



Railroad-DOT Mitigation Strategies (R16)

Warning Devices Agreement

Warning devices, such as lights and gates or flashing warning lights, are a common type of item needing regular maintenance, improvement, replacement, or installation. To make the repairs routine and to expedite the process, a standard warning devices agreement between the highway agency and the railroad is common. The following model agreement addresses installation, repair, and upkeep of warning devices.

RAILROAD-HIGHWAY MASTER AGREEMENT
FOR WARNING DEVICES

This Master Agreement (“MASTER AGREEMENT”) is made and entered into this _____ day of _____, 20____, by and between the _____ Department of Transportation, hereinafter called the “DEPARTMENT,” and _____ [Railroad Company], hereinafter called the “RAILROAD.”

WITNESSTH:

WHEREAS, the RAILROAD owns and operates a line of railroad in and through the City/County of _____, in the State of _____.

WHEREAS, the DEPARTMENT wants to progressively upgrade the safety at railway-highway crossings by installing warning devices throughout the State of _____. In order to expedite the processing of applications for these safety improvements and processing of related agreements, it is the desire of the DEPARTMENT and the RAILROAD to enter into this MASTER AGREEMENT setting out the general terms and conditions under which the improvements shall be provided, with the understanding that supplements to this MASTER AGREEMENT will be issued and executed from time to time covering specific installations in the form marked Exhibit A, attached hereto and hereby made a part hereof (the “Supplement” or “Supplements”).

WHEREAS, the RAILROAD desires to cooperate with the DEPARTMENT in the installation of these grade crossing warning devices that both parties agree to accomplish through the use of Federal Section 130 and/or State funds.

WHEREAS, the local public authority, if applicable, having jurisdiction of the highway or street crossing is referred to in this MASTER AGREEMENT and each Supplement as the “LOCAL AUTHORITY.”

NOW, THEREFORE, in consideration of the mutual covenants and agreement of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Scope of Work

The RAILROAD will provide all the work, labor, material, and services to install the warning devices, hereinafter called “signals,” at the locations described in the applicable Supplement.

The LOCAL AUTHORITY shall perform those services necessary to facilitate the processing of all documents required for orderly progress of the project in accordance with the policies and procedures of the State of _____ and the Federal-Aid Policy of the Federal Highway Administration.

The LOCAL AUTHORITY, where applicable, shall install without expense to the RAILROAD advance warning signs, standard pavement markings for railroad crossings, and guardrail or barriers to protect the signal from highway traffic when such protection is required.

Section 2: Notice from the Department

The DEPARTMENT will provide, at project expense, notice to the RAILROAD of the proposed project. The notice will contain a description of the site, a detailed plan showing the locations of warning devices to be installed, improvement proposed, funding sources proposed, and a request to the RAILROAD to prepare plans and estimates for the work involved.

Section 3: Railroad Obligations

- A. The RAILROAD shall, at project expense, furnish all labor, material, and equipment necessary for the project, and shall install warning signals and/or crossing surface of the type and at the location described in the applicable Supplement, subject to the terms and conditions of this MASTER AGREEMENT and the applicable Supplement.
- B. The RAILROAD shall also furnish, at project expense, such detailed plans, specifications, and estimates of cost that may be required in addition to those prepared by the State. The plans, specifications, and estimates shall become a part of the applicable Supplement.
- C. The position of the crossing improvements shall be established jointly by representatives of the DEPARTMENT and the RAILROAD.
- D. The RAILROAD shall not begin installation of the crossing improvements until authorization is received from the DEPARTMENT. The RAILROAD shall notify the DEPARTMENT at least forty-eight (48) hours prior to the commencement of the improvements. The RAILROAD shall notify the DEPARTMENT in writing of the date when all work is completed. At the completion of all work, representatives of the DEPARTMENT and the RAILROAD will conduct a joint inspection of the crossing improvements.

