



# Memo

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TO: Public Works Committee  
FROM: Ed Andrews, Public Works Director  
DATE: January 3<sup>rd</sup>, 2019  
SUBJECT: Knollcrest Ditch – Contract Time Extension

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The Committee will recall the award of the Knollcrest ditch cleaning project to Stark Excavating in January of 2019. This work is an effort to improve the drainage from the Dieble detention basin along the existing utility easement and railroad ROW some 550' to the west of Diebel Road. The ditch was found to be obstructed by a number of private culverts placed upon Railroad ROW without permission.

The contract provided for following time requirement:

***PERFORMANCE PERIOD***

*This work is anticipated to begin in January of 2018 and be completed no later than in April 30, 2019. While this work has been estimated at 40WD, all work shall be final complete and invoiced by April 30, 2019, consummate with the City's Fiscal Year.*

However, the railroad did not issue a fully executed agreement for right of entry on their property until March 22, 2019, see attached. This delay along with the adverse weather in the interim period are reasonable grounds for a time extension until May 21, 2019, the effective dates of the railroad agreement.

Stark has been diligent in their coordination efforts with the local track master, Josh Thomas. In fact, discussions to this point are that flaggers will not be required provided the sequencing can occur as planned.

This matter has been placed on the Public Works Committee agenda of Monday, May 6<sup>th</sup>, 2019 for review and discussion.

cc: File

## Ed Andrews

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**From:** GWAPPSWEST <gwappswest@gwrr.com>  
**Sent:** Friday, March 22, 2019 8:52 AM  
**To:** Erin Mool  
**Cc:** Ed Andrews; Joshua Weber; Blake Gullett; Christopher Frank; David Shepherd; Dawn Davis-Carpenter; Joshua Thomas; Julie Eddy; Mitchell Brown; Sabrina Moran; Tim Shepherd; Toby Tobias  
**Subject:** RE: TPW18117603 - Knollcrest Ditch Cleaning Washington, IL  
**Attachments:** TPWR18117603 - Executed Right of Entry.pdf; TPWR18117603 - Midwest Region Flagging Agreement.pdf

Good Morning/Afternoon,

The subject fully executed agreement is attached, please complete the attached Flagging Agreement, and submit to Ms. Sabrina Moran (smoran@gwrr.com) and Mr. Christopher Frank (cfrank@gwrr.com) to schedule flagging with the corresponding railroad. Please note that scheduling may take up to 30 days dependent on availability and approval.

PLEASE NOTE THE ATTACHED CONTRACTORS RIGHT OF ENTRY AGREEMENT IS EFFECTIVE March 22, 2019 to May 21, 2019.

If approved work is not completed within this 60 day window you will be required to submit a written request to extend this agreement beyond the original 60 days.

Additional fees may be incurred for this extension of time.

It is recommended you contact this office via email at least 2 weeks prior to the original expiration date if an extension of time is required to complete approved work.

Thank you,

**Crystal Galbreath**  
**Real Estate Coordinator**  
**Genesee & Wyoming Railroad Services, Inc.**  
13901 Sutton Park Drive South  
Suite 160  
Jacksonville, Florida 32224  
904-596-7782  
[gwappswest@gwrr.com](mailto:gwappswest@gwrr.com)

Preliminary property research or application review will take approximately 3-4 weeks. To minimize duplicate reviews and obtain faster process times, we request that you submit the information you have as an application package for review. If additional information/revisions are needed or if the underlying land owner is an alternate railroad, you will be directed upon review.

**From:** Erin Mool <emool@starkcompanies.com>  
**Sent:** Wednesday, March 13, 2019 5:27 PM  
**To:** GWAPPSWEST <gwappswest@gwrr.com>  
**Cc:** eandrews@ci.washington.il.us; Joshua Weber <jweber@starkcompanies.com>

**Subject:** FW: TPW18117603 - Knollcrest Ditch Cleaning Washington, IL  
**Importance:** High

See attached in regards to insurance. If you are needing something different, please let me know.

