

2.6 Insurance

- a. In addition to any other forms of insurance or bonds required under the terms of any contract or specifications, and except to the extent that any of the requirements of this section are expressly waived or revised in writing by Conrail, prior to the commencement of any work, Sponsor and its subcontractors, at their own cost and expense, shall maintain insurance of the following kinds and amounts and deliver to Conrail satisfactory evidence of such insurance as indicated herein:
1. Commercial General Liability Insurance, including contractual liability, products and completed operations, as well as personal and advertising injury insurance with a per occurrence limit of not less than \$5,000,000 and \$10,000,000 in the aggregate for all losses including but not limited to damages, bodily injury, death, property damage and legal fees in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Coverage must be purchased on an ISO occurrence form or its equivalent. If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow the form of the underlying policy and be endorsed to “drop down” to become primary in the event the primary limits are exhausted. Conrail shall be added as an additional insured under this coverage. Exclusion of work within fifty (50) feet of railroad right of way shall be deleted (Endorsement CG2417). The policy shall contain a waiver of subrogation in favor of Conrail. The definition of bodily injury should include mental anguish. A per project aggregate limit must be included. Coverage should be primary and non-contributory in favor of Conrail. It is agreed that any workers’ compensation exclusion does not apply to payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs, and any payments made are deemed not to be either payments made, or obligations assumed under any workers’ compensation, disability benefits, or unemployment compensation law or similar law.
 2. Automobile Liability Insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. Conrail shall be added as an additional insured under this coverage. Exclusion of work within fifty (50) feet of railroad right of way shall be deleted (Endorsement CA2070). The policy shall contain a waiver of subrogation in favor of Conrail. Coverage should apply to any and all motor vehicles owned. Non-owned, used or hired must be covered and mobile equipment must be covered to the extent it may be excluded from the general liability insurance. Coverage should be primary and non-contributory in favor of Conrail.
 3. Workers’ Compensation/Employers’ Liability and Occupational Disease Insurance with Limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee. Such Policy shall include a waiver of subrogation in favor of Conrail (if allowable in by state law).
 4. Pollution Liability Insurance of not less than \$5,000,000 per claim and \$10,000,000 aggregate applying to each annual period, subject to a deductible or self-insured retention not to exceed \$25,000 per occurrence (unless approved in advance by Conrail) covering bodily injury, property damage including Natural Resource Damage) environmental damage, cleanup costs and defense of third-party claims caused by pollution conditions arising out of work by the Sponsor. Coverage may be written on an occurrence or claims-made form, but if claims-made coverage is provided, Sponsor agrees to use best efforts to renew the coverage with the same terms, conditions and limits for at least three years following the termination of this Agreement. Coverage shall be provided for claims arising out of pollution conditions occurring at non-owned disposal sites and for the transportation of materials, including the

transportation of wastes to or from a site where covered operations are conducted. Conrail shall be added as an additional insured under this insurance.