Section 4: Department or Local Authority Obligations

- A. Unless otherwise provided in Section 4B, the DEPARTMENT, at project expense, shall (1) furnish all supervision, labor, materials, and equipment that are needed to install and thereafter maintain advance warning signs, standard pavement markings, guardrails, or barriers to protect warning devices from highway traffic and, if applicable, shall resurface and align the crossing approaches to the alignment of the new rail crossing and (2) provide all necessary traffic control, barricades, and detour signing for crossing work.
- B. If a LOCAL AUTHORITY has jurisdiction of the highway or street and will have the responsibility to perform the work described in Section 4A or any other work set forth in this MASTER AGREEMENT or shall be responsible for any other obligations under this MASTER AGREEMENT, the DEPARTMENT in a separate agreement with the LOCAL AUTHORITY shall require the LOCAL AUTHORITY to perform such work and/or be responsible for such obligations and shall require the LOCAL AUTHORITY to comply with the terms and conditions contained in this MASTER AGREEMENT and in the respective Supplement.
- C. All work performed by the DEPARTMENT or the LOCAL AUTHORITY shall be in compliance with the current Manual on Uniform Traffic Control Devices.

Section 5: Maintenance by Railroad

- A. Upon completion of installation, the warning devices shall be operated and maintained by and at the expense of the RAILROAD, provided, however, that the RAILROAD’S agreement herein to operate and maintain said warning devices shall not prejudice the RAILROAD from having the benefit and advantage of Federal, State, or other public funds that may become available to pay or contribute to the cost of operation and maintenance of warning devices at highway–railway grade crossings.
- B. The portion of the crossing surface between the track tie ends shall be maintained by and at the expense of the RAILROAD. If, in the future, the DEPARTMENT or the LOCAL AUTHORITY elects to have the surfacing material between the track tie ends replaced with paving or some surfacing material other than timber planking, the RAILROAD, at the DEPARTMENT’S or the LOCAL AUTHORITY’S expense, shall install such replacement surfacing.

Section 6: Maintenance by Local Authority

The LOCAL AUTHORITY will maintain the advance warning signs, the standard pavement markings for railroad crossings, and protecting barriers or guardrails at the LOCAL AUTHORITY'S expense. However, in the event that any existing or future legislation makes Federal, State, or other funds available for the operation, maintenance, repair, or replacement of signals at grade crossings, the LOCAL AUTHORITY shall cooperate with the RAILROAD to secure said funds for the operation, maintenance, repair, or replacement of the signals installed pursuant hereto. This agreement may be supplemented and amended as necessary for operation and maintenance of said warning devices and their appurtenances.

Section 7: Repair or Replacement of Damaged or Obsolete Facility

In the event that said warning devices or their appurtenances installed under any Supplement are damaged, and if after a diligent effort by the RAILROAD, documented in writing, the item for damages proves uncollectible from the person or persons responsible for such damage, or in the event the RAILROAD and the DEPARTMENT agree that said warning devices cannot be maintained or by virtue of their obsolescence require replacement, then in either event cost of repair of said warning devices or cost of reinstallation of new warning devices shall be borne by the parties hereto in the same participation ratio as the cost of the original installation. The DEPARTMENT will not assume any liability for further damage or participate in any flagging or other costs on account of the warning devices being inoperative due to damage or replacement.

If the damage to said warning devices is caused by highway traffic, the DEPARTMENT or LOCAL AUTHORITY, as applicable, will cooperate with the RAILROAD in determining the location and identification of the parties responsible for such damage to the extent of making accident records available to the RAILROAD.

If the said warning devices cannot through age be maintained or require replacement because of obsolescence, then the cost of replacing the said warning devices shall be negotiated by the LOCAL AUTHORITY and the RAILROAD as specified in the participation Exhibit A, with such State, Federal, or other public funds as may be available at the time that such replacement becomes necessary.

Section 8: Disposition of Signal No Longer Required

- A. In the event that said warning devices are no longer required at the grade crossing and the RAILROAD and the DEPARTMENT/LOCAL AUTHORITY agree that they are not obsolete, the DEPARTMENT will take ownership and arrange to have them relocated to some other grade crossing. The division of costs of said relocation shall be agreed upon between the RAILROAD and DEPARTMENT/LOCAL AUTHORITY, as applicable, prior to such removal.
- B. If for any reason the warning devices shall no longer be required at the grade crossing and in the opinion of the RAILROAD and DEPARTMENT/LOCAL AUTHORITY, as applicable, the warning devices are obsolete, the RAILROAD may remove the said warning devices and credit the DEPARTMENT/LOCAL AUTHORITY, as applicable, the value of salvage recovered less cost of removal.