Thank you,

**Erin Mool**  
Office Engineer – Bloomington, IL  
Office Phone: (309) 828-5034 Ext. 274  
Fax: (309) 829-3897



**Our Mission** is to deliver creative and cost effective solutions in everything we do. We strive to work above and beyond stakeholder expectations and to deliver the best possible result while never compromising our integrity or our commitment to quality and safety.

**From:** GWAPPSWEST [<mailto:gwappswest@gwrr.com>]  
**Sent:** Wednesday, March 13, 2019 10:23 AM  
**To:** Ed Andrews <[eandrews@ci.washington.il.us](mailto:eandrews@ci.washington.il.us)>; Joshua Weber <[jweber@starkcompanies.com](mailto:jweber@starkcompanies.com)>  
**Subject:** RE: TPW18117603 - Knollcrest Ditch Cleaning Washington, IL

Hi Ed,

I need the certificate of insurance of general liability for Stark Excavating. The letter provided does not provide proof of General Liability, Automobile Liability and Workers Compensation.

Thanks,  
**Crystal Galbreath**  
**Real Estate Coordinator**  
**Genesee & Wyoming Railroad Services, Inc.**  
13901 Sutton Park Drive South  
Suite 160  
Jacksonville, Florida 32224  
904-596-7782  
[gwappswest@gwrr.com](mailto:gwappswest@gwrr.com)

**From:** Ed Andrews <[eandrews@ci.washington.il.us](mailto:eandrews@ci.washington.il.us)>  
**Sent:** Monday, March 11, 2019 9:07 AM  
**To:** GWAPPSWEST <[gwappswest@gwrr.com](mailto:gwappswest@gwrr.com)>  
**Subject:** FW: TPW18117603 - Knollcrest Ditch Cleaning Washington, IL

Crystal,

Please find the additional insurance statement for your records. This adds clarification that they have coverage inside of the 50' clear zone of the tracks.

Thanks,  
Ed Andrews, PE  
Public Works Director - City of Washington  
301 Walnut Street  
Washington, IL. 61571  
(309) 444-1136 office  
(309) 444-9779 fax  
(309) 981-9087 cell

**From:** Joshua Weber <[jweber@starkcompanies.com](mailto:jweber@starkcompanies.com)>  
**Sent:** Monday, March 11, 2019 8:02 AM  
**To:** Ed Andrews <[eandrews@ci.washington.il.us](mailto:eandrews@ci.washington.il.us)>; Kevin Schone <[kschone@ci.washington.il.us](mailto:kschone@ci.washington.il.us)>  
**Subject:** SEI # 19043 - Knollcrest Dr Drainage - RR Insurance

Ed,

See attached. Please resend this to your RR contact. Our insurance company rewrote this sheet as they had forgotten to charge us the additional \$150.00. This is just noting the increase to an approx. 30 K value on the project. Thanks!



**EXCAVATING, INC. Josh Weber**

Estimator/PM - Bloomington, IL

[www.starkcompanies.com](http://www.starkcompanies.com)

Office Phone: (309) 828-5034 EXT. 263

Fax: (309) 829-3897

**Our Mission** is to deliver creative and cost effective solutions in everything we do. We strive to work above and beyond stakeholder expectations and to deliver the best possible result while never compromising our integrity or our commitment to quality and safety.

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19043

## CONTRACTOR RIGHT OF ENTRY LICENSE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of March 22, 2019, (the "Effective Date"), by and between Toledo, Peoria & Western Railway Corp. ("Railroad") and Stark Excavating, Inc. ("Licensee").

### WITNESSETH:

WHEREAS, Licensee has submitted a written request or application to Railroad requesting permission to enter Railroad's property at or near the location specified in Section 1 below for the limited purpose of performing certain work; and

WHEREAS, Railroad is willing to grant to Licensee the limited right and permission to enter upon such property for the limited purpose of performing such work in accordance with the terms provided herein.

