

DALLAS, GARLAND, AND NORTHEASTERN RAILROAD, INC.
CONSTRUCTION AND MAINTENANCE AGREEMENT
CONSTRUCTION OF NEW AT GRADE CROSSING

MILEPOST 305.18
COLLIN COUNTY, TEXAS

THIS AGREEMENT made this 20th day of November, 2012 by and between **COLLIN COUNTY, TEXAS**, hereinafter called "**County**", and the **DALLAS, GARLAND, AND NORTHEASTERN RAILROAD, Inc.**, hereinafter called "**Railway**":

WITNESSETH:

WHEREAS, there is a proposed roadway to be owned and maintained by **County** and that shall cross such property, commonly referred to as: "Collin County Outer Loop"; and

WHEREAS, the **County** wishes to construct Collin County Outer Loop, a three lane roadway connecting State Highway 121 and US Interstate 75; and

WHEREAS, in the interest of public safety and aiding motor vehicle traffic, the **County** wishes to construct the new Collin County Outer Loop and to create a new at-grade Railroad Crossing where it crosses **Railway's** tracks, specifically referred to as **Railway's Milepost 305.18, DOT# 936 538B, Railway Project #DGNORP09033**, hereinafter called "**Project**"; located near **MELISSA, COLLIN COUNTY, TEXAS**; and

WHEREAS, attached hereto and hereby made a part hereof as **Exhibit "A"** is a Project Print(s) showing the type, size and location of the new at-grade crossing structure, and

WHEREAS, the **County** is willing to undertake the entire cost and expense of construction of the Project with **COUNTY, STATE AND OR FEDERAL** funds available for this purpose and the **Railway** is willing to consent to and assist with the work related to the implementation of the Project upon the terms and conditions herein stated and not otherwise; and

WHEREAS, said **Project** shall be constructed in accordance with plans and designs which shall be subject to the mutual approval of **Railway** and **County**, and

WHEREAS, the **Railway** and **County** hereto desire to contract with reference to the work to be done by each of those in connection therewith, the manner of the work to be performed and the payment of costs and expense therein involved,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

I. Performance of Work

The **County** and **Railway** will each perform various items of work as described below:

A. **WORK TO BE PERFORMED AND MATERIALS FURNISHED BY EITHER COUNTY OR ITS CONTRACTOR AT COUNTY EXPENSE**

1. Project Plans & Specifications and Construction
Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the Project. **County** shall obtain written approval of Project Plans & Specifications prior to construction of the Project, which shall not be unreasonably delayed, or denied by the Railway.
2. Roadway Construction

Bear responsibility for the construction of the highway roadbed outside of the Railway ties and the roadway up to the edge of the railroad crossing surface to include but not limited to all pavement structure, pavement surface, shoulders, drainage, sidewalks, pavement striping, advance pavement markings, erosion control, tree cutting, mowing, and advance warning signs.

3. Schedule & Notification
Provide project construction schedule and notify **Railway** sixty (60) days prior to date **Railway** is to perform work and/or provide flagging services.
4. Other Work
Apply and maintain said Department of Transportation or Commission's road crossing number(s) **DOT# 936 538B**, in a conspicuous location on or about at-grade crossing structure(s). Further, the **County** shall be responsible for all reasonable and necessary **Railway** costs incurred to maintain the vehicular concrete crossing surface and the signals, gates, and related crossing safety equipment at the **Project**, both of which are further described below.

B. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY THE RAILWAY AT COUNTY'S EXPENSE

1. Engineering and Bill Preparation
Perform preliminary and special engineering, review, and inspection, including field and office work and preparation of bills.

2. Construction
CROSSING SURFACE
The **Railway**, at the **County's** expense, will provide, furnish, or have furnished, all materials necessary and construct a 56.875 foot wide vehicular concrete crossing surface in accordance with **Exhibit "A"**. Installation costs are estimated to be **\$84,240.00** as shown on the estimate for crossing installation attached hereto as **Exhibit "B"**, and incorporated by reference. The cost to remove the existing crossing surface is included in this estimate. The outlined estimate provided in **Exhibit B** is not intended to be a guarantee of construction cost; actual construction cost may differ based upon variables encountered at and during construction.