Section 9: Working on Railroad Property

- A. The DEPARTMENT, when working on any RAILROAD property, will comply with the terms and conditions set forth in Exhibit E, attached hereto and hereby made a part hereof, and will also require, in its separate contract with the LOCAL AUTHORITY and/or the DEPARTMENT'S Contractor (as such term is defined in Paragraph B below), that the LOCAL AUTHORITY and/or Contractor also comply with the terms and conditions contained in Exhibit E.

- B. The term “Contractor” as used in this MASTER AGREEMENT or in any Supplement shall mean the contractor or contractors hired by the DEPARTMENT or the LOCAL AUTHORITY to perform any work on the RAILROAD’S property and shall also include the Contractor’s subcontractors and the Contractor’s and subcontractor’s respective employees, officers, and agents and others acting under its or their authority.

Section 10: Funding and Audit

- A. The project will be funded in conformity with Federal Highway Administration regulations adopted for safety improvement projects authorized in the Transportation Equity Act for the 21st Century, its revisions, or amendments. All bills rendered by the RAILROAD and paid by the DEPARTMENT/LOCAL AUTHORITY will be subject to audit and approval by the Federal Highway Administration (“FHWA”). Reimbursement shall be in accordance with provisions of the Federal-Aid Policy Guide, provided, however, that the use of said Federal-Aid Policy Guide as a guideline for reimbursement between the parties hereto shall not be construed as a condition precedent to the DEPARTMENT’S obligation to pay the RAILROAD for work performed by it. If the DEPARTMENT desires to secure reimbursement from the FHWA for all phases of the work performed by the RAILROAD, it is the responsibility of the DEPARTMENT to ensure that the interpretation of the Federal-Aid Policy Guide will permit Federal participation in the cost and expense of work that, pursuant to each Supplemental, is to be performed by the RAILROAD at the expense of the DEPARTMENT.
- B. If the DEPARTMENT requires the services of a consultant, the DEPARTMENT shall be responsible for audit of the consultant’s records to determine eligible federal aid costs on the project. The report of said audit shall be in the DEPARTMENT’S files and made available to the State or Federal government. An audit shall be conducted by the DEPARTMENT’S internal Audit office in accordance with generally accepted auditing standards as issued by the U.S. Government Accountability Office.
- C. All project records in support of all costs incurred and expenditures shall be open to inspection by the DEPARTMENT and the FHWA at the RAILROAD’S offices, during normal business hours, and shall be retained and made available by the RAILROAD for such inspection for a period of not less than three (3) years from the date of final billing from the RAILROAD.
- Any overpayment of federal money in ineligible items of cost found as a result of the audit will be reimbursed by the RAILROAD to the DEPARTMENT or LOCAL AUTHORITY, as applicable, for the amount of such overpayment. All such excess funds will be reimbursed to the FHWA.

Section 11: Billing and Payments

- A. The RAILROAD will submit progressive itemized invoices detailing the actual cost incurred by the RAILROAD in carrying out work to be performed under this MASTER AGREEMENT and each Supplement to the LOCAL AUTHORITY or DEPARTMENT, as applicable. Work shall include cost of labor, materials, and other services as shown in the estimate of cost furnished by the RAILROAD and accepted by the LOCAL AUTHORITY or DEPARTMENT, as applicable. The LOCAL AUTHORITY or DEPARTMENT, as applicable, shall pay all undisputed parts of said progressive invoices within thirty (30) days and no later than one hundred twenty (120) days of receipt of invoices. The DEPARTMENT will promptly notify the RAILROAD of all disputed billings.
- B. A final and complete billing of all actual incurred costs and expenses, ascertained in accordance with the provisions of 23 CFR, Chapter I, Subchapter B, Part 140, Subpart I, as supplemented and

amended, which by this reference is incorporated in this MASTER AGREEMENT, shall be made within one (1) year of completion of project by the RAILROAD. The DEPARTMENT/LOCAL AUTHORITY agrees to make final payment of eligible costs listed in the final invoice within ninety (90) days of receipt of said final invoice.