NOW THEREFORE, in consideration of these promises, the Agreement herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### Section 1. LOCATION/PAYMENT/WORK PRACTICES:

1.1 Railroad hereby conveys to Licensee the limited right and permission to enter upon the Railroad's property located at or near Milepost 98.21, ILLINOIS Subdivision, Latitude: 40.710169, Longitude: -89.388164 located in WASHINGTON, in the County of TAZEWELL, State of IL as reflected on the map attached hereto as Exhibit A and incorporated herein by reference (the "Property") for the purpose of Licensee, through its employees, agents or contractors to CLEAR DITCH ALONG RAILROAD AND RESIDENTAL PROPERTY LINE (the "Work"); and

1.2 Upon payment of a fee referenced in Section 11 herein, Railroad hereby grants to Licensee, the right and permission to enter upon Railroad's Property for the purpose of performing the Work, subject to the terms, conditions and provisions set forth in this Agreement.

1.3 The Work shall be performed at the entire cost and expense of Licensee, in accordance with good and sound engineering practices, to the satisfaction of Railroad's Chief Engineer, or his duly authorized representative (the "Representative"), and in a manner to avoid accident, damage or harm to persons or property and delays to or interference with the operations of Railroad.

### Section 2. PRIOR NOTICE/FLAGGING/OTHER CONDITIONS.

2.1 Licensee or Licensee's contractor shall notify Railroad's Representative at least five (5) business days before proceeding with any phase of the Work on the Property and shall abide by the instructions of said Representative concerning the safety of the Railroad. All persons entering the Property pursuant to the permission granted herein shall comply with and perform the Work in accordance with Genesee & Wyoming Inc.'s Code of Ethics and Conduct and all publicly available policies referenced therein, including but not limited to the Contractor Safety Rules (collectively, the "Policies"), which can be located at

[https://www.gwrr.com/investors/pdfs/GWR\\_US\\_Ethics\\_073008.pdf](https://www.gwrr.com/investors/pdfs/GWR_US_Ethics_073008.pdf)

and

<https://www.gwrr.com/download.axd/0774e378f35949f59f232ef1adbc63e7.pdf?d=Contractor%20Safety%20Rules>

The following Personal Protective Equipment ("PPE") must be worn at all times on the Property: Hard Hats, Safety Footwear, certified Eye Protection with side shields and approved High-Visibility Work wear. Additional forms of PPE may be required under certain circumstances as specified in the aforesaid Contractor Safety Rules.

2.2 Railroad shall furnish such personnel, flagman or watchman which in Railroad's sole discretion may be necessary to protect the facilities and traffic of Railroad during the performance of said Work. The Licensee or its contractor shall reimburse Railroad promptly for the actual cost of said services, including all applicable surcharges, upon receipt of bill or bills therefor.

2.3 No equipment of Licensee or of its contractor, shall be placed and operated, nor Work permitted to be performed at a distance closer than fifty (50) feet from the center of track, nor equipment moved across the Railroad's track(s) at other than an established public crossing, unless prior arrangements have been made with said Chief Engineer or his Representative. Appropriate precautions must be taken by Licensee and its contractor to avoid interference with or damage to Railroad's facilities during the course of the Work.

2.4 Prior to entering upon the Property, Licensee agrees to comply with the **RAILROAD'S ROADWAY WORKER PROTECTION TRAINING POLICY** as set forth in Exhibit B attached hereto and incorporated herein by reference, if such training is applicable as determined in the sole discretion of Railroad.

2.5 The permission herein granted is subject to all existing leases, licenses and occupancies of the Property by third parties. Licensee acknowledges that, in agreeing to this Agreement, Railroad acts on its own behalf only and has no authority to act, and does not claim to act, on behalf of any other entity or person with respect to any right any such other entity or person may have to object to this Agreement. Licensee shall secure the consent, and protect the facilities, of each such third party occupier of the Property.

2.6 Licensee shall implement and enforce a safety program conforming to all applicable requirements of federal, state and local laws, rules and regulations.