SIGNAL WORK

The **Railway**, at the **County's** expense, will install signals, gates, cantilever, and related crossing safety equipment at the crossing site in accordance with **Exhibit "A"**. Installation costs are estimated to be **\$243,242.34** as shown the attached **Exhibit "B"**, and incorporated by reference. The outlined estimate provided in **Exhibit "B"** is not intended to be a guarantee of construction cost; actual construction cost may differ based upon variables encountered at and during construction.

3. Flagging
Perform flagging and furnish requested services and devices during construction operations of the **County** or its contractor, as deemed necessary by the **Railway**. **Any flagging cost or protective services performed by the Railway or its contractor shall be at the County's expense.** Estimated costs only for flagging are included in the estimate attached hereto as **Exhibit "B"**. Any additional costs incurred by the **Railway** for required Flagging Services will be the sole responsibility of the **County**, and reimbursable to the **Railway** by the **County**.
4. Costs
Any costs incurred by Railway in excess of 10% greater than the estimates of Exhibit B require prior written approval of the County.

II. Construction Plans and Specifications

The **County** or its contractors shall perform its work in accordance with detailed plans and specifications which shall be prepared by the **County** or its contractors and submitted to **Railway** Manager of Public Projects for approval of those sections that are within or adjacent to **Railway**'s right-of-way, affecting facility or operations of the **Railway**. No work pursuant to said plans and specifications shall be performed on the right-of-way of the **Railway** prior to receipt of notices to proceed given by the **Railway** Manager of Public Projects and authorized representative to the **County** engineer or their respective authorized representatives. Nothing provided in this Agreement with respect to said plans and specifications shall be construed or deemed to be ratification or an adoption by the **Railway** of either or both said plans as its own.

III. Traffic Protection and Safety

All work herein provided for, to be done by the **County** or its contractors on the **Railway**'s right-of-way, shall be performed by the **County** or its contractors in a manner satisfactory to the **Railway** and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the **Railway**. The **County** or its contractors shall enter into a "Right-of-Entry Agreement" with the **Railway** prior to the first entry onto **Railway**'s right-of-way. The **County** shall reimburse the **Railway** for all actual costs thereof, including, without limitation, both direct and indirect labor additives. The **Railway** will submit bills for flagging and other protective services and devices currently during the progress of the work contemplated by this Agreement. The **Railway** shall have one hundred twenty (120) days to submit complete billing for flagging and other protective services and devices, and the **County** shall pay such bills within thirty (30) days of its receipt of billing. Wherever the safeguarding of trains or traffic of the **Railway** is mentioned in this Agreement, it is intended to cover and include all users of the **Railway**'s tracks having permission for such use. The **Railway** will provide cost estimates for the work in this section III for the advance written approval of the **County**.

IV. Consideration

For and in consideration of the sum of Ten and No/100ths Dollars (\$10.00), such sum to be paid by the **County** to the **Railway** upon the execution and delivery of this Agreement and the mutual covenants herein, the Parties agree to the terms and conditions of this Agreement.

V. Conditions, Restrictions, and Limitations

All the aforementioned rights are granted subject to the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions contained in this agreement, including, without limitation, those set forth in **Exhibit "C"** attached hereto and by this reference incorporated herein; and **County**, in the exercise of the rights and in the conduct of the **Project**, shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions during the term of this agreement.

The **County** shall insure that its contractor(s) obtain and provide to **Railway** evidence that such contractor(s) have procured the insurance coverage described in **Exhibit "C"**, hereto attached, covering their work on **Railway**'s property covering this **Project**. All costs charged to the **County** must be reasonable and necessary in relation to the work to be performed.

VI. Compliance with Federal Regulations

The current provisions of 23 CFR (Code of Federal Regulations) parts 646, subpart B and 23 CFR parts 140, subpart I, shall apply to the work to be done under this agreement, and said memorandum is hereby incorporated in and made a part of this Agreement by reference.

If the **Railway** enters into a contract or agreement with a contractor to perform any of the work, which the **Railway** is required to perform under the terms of this Agreement, the **Railway**, for itself, its assigns and successors in interest, agrees that it will not unlawfully discriminate in its choice of contractors.

VII. Signatory Warranty

Each signatory to this agreement certifies that he has the authority to enter into this agreement on behalf of his respective organization.