Section 12: Preliminary Engineering Costs

The DEPARTMENT and the RAILROAD acknowledge that the cost of preliminary engineering incurred prior to approval of the specific project by the FHWA is ineligible for reimbursement with Federal funds and will therefore be reimbursed with State funds if incurred after the DEPARTMENT'S request for preparation of estimates.

Section 13: Separate Agreement with the Local Authority

If a grade crossing improvement project is to be undertaken at a crossing at which the highway or street is subject to the jurisdiction of the LOCAL AUTHORITY instead of the DEPARTMENT, the DEPARTMENT shall enter into a separate agreement with the LOCAL AUTHORITY whereby the LOCAL AUTHORITY shall assume responsibility for the obligations set forth herein as applicable to the LOCAL AUTHORITY with jurisdiction over the highway or street.

Section 14: Nondiscrimination Provision

If the RAILROAD enters into contract or agreement with a contractor to perform any of the work under this MASTER AGREEMENT or Supplement, the provisions of the Civil Rights Act of 1964 will apply and become a part of the Supplement for the project by reference.

Section 15: Successors or Assigns

This MASTER AGREEMENT and each Supplement shall be binding on and inure to the benefit of the parties hereto, their successors, and assigns.

Section 16: Indemnification

Nothing in this MASTER AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILROAD, its officers, employees, or agents. Moreover, for any work performed in the State of _____, the DEPARTMENT will require its contractor to indemnify the RAILROAD and any other railroad company occupying or using the RAILROAD'S right-of-way or line of railroad against all loss, liability, and damages, including environmental damages, hazardous materials damages, penalties, or fines that may be assessed for, caused by, or the result of the contractor's negligence; provided, however, that if such loss, liability, damages, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors. Likewise, if such loss, liability, damages, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT'S officers, employees, or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S officers, employees, or agents.

IN WITNESS WHEREOF, the parties hereto have caused this MASTER AGREEMENT to be executed in duplicate by their proper officers thereunto duly authorized, as of the day and year first herein written.

RAILROAD
(Federal Tax ID # _____)
By: _____
Title: _____
Date: _____

DEPARTMENT
By: _____
Title: _____
Date: _____

EXHIBIT A

SUPPLEMENT TO RAILROAD-HIGHWAY MASTER AGREEMENT BETWEEN
 _____ TRANSPORTATION DEPARTMENT
 AND
 _____ RAILROAD
 FOR GRADE CROSSING WARNING DEVICES
 INVOLVING FEDERAL SECTION 130 FEDERAL AID FUNDS

Project Name: _____
 Project No.: _____ (the "Project") DOT No.: _____
 Railroad Subdivision: _____ Railroad Milepost: _____
 Hwy, Road, or Street: _____ (the "Crossing")
 City: _____ County: _____

- A. _____ Transportation Department ("DEPARTMENT") and _____ Railroad Company ("RAILROAD") entered into a RAILROAD-HIGHWAY MASTER AGREEMENT ("MASTER AGREEMENT") dated _____.
- B. As provided in the MASTER AGREEMENT, the DEPARTMENT and the RAILROAD are to enter into supplements to the MASTER AGREEMENT covering each Section 130 project.
- C. This supplement to the MASTER AGREEMENT ("Supplement") is being executed by the DEPARTMENT and the RAILROAD [*add if applicable*: City of _____, County of _____ (the "LOCAL AUTHORITY")] to provide for the Project improvements described in this Supplement that are to be completed at the crossing described above pursuant to the terms and conditions of the MASTER AGREEMENT.
- D. Listed below are the proposed improvements with cost estimates. The RAILROAD'S force account estimate(s) is attached as Exhibit B, and wiring diagram (if required) is attached as Exhibit D, and are hereby made a part of this Supplement. All work and the financing thereof shall be subject to the terms and provisions of the MASTER AGREEMENT.