### Section 3. LEGAL COMPLIANCE.

Licensee expressly agrees, at its own cost and expense, to comply and cause its agents, employees and contractor(s) to comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over the Work or Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act and state "One Call" - "Call Before You Dig" requirements. Licensee shall indemnify, defend and save harmless Railroad and its affiliates from and against, and shall pay, all expenses, damages, penalties, and claims, including without limitation reasonable counsel fees, that may arise from, or be imposed because of, the failure of Licensee to comply with this Section.

### Section 4. LIABILITY/INDEMNITY.

4.1 Licensee hereby assumes risk of and agrees to indemnify, defend, protect and save Railroad and its affiliates, and each of their directors, officers, agents and employees of Railroad, harmless from and against (a) injury to or death of any person or persons whomsoever, including but not limited to the agents, employees or contractor(s) of the parties hereto, and (b) the loss or damage to any property whatsoever, including property claims, demands, suits, judgments or expenses incurred in connection therewith, resulting from or arising out of the acts or omissions of Licensee, its agents, employees or contractor(s), or resulting from, arising out of, or occurring in connection with the entry or presence of Licensee, its agents, employees or contractor(s) on the Property, or resulting from, arising out of, or occurring in connection with the performance or execution of the Work performed under this Agreement or incidental thereto.

4.2 IN NO EVENT UNDER THIS AGREEMENT WILL RAILROAD HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE TERM "RAILROAD" AS USED IN THIS SECTION 4 SHALL INCLUDE THE SUCCESSORS, ASSIGNS, AND AFFILIATED COMPANIES OF RAILROAD, AND ANY OTHER RAILROAD COMPANY THAT MAY BE LAWFULLY OPERATING UPON AND OVER THE TRACKS, OR THE TRACKS

CROSSING OR ADJACENT TO THE TRACKS, AND THE OFFICERS, AGENTS, INVITEES AND EMPLOYEES THEREOF.

Section 5. INSURANCE.

Licensee agrees to comply with the **INSURANCE REQUIREMENTS FOR CONTRACTOR RIGHT-OF-ENTRY LICENSE AGREEMENTS**, attached hereto as Exhibit C and incorporated herein by reference, and shall provide the required Certificate of Insurance to Railroad with return of the signed duplicate original of this Agreement prior to the commencement of the Work.

Section 6. NOTIFICATION.

Licensee shall promptly notify said Chief Engineer of any loss, damage, injury or death arising out of or in connection with said Work.

Section 7. RESTORATION.

Upon completion of the Work or the term of the Agreement, Licensee shall promptly remove from the Property all tools, equipment and materials placed thereon by Licensee. Licensee shall restore the Property to the same state and condition as when Licensee first entered thereon and shall leave the Property in a condition satisfactory to Railroad's Chief Engineer or Representative.

Section 8. TERM/TERMINATION.

This Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement and shall terminate upon completion of the Work or at midnight 60 calendar days following the Effective Date, whichever occurs first, unless extended in writing by Railroad. Notwithstanding the foregoing, Railroad shall have the right to terminate this Agreement and the license granted hereunder immediately if Licensee defaults on any of the terms and/or conditions set forth herein.

Section 9. COMPLIANCE AND DOCUMENTATION.

Licensee agrees, and shall cause its agents, employees or contractor(s), to (a) understand and comply with the terms and conditions of this Agreement, (b) carry a copy of this Agreement at all times while on the Property, and (c) promptly present the copy of this Agreement to any employee of Railroad upon request.

Section 10. RAILROAD CONTACT INFORMATION.

The Railroad's Chief Engineer is:

Christopher R. Frank  
4349 Easton Way, Suite 110  
Columbus, OH 43219

The Railroad's Representative is:

Roadmaster, Josh Thomas  
4349 Easton Way, Suite 110  
Columbus, oh 43219  
309.303.9404

Railroad **EMERGENCY** Phone Number: (866) 527-3499  
Reference Location: Toledo, Peoria & Western Railway Corp.  
Subdivision ILLINOIS Milepost 98.21

Section 11. FEE.

Upon execution of this Agreement, Licensee shall pay Railroad the sum of \$1750 toward the cost of preparing this Agreement and for the privileges granted to the Licensee.