VIII. Term, Ownership, and Maintenance Responsibilities

The term of this Agreement commences on the date on the top of page one hereof and shall continue for a period not to exceed the earlier of the 12 months from the date construction commences within the **Railway's** Right-of-Way or completion of the construction of the **Project** as determined by the **Railway and the County**. The **County's** and the **Railway's** obligations under Section 1(A) (4) and in the following paragraphs of this Provision shall survive the term of this Agreement. Upon completion of the crossing, the **County**, at the **County's** expense, will be responsible for the maintenance of the highway roadbed outside of the **Railway** ties and the roadway up to the edge of the railroad crossing surface to include but not limited to all pavement structure, pavement surface, shoulders, drainage, sidewalks, pavement striping, advance pavement markings, erosion control, tree cutting, mowing, and advance warning signs.

Upon completion of the crossing, the **Railway**, at the **County's** expense, will be responsible for the maintenance and replacement of the crossing surface, trackbed and rail components, plus the highway roadbed, for the width of the rail ties within the crossing area. This includes all crossing surface repair and replacement costs required due to Acts of God, normal wear and tear, and damage from accidents where third party accountability cannot be determined, and any other cause not attributable to the **Railway**. The **Railway** will provide a cost breakdown for all materials and labor associated with the replacement of the warning devices to the **County**, and the **County** will be responsible and pay unto **Railway** annually, these annual maintenance and replacement costs within 60 days from the invoice date.

Upon completion of the crossing, the **Railway**, at the **County's** expense, will be responsible for the maintenance and replacement of the crossing warning devices, equipment and all associated components of the **Railway** warning system. This includes all warning device repair and replacement costs required due to Acts of God, normal wear and tear, damage from accidents where third party accountability cannot be determined, and any other cause not attributable to the **Railway**. The **Railway** will provide a cost breakdown for all materials and labor associated with the replacement of the warning devices to the **County**, and the **County** will be responsible and pay unto **Railway** annually, these annual maintenance and replacement costs within 60 days from the invoice date.

In addition, **County** shall pay unto **Railway** annually the annual cost of normal inspection and maintenance of said warning devices. The annual cost of maintenance of the warning devices, including normal inspection and maintenance of the signs, flashing lights, bells, cantilever, and gates, and all associated components is \$3,500.00.

This annual cost for inspection and maintenance shall be increased each year on the anniversary date of this Agreement, commencing on the anniversary date of the second year of this Agreement, by the product of the annual cost for inspection and maintenance in effect for the preceding year multiplied by one hundred percent (100%) of the percentage increase, if any, in the Consumer Price Index, (1967=100), issued by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), or 3%, whichever is less. The base CPI will be the CPI for the month of the year preceding the applicable anniversary date of this Agreement by ninety (90) days. No adjustment will be made for decreases in the CPI.

IX. Assignment

Neither party has the right to assign this Agreement without the consent of the other. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

X. Termination

In the event that the **Railway** abandons the tracks at this crossing through a formal process before the agency or court having jurisdiction for such abandonment proceedings and receives approval from such agency or court, all

Maintenance Fees as contained in "Section VIII Term, Ownership and Maintenance Responsibilities", will terminate at the next Agreement anniversary date. Pro rata refunds will be provided to the **County** by the **Railway** for mid-year or longer Agreement terminations. The same rights of termination are granted the County in the event the County determines the proposed roadway is to be closed, or materially modified in its construction or use.

XI. Construction

The County shall complete all construction within one (1) year of the execution date of this agreement. If construction has not commenced within one (1) year, this agreement becomes null and void. If construction has commenced and is not complete, the **County** shall provide the **Railway** a time line for the completion of the construction. The **Railway** will review the time line and determine if amendments to the terms of this agreement or supplemental agreements are required prior to the completion of construction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinafter written.