E. Description of Improvement:

Estimated Total Cost	Federal Funds	State Funds	Local Funds	Railroad Funds
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

F. The [DEPARTMENT] [LOCAL AUTHORITY] shall be responsible for reimbursing the RAILROAD for railroad flagging costs relating to any work performed by the State, LOCAL AUTHORITY, or Contractor.

RAILROAD
 (Federal Tax ID # _____)
 By: _____
 Title: _____
 Date: _____

DEPARTMENT
 By: _____
 Title: _____
 Date: _____

LOCAL AUTHORITY [*add if applicable*]
 By: _____
 Title: _____
 Date: _____

EXHIBIT B

RAILROAD

DETAILED FORCE
ACCOUNT COST ESTIMATE

Type of Work	Labor	Non-Labor	Total
1. Install Warning Devices (Type)			
a. Freight Material Handling			
b. Equipment Rental			
c. Expenses			
d. Salvage			
e. Other			
2. Engineering and Accounting			
3. Liability Insurance			
4. Labor Surcharge			
5. Other Work by Railroad			
<input type="checkbox"/> Yes <input type="checkbox"/> No EXHIBIT C attached hereto			
6. Total Project Costs			

EXHIBIT C

RAILROAD

OTHER WORK [IF REQUIRED]
COST ESTIMATE

EXHIBIT D

RAILROAD

DETAILED WIRING DIAGRAM [IF REQUIRED]

EXHIBIT E

TERMS AND CONDITIONS RELATING TO WORKING ON THE RAILROAD'S PROPERTY

1. The RAILROAD, at its determination, may provide inspection, security, flagging, or other protective services as necessary for the protection of the RAILROAD'S property or operations whenever there are DEPARTMENT, LOCAL AUTHORITY, or Contractor activities or work on the RAILROAD'S property.
2. All work to be done by the DEPARTMENT, LOCAL AUTHORITY, and any Contractor on RAILROAD property shall be done in a manner satisfactory to the RAILROAD. The work shall be performed diligently and completed within a reasonable time or within such period of time as may be specified in writing by the RAILROAD. The authorized representative of the RAILROAD shall have final authority in all matters affecting safe and timely train operations.
3. No Project work on any RAILROAD property shall commence until the DEPARTMENT, LOCAL AUTHORITY, or Contractor has provided fifteen (15) days' advance notice to the RAILROAD representative and at least fifteen (15) days' advance notice for any work to be performed within twenty-five (25) feet of any railway track, or where such work, personnel, or equipment will be near enough to any track that an 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, temporary structures, machinery, tools, materials, or vehicles shall be located, operated, placed, or stored within twenty-five (25) feet of any railway track at any time, for any reason, unless and until the RAILROAD has given approval of such use and a RAILROAD flagger is available at the job site to provide flagging protection. 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 DEPARTMENT, LOCAL AUTHORITY, or 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 DEPARTMENT or the LOCAL AUTHORITY will 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 fifteen (15) days' notice must then be given to the RAILROAD if flagging services are needed again after such five (5)-day cessation notice has been given to the RAILROAD.
4. The work performed by the DEPARTMENT, LOCAL AUTHORITY, or Contractor shall be done at such time and in such manner as not to damage any railway tracks or interfere with (1) the timely and safe movement of the RAILROAD'S trains and on-track maintenance equipment or (2) the installations or operations of the RAILROAD'S tenants, unless mutually agreed upon prior to any such work activity.
5. The RAILROAD reserves the right to stop, by an oral directive followed by a written notice, any DEPARTMENT, LOCAL AUTHORITY, or Contractor activities or operations on RAILROAD property that, at the RAILROAD'S determination, could or is creating an imminent hazard to RAILROAD property or operations. After stopping any activity or operation, the RAILROAD is to notify the DEPARTMENT, LOCAL AUTHORITY, and Contractor in writing of the required modification to activities or operations, along with recommended protective services that will be provided by the RAILROAD to allow Project construction to continue.
6. Work on the job site shall not cease without the RAILROAD'S written consent and subject to such reasonable conditions as the RAILROAD may specify. It is understood that the RAILROAD'S

tracks at and in the vicinity of the work will be in use during progress of the work and that movement or stoppage of rail traffic, including track maintenance equipment, may cause delays in the work of the Project. The DEPARTMENT and/or LOCAL AUTHORITY hereby assume the risk of any such delays and agree that no claims for damage on account of any delay shall be made against the RAILROAD.

