

CONTRACTOR RIGHT OF ENTRY AGREEMENT

Terms and Conditions

Section 1. NOTICE OF COMMENCEMENT OF WORK-FLAGGING

Contractor agrees to notify the Railroad Representative at least 48 hours in advance of Contractor commencing its work and at least 24 hours in advance of proposed performance of any work by Contractor in which any person or equipment will be within 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 25 feet of any track. Upon receipt of notice the Railroad Representative will determine and inform Contractor whether a flagman will be present and whether Contractor need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Railroad's expense with the understanding that if the Railroad provides any flagging or other services Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2. NO INTERFERENCE WITH RAILROAD'S OPERATION

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 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.

Section 3. MECHANIC'S 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 the Railroad for any such work performed.

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. Contractor shall contact the appropriate Class I and shortline railroads to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Contractor's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished.
- b). In addition to other indemnity provisions in this Agreement 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 Contractor, its contractor, agents and/or employees, to the extent that it causes (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 5. COMPLIANCE WITH LAWS

In the progression of 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. Contractor shall use only such methods as are consistent with safety, both as concerns Contractor, Contractor's agents and employees, the officers, agents and employees, and property of the Railroad and the public in general. Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration ("FRA") regulations shall be followed when work is performed on the Railroad's property. If any failure by Contractor to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, Contractor shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. Contractor further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 6. SAFETY INSTRUCTIONS

Safety of personnel, property, rail operations and the public is of paramount importance in the progression of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed:

- a). 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. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration ("OSHA") reportable injuries occurring to any person that may arise during the work performed on the job site. Contractor shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.
- b). The employees of Contractor shall 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. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment
 - (1) Protective headgear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Contractor's or subcontractor's company logo or name;

- (2) Eye protection that meets American National Standard 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, burning, etc.; and
 - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- c). All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Contractor's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, Contractor, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 7. INDEMNITY

- a). As used in this Section, "Railroad" includes its officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, Contractor's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Contractor's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).
- b). As a major inducement and in consideration of the license and permission herein granted, Contractor agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from Contractor's work performed under this Agreement, its breach of the agreement or its failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of its performance or nonperformance of this Agreement, except to the extent such Loss is caused by Railroad's negligence or willful misconduct.

Section 8. RESTORATION OF PROPERTY

In the event the Railroad authorizes Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the 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.

Section 9. WAIVER OF BREACH

The waiver by the either party of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the waiving party to avail itself of any remedy for any subsequent breach thereof.

The parties hereto have executed this agreement in duplicate as the date first herein written.

RAILROAD NAME

CONTRACTOR

Printed Name, Title

Signature

Date

Printed Name, Title

Signature

Date