WITNESS:

Georgia Shephard

Administrative Secretary

COLLIN COUNTY, TEXAS

Keith Self
Authorized Representative Signature

Keith Self, President
Authorized Representative Name (print) / Title

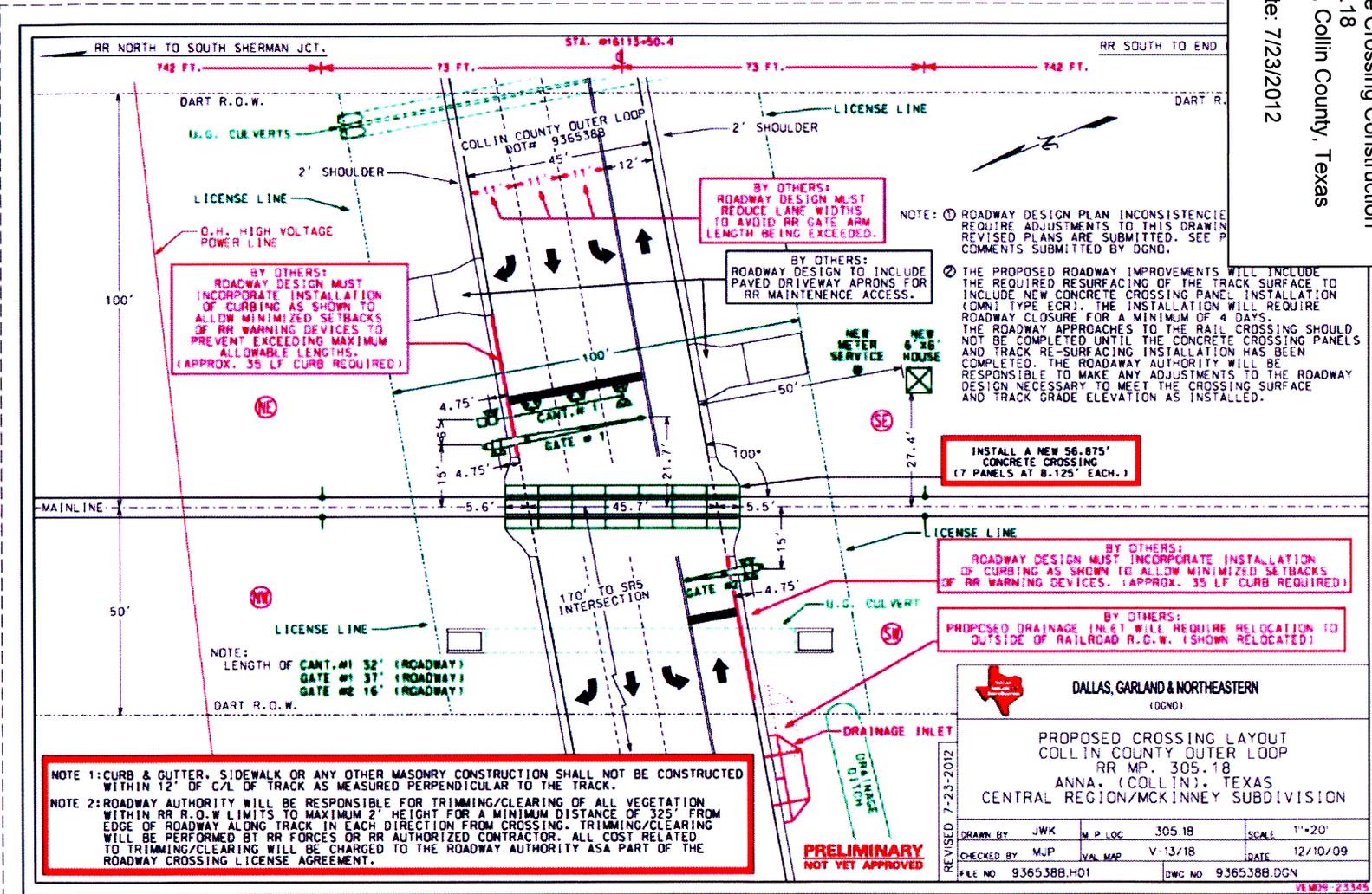
WITNESS:

Yamini Komari
AVP - Engineering Services

DALLAS, GARLAND, AND NORTHEASTERN RAILROAD, Inc.