7. The DEPARTMENT or LOCAL AUTHORITY, at its own expense, shall adequately police and supervise all work to be performed by the Contractor. The responsibility of the DEPARTMENT or LOCAL AUTHORITY for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the RAILROAD'S collaboration in performance of any work, or by the presence at the job site of the RAILROAD'S representatives, or by compliance by the DEPARTMENT or LOCAL AUTHORITY with any requests or recommendations made by such representatives.
8. All Project work shall be performed in compliance with all applicable Federal, DEPARTMENT, and local laws and regulations affecting the Project work, including, without limitation, all applicable Federal Railroad Administration regulations.
9. The DEPARTMENT, LOCAL AUTHORITY, or Contractor shall telephone the RAILROAD during normal business hours (_____, except holidays) at _____ [also include a 24-hour, 7-day number for emergency calls] to determine if fiber optic cable is located within the job site area on RAILROAD property. If there are fiber optic cables on such property, 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 optics, at Project expense, prior to beginning any work on RAILROAD property.
10. The DEPARTMENT, LOCAL AUTHORITY, and Contractor, at no expense to the RAILROAD, shall provide and maintain suitable facilities for draining the highway and its appurtenances, and shall not suffer or permit drainage water therefore to flow or collect on property of the RAILROAD. The DEPARTMENT and LOCAL AUTHORITY shall provide adequate passageway for the waters of any streams, bodies of water, and drainage facilities (either natural or artificial, including water from the RAILROAD'S culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Contractor, be impeded, obstructed, diverted, or caused to back up, overflow, or damage the property of the RAILROAD or any part thereof, or the property of others. The Contractor shall not obstruct or interfere with existing ditches or drainage facilities.
11. Upon completion of work, the DEPARTMENT, LOCAL AUTHORITY, and Contractor shall remove from RAILROAD property all machinery, equipment, surplus materials, and rubbish and leave such property in a condition satisfactory to the RAILROAD.
12. The DEPARTMENT, LOCAL AUTHORITY, and Contractor shall remedy any damage to the RAILROAD property and the RAILROAD'S tenants' property caused by itself during Project activities or the failure to perform activities, and in the event the Contractor or its insurance carrier(s) fail to repair or restore the same.
13. Safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the work performed by DEPARTMENT, LOCAL AUTHORITY, or Contractor. The DEPARTMENT, LOCAL AUTHORITY, or Contractor shall be responsible for initiating, maintaining, and supervising all safety, operations, and programs in connection with its work on RAILROAD property.
14. The DEPARTMENT and LOCAL AUTHORITY shall protect and hold harmless the RAILROAD and the RAILROAD'S tenants from and against all loss, liability, and damage arising from activities

of the DEPARTMENT or LOCAL AUTHORITY on RAILROAD property during and after Project work.