Section 12. NON-WAIVER.

If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

Section 13. APPLICABLE LAW.

This Agreement shall be governed by and construed under the laws of the State of IL, without regard to the choice of law provisions thereof.

Section 14. ASSIGNMENT.

Licensee shall not assign this Agreement without the prior written consent of Railroad, which consent may be granted or withheld at Railroad's sole discretion. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

Section 15. INTERPRETATION/SEVERABILITY.

To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

Section 16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 17. HEADINGS.

The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

Section 18. CONSTRUCTION OF TERMS.

The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.



*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

RAILROAD:  
TOLEDO, PEORIA & WESTERN RAILWAY CORP.

LICENSEE:  
STARK EXCAVATING, INC.

By: 

Name: Charles C. Stringer

Its: Assistant Treasurer

By: 

Name:

Its:

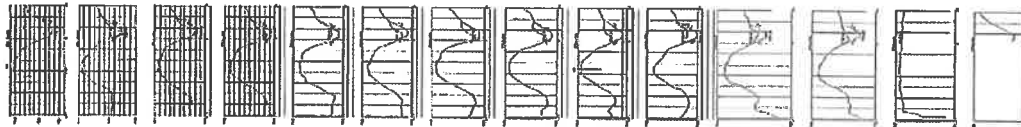
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EXHIBIT B

**ROADWAY WORKER PROTECTION TRAINING POLICY**

A. In order to maintain the integrity and security of the Property and Railroad's operations, prior to each employee of Licensee and its contractor entering upon the Property (each a "Licensee Applicant"), Licensee shall cause its employees, and shall cause its contractor to require its employees, to successfully complete the Genesee & Wyoming Inc. Roadway Worker Training Program (the "Program") on an annual basis to be administered by Roadway Worker Training, Inc. (the "Program Administer"), at the sole cost and expense of the Licensee or contractor, as the case may be (the current cost of which is \$50.00 USD per Licensee Applicant). The Program shall be available via the internet and instructions to access the Program set forth in Paragraph K.

B. Upon completion of the Program, the Licensee Applicant shall be required to satisfactorily complete a test administered by the Program Administer. The Program Administer shall be responsible for scoring such test and verifying whether the Licensee Applicant satisfies the requirements of Railroad to perform work on the Property. Any Licensee Applicant who fails to achieve a satisfactory score or who refuses to complete such test shall not be permitted to enter the Property.

C. When a satisfactory score is achieved by the Licensee Applicant, the Program Administrator shall furnish a certificate (the "Certificate") to the business address of Licensee or its contractor, as the case may be, for distribution to the Licensee Applicant. Until receipt of the Certificate from the Program Administrator, the Licensee Applicant shall print a temporary certificate authorizing the Licensee Applicant's access to the Property.

D. For the avoidance of doubt, satisfactory completion of the Program as evidenced by receipt of a Certificate does not in itself grant permission to the Licensee Applicant to enter the Property, except as expressly permitted under and in strict compliance with the terms of the Agreement.

E. The Licensee Applicant shall be responsible for carrying the Certificate at all times when on the Property.

F. All communications regarding Licensee Applicants, the Program, or any other matters described in this Exhibit B should be addressed to:

Michael Lundell  
GWI Safety Department  
13901 Sutton Park Drive South, Suite 180  
Jacksonville, FL 32224  
Mlundell@gwrr.com  
(904) 596-1766

G. Licensee and its contractor shall be responsible for managing and recovering Certificates from their employees who resign, retire or are terminated.

H. Notwithstanding the receipt of a Certificate by a Licensee Applicant, Railroad reserves the right to reject any Licensee Applicant from entering upon the Property in Railroad's sole discretion in accordance with:

- i) Genesee & Wyoming Inc. Code of Ethics and Conduct,
- ii) Genesee & Wyoming Inc. Contractor Safety Rules, or
- iii) upon failure to comply with the terms and conditions of the Agreement and all applicable laws.