Sachin Mishra
Authorized Representative Signature

SACHI MISHRA / VP
Authorized Representative Name (print) / Title



DALLAS, GARLAND & NORTHEASTERN
 (DGN)

PROPOSED CROSSING LAYOUT
 COLLIN COUNTY OUTER LOOP
 RR MP. 305.18
 ANNA, (COLLIN), TEXAS
 CENTRAL REGION/MCKINNEY SUBDIVISION

REVISIONS	DATE	BY	DESCRIPTION
REVISED	7-23-2012	JWK	INITIAL DRAWING

DRAWN BY	JWK	M.P. LOC	305.18	SCALE	1"=20'
CHECKED BY	MJP	VAL. MAP	V-13/18	DATE	12/10/09
FILE NO	9365388.H01	DWG NO	9365388.DGN		

VE M09-23345

NOTE 1: CURB & GUTTER, SIDEWALK OR ANY OTHER MASONRY CONSTRUCTION SHALL NOT BE CONSTRUCTED WITHIN 12' OF C/L OF TRACK AS MEASURED PERPENDICULAR TO THE TRACK.

NOTE 2: ROADWAY AUTHORITY WILL BE RESPONSIBLE FOR TRIMMING/CLEARING OF ALL VEGETATION WITHIN RR R.O.W LIMITS TO MAXIMUM 2' HEIGHT FOR A MINIMUM DISTANCE OF 325' FROM EDGE OF ROADWAY ALONG TRACK IN EACH DIRECTION FROM CROSSING. TRIMMING/CLEARING WILL BE PERFORMED BY RR FORCES OR RR AUTHORIZED CONTRACTOR. ALL COST RELATED TO TRIMMING/CLEARING WILL BE CHARGED TO THE ROADWAY AUTHORITY ASA PART OF THE ROADWAY CROSSING LICENSE AGREEMENT.

Exhibit "B"

RR PROJECT #DGNORP09033
At Grade Crossing Construction
MP 305.18
Melissa, Collin County, Texas

Print date: 7/23/2012

RE Contract: _____
RR Project #: **DGNORP09033**
XORAIL#: **VEM09-23345**



Estimate No : 936 538B - 7/23/2012

DALLAS, GARLAND & NORTHEASERN RAILROAD (DGNO)

ANN, (Collin), TX - COLLIN COUNTY OUTER LOOP

DOT# : 936 538B
RR MP.: 305.18

CENTRAL Region
MCKINNEY Subdivision

RAILROAD # : DGNORP09033
XORAIL# : VEM09-23345

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation)	\$243,242.34
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation)	\$84,240.00
TRACK GRADE AND REHABILITATION (Includes all design, requisition, labor, materials, and installation)	\$0.00
RAILROAD ENGINEERING (Includes RAILROAD Labor for Reviewing Engineering Authorizations, Field Inspections and Administrative Labor)	\$5,418.98
PRELIMINARY ENGINEERING (Phase 1) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$15,490.00
AGREEMENTS & APPROVALS (Phase 2) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$5,000.00
CONSTRUCTION ENGINEERING (Phase 3) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$16,630.00
CONSTRUCTION ENGINEERING INSPECTION (Estimated Construction Engineering Inspection cost based on 1 days @ \$1500 per day)	\$1,500.00
UTILITY CROSSING (0 new utility crossings @ \$4000 per crossing, includes application, engineering review, and right of entry)	\$0.00
RIGHT OF ENTRY FEE (Right of Entry Fee of \$1,500 is valid for 60 days, after 60 days, additional fees of \$750 per 30 days are required.)	\$1,500.00
FLAGGING SERVICES (Estimated Flagging Services cost based on 17 days @ \$1050 per day)	\$17,850.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs)	\$5,000.00
OTHER (DDNO Administrative Fee 16.28%)	\$64,447.85
TOTAL ESTIMATE COST	\$460,318.17 (USD)

DATE: 7/23/2012

RESPONSIBLE PARTY:

Name: **COLLIN COUNTY**
Number: **49468-COOL**
Contact: **JEREMY KRAFT**

NOTE: This Estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower, resource availability, and other factors known as of the date prepared. The actual cost for Railroad work may differ based upon the agency's requirements, their contractors work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work. If any extended time elapses from the date of this Estimate, the Railroad will reserve the right to update the estimate to current price values, and require agency's approval before any work by Railroad will commence.