5. Professional Liability Insurance (if applicable) with limits of not less than \$5,000,000 per claim and \$5,000,000 in the aggregate applying to each annual period, subject to a deductible or self-insured retention not to exceed \$50,000 per occurrence (unless approved otherwise in advance by Conrail) covering claims arising out of alleged or actual negligence in the rendering or failure to render professional services related to the work by the Sponsor. Coverage shall be written on a claims-made form with a retroactive date preceding the date this Agreement was executed. Sponsor shall use best efforts to renew this coverage with the same terms, conditions and limits for at least three years following the termination of this Agreement. Defense costs shall be included within the limits of liability specified above.
6. Property Insurance, insuring Sponsor's property of every kind and description and property of persons claiming by or through Sponsor against those risks normally encompassed in an "all-risk" policy, including, but not limited to, (1) loss or damage by fire; (2) loss or damage from such other risk or hazards now or hereafter embraced by an "extended coverage endorsement," (3) loss for flood if the area/property upon which Sponsor is working is a designated flood or flood insurance area; and (4) such other risks as reasonably prudent owner of similar property in the locality where the work area is located would normally insure against. Such insurance shall provide for the full replacement cost in the event of a total destruction of Sponsor's property. A waiver of subrogation shall be provided in favor of Conrail.
7. With respect to the work performed by it or any of its subcontractors, Sponsor shall provide Railroad Protective Liability Insurance in the name of Consolidated Rail Corporation with a limit of not less than \$5,000,000 per occurrence, combined single limit for bodily injury and/or property damage, for damage to or destruction of property, including the loss of use thereof. Such insurance shall also contain an aggregate of not less than \$10,000,000 for damages arising out of more than one occurrence. Conrail shall be the only Named Insured on the policy. The policy shall be endorsed to include broad form coverage for property damage "Physical Damage to Property Definition Amendment", Sudden and Accidental Pollution and Evacuation Expenses.
8. The insurance coverages specified above are the minimum limits of insurance to protect Conrail, the Sponsor and its subcontractors, and shall not be construed as a maximum or limitation on the coverage that may be purchased to protect Conrail. Conrail shall be covered by the insurance coverages specified above to the full extent of the actual limits of insurance purchased by Sponsor and its subcontractors.
9. The insurance coverages purchased by Sponsor and its subcontractors shall in all cases be considered primary to all other coverage available or potentially available to Conrail, and there shall be no right to contribution with any other insurance of Conrail.
10. The insurance coverages specified above (except the Railroad Protective Insurance policy) shall be carried for at least three years after the project is satisfactorily completed and formally accepted by Conrail.
11. Before commencing work, the above-specified insurance coverages from insurance companies lawfully authorized to do business in the state where the project is located shall be in place and maintained until completion and final acceptance of the work, or as otherwise stated herein. Conrail shall have the right, without limitation, to reject any insurance company

- selected by the Sponsor or any subcontractor, of any tier, that has an A.M. Best rating of less than A or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa.
12. The above-specified insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of the project, 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 project and when the insurance was in force.
 13. Sponsor shall furnish Conrail with certificates of insurance evidencing the insurance coverages required and shall also furnish the original Railroad Protective Liability Insurance policy at least fourteen (14) days prior to commencement of the project. Certificates shall reference Conrail Project Number assigned to specific project, a description of the work and the project location. Certificates, policies and notices should be sent to Director – Design and Construction, Consolidated Rail Corporation, 330 Fellowship Road, Suite 300, Mount Laurel, NJ 08054, as well as the Project Engineer identified by Conrail.
 14. All hazards to be covered shall include the so-called "XCU" coverage for explosion, collapse, and damage where work is to be done over or under Conrail property.
 15. Policies shall not contain any punitive damages exclusion.
 16. All policies, except the Workers' Compensation/Employers' Liability and Occupational Disease policy, must contain a separation of insureds provision. Separation of insureds must be indicated on the certificate of insurance.
 17. All policies shall be endorsed to provide that the insurance company shall give thirty (30) days' prior written notice to Conrail if the policies are to be terminated or if any changes are to be made which shall in any way affect the insurance requirements of the project.
 18. Sponsor may not self-insure without the prior written consent of Conrail. If allowed by Conrail, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Sponsor in lieu of insurance. Any and all Conrail liabilities that, in accordance with the provisions of the agreement governing the project, would otherwise be covered by Sponsor's insurance will be covered as if Sponsor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
 19. If any portion of the services are to be subcontracted by Sponsor, Sponsor must require that the independent associates consultant and/or subcontractor provide and maintain the insurance coverages set forth herein, naming Conrail as an additional insured and requiring that the independent associate, consultant, and/or subcontractor release, defend and indemnify Conrail to the same extent and under the same terms and conditions as Sponsor is required to release, defend and indemnify Conrail herein.
 20. The fact that insurance (including without limitation, self-insurance) is obtained by Sponsor as required herein will not be deemed to release or diminish the liability of Sponsor to Conrail or to others including, without limitation, liability to Conrail under the defense and indemnity provisions of any other agreement between Conrail and Sponsor. Damages recoverable by Conrail or by others will not be limited by the minimum amounts of insurance set forth above.