I. To the extent that any portion of the requirements set forth in this Exhibit B violates any law, ordinance, statute or regulation that portion shall be ignored and the Licensee or contractor, as the case may be, shall comply with all remaining portions of Railroad's Roadway Protection Training Policy, the Program or the related application process.

J. Licensee or its contractor, as the case may be, shall be primarily responsible for enforcement of the Program; *provided, however*, that both Railroad and the Federal Railroad Administration reserve the right to audit Licensee and its contractor, as the case may be, for compliance with the Program and Railroad's Roadway Protection Training Policy. Should a Licensee or its contractor, as applicable, be found out of compliance, any and all fines or penalties incurred by Railroad due to such non-compliance shall be the sole obligation of the Licensee.

K. To access the G&W Roadway Worker Protection Training for Railroad Contractors Course on the RWT On-Line please follow these instructions:

- Start at website [www.rrtrainers.com](http://www.rrtrainers.com)
- Click on the "On-Line Courses" button
- Select the G&W course by clicking on the course name
- On the right hand side of the page select "New User Registration"
- Fill out all of the fields on the registration page and submit
- You will receive a username and password via email
- After receiving the username and password go back to the On-Line Courses page and select the G&W course again
- Complete the registration process and training.

EXHIBIT C

**INSURANCE REQUIREMENTS FOR RIGHT-OF-ENTRY LICENSE AGREEMENT**

(a) The Licensee shall, at its own cost and expense, prior to entry onto the Property or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) The Licensee shall maintain Public Liability or Commercial General Liability Insurance ("CGL"), including Contractual Liability Coverage and CG 24 17 "Contractual Liability - Railroads" endorsement, covering all liabilities assumed by the Licensee under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Two Million Dollars (\$2,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Six Million Dollars (\$6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates** and shall name the Railroad and its affiliates as **Additional Insured**. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section, but must "follow form" and afford no less coverage than the primary policy.

(ii) The Licensee shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) for Bodily Injury and/or Property Damage Liability per occurrence. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates** and shall name the Railroad and its affiliates as **Additional Insured**.

(iii) The Licensee shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Each Employee. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates**.

(iv) **Prior to construction within 50' of the railroad tracks**, the Licensee shall purchase Railroad Protective Liability Insurance naming the Railroad as the named insured with limits of Two Million Dollars (\$2,000,000) each occurrence and Six Million Dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, obtain such coverage from the Railroad.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be effected under standard form policies underwritten by insurers licensed in the state where work is to be performed, and carry a minimum Best's rating of "A-" and size "Class VII" or better. The Railroad reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be **primary and non-contributory to any insurance coverages maintained by the Railroad and its affiliates**.

(iii) All insurance policies shall be endorsed to provide the Railroad with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

(iv) The Licensee shall provide the Railroad with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Contractor Right of Entry License Agreement by agreement date and description and shall be furnished to the Railroad at the following address, or to such other address as the Railroad may hereafter specify:

Toledo, Peoria & Western Railway Corp.  
C/O Genesee & Wyoming Railroad Services, Inc.  
13901 Sutton Park Drive South, Suite 160  
Jacksonville, FL 32224

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

- (1) The retroactive date shall be prior to the commencement of the work;
- (2) The Licensee shall maintain such policies on a continuous basis;
- (3) If there is a change in insurer or policies are canceled or not renewed, the Licensee shall purchase an extended reporting period of not less than three (3) years after the contract completion date; and
- (4) Licensee shall arrange for adequate time for reporting of any loss under this Agreement.

(c) The Railroad may require the Licensee to purchase additional insurance if the Railroad reasonably determines that the amount of insurance then being maintained by the Licensee is insufficient in light of all relevant factors. If the Licensee is required to purchase additional insurance, the Railroad will notify the Licensee. Failure of the Licensee to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

(d) Furnishing of insurance by the Licensee shall not limit the Licensee's liability under this Agreement, but shall be additional security therefore.

(e) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

(f) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Licensee's sole risk.

(g) If contractors are utilized, the Licensee agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.