

EXHIBIT A:

INSURANCE/INDEMNIFICATION/BONDING  
REQUIREMENTS

## **Insurance and Indemnification Provisions**

1. **Release.** Railway Operator for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges VCTC, its officers, employees, agents, successors and assigns, from any Loss of Leasee in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Property, or any clearance constraints on the Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.
  - 1.1. Railway Operator hereby grants to VCTC, on behalf of any insurer providing property, general liability or automobile liability insurance to either Railway Operator or VCTC with respect to the operations of Railway Operator, a waiver of any right to subrogation which any such insurer of Railway Operator may acquire against VCTC by virtue of the payment of any loss under such insurance.
  - 1.2. If any Loss is caused by a third party under contract with VCTC, VCTC shall, at its option, (i) pursue any claim it may have against the third-party contractor, or (ii) assign to Railway Operator any such claim, provided that Railway Operator shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:
    - 1.2.1. First, Property and Railroad Facilities;
    - 1.2.2. Then, railroad equipment.
2. **Insurance.** Railroad Operator shall obtain the following types of insurance: commercial general liability, worker's compensation, vehicle liability, pollution liability, business interruption (optional), railroad protective liability and umbrella, to be kept in force during the life of this Agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to VCTC, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.
  - 2.1. **Railway Insurance:** Railway Operator shall provide and procure its own cost and expense Railroad Liability insurance, Commercial

General Liability insurance, Vehicle Liability insurance, Pollution Liability insurance, Umbrella insurance, Business Interruption insurance (optional) and Worker's Compensation insurance (to the extent required by law.)

- 2.1.1. The Railway Liability insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The Commercial General Liability insurance shall have a limit of not less than \$2 million each occurrence and an aggregate limit of not less than \$4 million. The Vehicle Liability insurance shall have a limit of not less than \$2 million each occurrence and an aggregate limit of not less than \$4 million. The Pollution Liability insurance shall have a limit of not less than \$5 million. The Umbrella insurance shall have a limit of not less than \$10 million. The Business Interruption insurance is recommended, but optional, and may be obtained in any amount that the Railway Operator deems appropriate. The self-insured retention for any policy listed above may not exceed \$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this Agreement.) Prior to the execution of this Agreement, Railway Operator shall provide VCTC with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to VCTC, substantiating the required coverages and limits set forth herein. Upon request by VCTC, Railway Operator shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by insurance company to be a true and correct copy of the original policy.
- 2.1.2. The insurance policies must include VCTC as an "additional insured" and the property insurance policy shall name VCTC as a loss payee.
- 2.1.3. Required Provision: The insurance policies shall contain, or be endorsed to contain, the following provisions:
  - 2.1.3.1. For any claims related to this Agreement, Railway Operator's insurance coverage shall be primary insurance as respects VCTC, its directors, officers, employees, and agents and any insurance or self-insurance maintained by VCTC, its directors, officers,

employees, or agents, shall be in excess of Railway Operator's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of VCTC or its officers, directors, employees, agents, or invitees; as to any such claim, VCTC's insurance shall be primary, and any insurance or self-insurance maintained by Railway Operator, its directors, officers, employees, or agents, shall be in excess of VCTC's insurance and shall not contribute to it.

- 2.1.3.2. Railway Operator shall comply with all reporting or other provisions of the policies, as necessary to maintain coverage required hereunder, including coverage to be provided to VCTC, its directors, officers, employees, or agents. Railway Operator shall notify VCTC in writing of any claims submitted relating to the Property under any policy required under this Agreement.
- 2.1.3.3. Railway Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 2.1.3.4. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to VCTC.
- 2.1.4. Workers' Compensation insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California with a limit of at least \$1 million. The Railway Operator represents and VCTC understands that all railroad workers are subject to FELA and are not covered by Worker's Compensation insurance.
- 2.1.5. The fact that insurance is obtained by Railway Operator will not be deemed to release or diminish Railway Operator's liability, including liability under the indemnity provisions of this Agreement. Damages recoverable by

VCTC from Railway Operator or any third-party will not be limited by the amount of the required insurance coverage.

2.1.6. Any self-insured retentions must be declared to VCTC. At the option of VCTC, Railway Operator shall provide a financial guarantee satisfactory to VCTC guaranteeing payment of losses and related investigations, claim administration and defense expenses.

2.1.7. If any of the Consultant's insurance are written on a claims-made form:

- a) The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
- b) Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of work under the Agreement.
- c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Consultant must purchase an extended reporting coverage for a minimum of two years after completion of work under the Agreement.

2.1.8. If any insurance policy includes a self-insured retention, nothing shall prevent any of the parties to this Agreement from satisfying or paying the self-insured retention. If any insurance policy states that the self-insured retention must be paid by a named insured as a precondition of the insurer's liability (or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention), such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement.

2.2. VCTC Insurance: VCTC shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workers' Compensation insurance as it deems necessary to cover its obligation under this Agreement.

### 3. **Indemnity**

- 3.1. Railway Operator shall indemnify, defend and hold harmless VCTC from any Loss which is due to or arises from: (a) Railway Operator's operation, maintenance, repair, or use of the Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Railway Operator's provision of Freight Service or other railway or transportation service as authorized in this Agreement; or (c) Railway Operator's failure to comply with or perform any of the terms and conditions set forth in this Agreement; except to the extent that the Loss is caused by the negligence or willful misconduct of VCTC, its officers, agents, or employees, or a breach of an express material warranty of VCTC. The provisions of this section shall survive the termination or expiration of the term of this Agreement for a period of four years.
- 3.2. Railway Operator's obligations under Section 3.1 above are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party") shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) and the Indemnified Party shall give the Indemnifying Party the opportunity to control the defense, in consultation with Indemnified Party, against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent.

### 4. **Bonding**

Railway Operator shall obtain payment and performance bonds for work done within the rail right-of-way and to guarantee at least one year of maintenance work within the Railway Right-of-Way in the event that the Railway Operator fails to perform its obligations or ceases to operate during the term of the lease.