15. The DEPARTMENT and LOCAL AUTHORITY shall provide, without expense to the RAILROAD and the RAILROAD'S tenants, a minimum of \$500,000 of liability insurance for bodily or personal injury, death, or property damage or loss as a result of any one occurrence or accident, regardless of the number of persons injured or the number of claimants during Project work.
16. The DEPARTMENT'S or LOCAL AUTHORITY'S contract with the Contractor shall require the Contractor to indemnify, defend, and hold harmless the RAILROAD, its officers, agents, and employees from and against any loss, damages, claims, actions, penalties, fines, costs, and expenses, including, without limitation, court costs and reasonable attorney's fees, which may result from (1) injury to or death of any person, including the RAILROAD'S and Contractor's officers, agents, and employees, as well as any other person, and/or (2) damage to or loss or destruction of property whatsoever, including the RAILROAD'S and the Contractor's property or property in their care or custody or any other property (hereinafter collectively "Loss") when the Loss is due to or arises from the Contractor's work or other acts or omissions on RAILROAD property, except to the extent that the Loss is caused by the sole negligence of the RAILROAD. The RAILROAD shall have the right to file a lawsuit or claim directly against the Contractor in connection with the provisions of this Section.
17. The DEPARTMENT'S or LOCAL AUTHORITY'S Contractor shall not store material or park equipment and vehicles on RAILROAD property when not in use in the Project.
18. The DEPARTMENT or LOCAL AUTHORITY shall ensure that the payment bond(s) it obtains from the Contractor for the Project includes the payment of any mechanic's or materialmen's liens filed by the Contractor against any property of the RAILROAD. If such bonds are not sufficient for such liens to be released, the DEPARTMENT or LOCAL AUTHORITY shall immediately pay off such liens so that such liens are released and not enforced.
19. Any utility lines constructed on RAILROAD property by or under authority of the DEPARTMENT or LOCAL AUTHORITY for the purpose of conveying electric power or communications incidental to the DEPARTMENT'S or LOCAL AUTHORITY'S use of RAILROAD property for highway purposes shall be constructed in accordance with specifications and requirements of the RAILROAD, and in such manner as to not adversely affect any communication or signal lines of the RAILROAD or its licenses now or hereafter located on the property.
20. Before commencing any work on any RAILROAD property, the Contractor will provide the RAILROAD and the DEPARTMENT or LOCAL AUTHORITY with the insurance binders, policies, certificates, and/or endorsements set forth in Exhibit F of this AGREEMENT. All insurance correspondence, binders, policies, certificates, and/or endorsements shall be sent to:

RAILROAD
Attention: _____
Address: _____

City: _____ State: _____

DEPARTMENT [OR LOCAL AUTHORITY]
Attention: _____
Address: _____

City: _____ State: _____

EXHIBIT F

INSURANCE REQUIREMENTS FOR CONTRACTOR AS SPECIFIED BY RAILROAD

The Contractor shall, at its sole cost and expense, procure and maintain until Project completion 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 \$6,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).
- 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 than \$1,000,000 per occurrence.
- 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 Department of _____ of the State of _____.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy with a limit of \$500,000 per employee.
If the 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. The 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 the RAILROAD as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. This information must be submitted to the RAILROAD before the work may be commenced.
- E. **Umbrella or Excess** insurance. If the 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 nonhazardous materials from the job site, the Contractor must furnish to the 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 workers' compensation and employers' liability) must include the 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 the RAILROAD as additional insured shall, to the extent provided under ISO Additional Insured Endorsements CG 20 26 and CA 20 48, provide coverage for the RAILROAD'S negligence whether sole or partial, active or passive, and shall not be limited by the Contractor's liability under any indemnity provisions under which the Contractor is to indemnify the RAILROAD under this Project.

The Contractor shall not assign or subcontract its contract with the DEPARTMENT or LOCAL AUTHORITY for this Project, or any interest therein, without the written consent of the DEPARTMENT or LOCAL AUTHORITY. The Contractor shall be responsible for the acts and omissions of all subcontractors. Before the 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 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 the subcontractor's 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 the subcontractor's 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 (1) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement or (2) all punitive damages are prohibited by all states in which this agreement will be performed.
- I. The Contractor waives all rights against the 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 the Contractor as required by this AGREEMENT.
- J. Prior to commencing the work, the Contractor shall furnish the 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 the 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 _____.
- L. The fact that insurance is obtained by the Contractor will not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this MASTER AGREEMENT. Damages recoverable by the RAILROAD from the Contractor or any third party will not be limited by the amount of the required coverage.
- M. Nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILROAD, its officers, employees, or agents. Moreover, for any work performed in the State of _____, the DEPARTMENT will require its contractor to indemnify the RAILROAD and any other railroad company occupying or using the RAILROAD'S right-of-way or line of railroad against all loss, liability, and damages, including environmental damages, hazardous materials damages, penalties, or fines that may be assessed for, caused by, or

the result of the contractor's negligence; provided, however, that if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors. Likewise, if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT officers, employees, or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S officers, employees, or agents.