Exhibit "C"
Insurance Requirements

The coverage afforded hereunder shall include the liability assumed by the named insured under the following indemnification provisions contained in an agreement in writing between the named insured and **DALLAS, GARLAND, AND NORTHEASTERN RAILROAD, INC. ("RAILWAY")**, covering work to be performed upon or adjacent to its property Mile Post 305.18, quoted herein below for convenience:

COUNTY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS RAILWAY, ITS AFFILIATED AND PARENT COMPANIES (INCLUDING RAILAMERICA, INC.), AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES OF EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND OTHER EXPENSES RELATED THERETO) FOR INJURY TO OR DEATH OF A PERSON OR FOR LOSS OF OR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY WORK DONE, ACTION TAKEN OR PERMITTED BY COUNTY, ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT, EXPRESSLY LIMITED TO THE INSURANCE COVERAGE REQUIRED BY THIS DOCUMENT TO BE MAINTAINED BY COUNTY.

IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH COUNTY AND RAILWAY, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, TO THE FULLEST EXTENT PERMITTED BY LAW, DOES NOT INDEMNIFY RAILWAY FOR ITS OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED FURTHER THAT SAID INDEMNITY SHALL NOT PROTECT RAILWAY FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE CRIMINAL ACTIONS OF RAILWAY, ITS OFFICERS, AGENTS AND EMPLOYEES. IT IS STIPULATED BY THE PARTIES THAT RAILWAY OWES NO GREATER DUTY THAN THE RAILWAY DOES TO THE PUBLIC AT LARGE TO COUNTY, ITS CLIENT, OR THEIR DIRECTORS, OFFICERS, EMPLOYEES AGENTS OR INVITEES TO PROVIDE A REASONABLY SAFE WORK PLACE AND THAT ALL PARTIES ENTERING ONTO RAILWAY PROPERTY DO SO AT THEIR SOLE RISK. "

The policy or policies shall provide coverage in amount of not less than Two Million Dollars (\$2,000,000) combined single limit for all damages arising out of bodily injury to or death of persons and for loss of or damage to property.

The policy or policies, where applicable and available, shall contain Insurance Services Office Standard Endorsement CG 2417.

No cancellation of this policy or modification of the coverage afforded under this endorsement shall be effective until ten (10) days' notice thereof has been given to: RailAmerica, Inc., Attn.: Property Management Dept., 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256

The policy as outlined herein shall name **Railway** as an additional insured.

The policy as outlined herein shall name **Railway** and affiliates as listed below as additional insured with respect to F.E.L.A. coverage, and/or if applicable under the laws of the State in which the work is performed.

The policy as required herein shall name **Dallas, Garland, and Northeastern Railroad, Inc and RailAmerica, Inc.** as insured's.

Railway requires that each Insurance Carrier providing coverage must be an Admitted Company in the State for which this Agreement is written and has an A.M. Best rating of "A" or better and a financial class rating of 10 or better.

Prior to the performance of any work upon or adjacent to **Railway's** property under this Agreement:

- (a) **COUNTY shall furnish Railway, at COUNTY expense, a certified copy of a public liability and**

property damage liability insurance policy issued in the name of COUNTY covering the contractual liability assumed by COUNTY. The form, substance, and limits of said insurance policy shall be subject to the approval of Railway and shall be in compliance with the provisions contained herein.

- (b) **County shall furnish Railway, at County expense, a certificate of Workers Compensation coverage, including Federal Employee Liability Act coverage if applicable, for its workers and subcontractors in accordance with the requirements of the State or States in which said work is to be performed.**

- (c) **COUNTY shall furnish a policy of Railway Protective coverage in the amount of Two million and no/100 dollars (\$2,000,000.00) per occurrence, Six million and no/100 dollars (\$6,000,000.00) aggregate with named insured as outlined herein. WARNING: ONLY A POLICY OF RAILROAD PROTECTIVE INSURANCE WHICH SPECIFICALLY NAMES DALLAS, GARLAND, AND NORTHEASTERN RAILROAD, INC. AND RAILAMERICA, INC. AS THE INSURED PARTIES IS ACCEPTABLE AND A COPY OF SAID POLICY MUST BE RECEIVED PRIOR TO THIS PERMIT BEING APPROVED ON BEHALF OF RAILWAY.**

County shall keep said insurance in full force and effect until all work to be performed upon or adjacent to the Premises under said contract is completed to the satisfaction of and accepted by **Railway** and thereafter until County has fulfilled the provisions of this agreement with respect to the removal of tools, equipment and materials from the Premises. The failure to respond by Railway within 60 days of receipt of a notice from County the contract is complete shall be deemed completed and accepted.