

Exhibit C-2 Insurance Terms

Any person, firm or corporation Permittee authorizes to work upon the Property, including any subcontractor, shall be deemed to be Permittee's agent and shall be subject to all the applicable terms of this Permit. Prior to entry upon the Property by Permittee or such agents, Permittee shall provide Railroad with satisfactory evidence (e.g. in the form of a Certificate of Insurance) that it and its subcontractors or other agents who will obtain access to the Property pursuant to this Permit are insured in accordance with the following kinds of insurance, which insurance shall remain in effect throughout the term of this Permit and shall be at the sole cost and expense of Permittee (or its agents):

- (a) Workers' Compensation and Employers' Liability Insurance and/or FELA.

Permittee shall at its own cost and expense procure and maintain Workers' Compensation and/or Federal Employers Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or as required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.

If the California Labor Code requiring Workers' Compensation applies, the Permittee shall also maintain Employer's Liability coverage with minimum limits of \$ 10 million.

Whether FELA or Workers' Compensation applies, the policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the City & County of San Francisco, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the National Railroad Passenger Corporation and the Union Pacific Railroad Company and their respective officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

Prior to commencing work or entering onto the Property, Permittee shall provide the Risk Manager of the JPB with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy.

The certificate and policy shall also provide that the Contractors' policy will not be cancelled without 30 days prior written notice to the Risk Manager of

the JPB.

b) Commercial General Liability Insurance.

Permittee shall, at its own cost and expense, procure and maintain Commercial General Liability insurance which shall include, as additional insureds, the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, the National Railroad Passenger Corporation and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

The insurance shall provide bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$ 10 million per occurrence or claim and a general aggregate limit of at least \$ 10 million. This insurance shall include but not be limited to premises and operations; contractual liability, personal and advertising injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.

Prior to commencing work or entering onto the Property, Permittee shall provide the Risk Manager of the JPB with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy

The policy(ies) shall indicate that it is primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation. The policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the City & County of San Francisco, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the National Railroad Passenger Corporation and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally.

The policy shall also stipulate inclusion of the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation ("Amtrak") as additional insureds shall not in any way affect Railroad's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Permittee. Said policy shall protect Permittee and the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San

Mateo County Transit District, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(c) Automobile Liability Insurance.

Permittee shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$ 10 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Such insurance shall include, as additional insureds, the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, the National Railroad Passenger Corporation and their respective directors, officers, employees, volunteers, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally. Said policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the City & County of San Francisco, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the National Railroad Passenger Corporation and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally. Prior to commencing work or entering onto the Property, Permittee shall provide the Risk Manager of the JPB with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

(d) Railroad's Protective Liability Insurance.

The JPB shall obtain, at Permittee's sole cost and expense, Railroad's Protective Liability Insurance with limits of liability of \$ 10 million per occurrence and \$ 10 million in the aggregate for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. The named insureds shall be the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, the National Railroad Passenger Corporation and Union Pacific Railroad Company and shall cover all other railroads operating on the right-of-way. Prior to commencing work or entering onto the Property, Permittee shall confirm that it has paid the premium for said insurance.

(e) Property Insurance.

Permittee shall, at its own cost and expense, procure and maintain

property insurance to protect its interest in the equipment to be used in performance of this Agreement and the Railroad's interest in materials or property to be installed, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment and the replacement cost of the property to be installed. If desired, Permittee may choose to self-insure this exposure, but in no instance shall the Railroad be responsible for such loss or damage. The policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the City & County of San Francisco, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the National Railroad Passenger Corporation and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally.

If Permittee's property is self-insured, Permittee hereby agrees to waive any subrogation rights it may acquire in favor of the Peninsula Corridor Joint Powers Board, the City & County of San Francisco, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the National Railroad Passenger Corporation and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers, agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted singly, jointly or severally.

Required:

Yes No (f) Professional Liability Insurance.

The Permittee shall, at its own cost and expense, procure and maintain a professional liability policy covering the Permittee, his agents or employees for all operations conducted on the Railroad's right of way under this Permit to Enter. The coverage shall be maintained during the term of this contract and the Permittee shall obtain an extended reporting endorsement covering the Work for at least 3 years following completion of the Work. The policy, or policies, shall have limits of liability of not less than \$ ___ million per occurrence and annual aggregate. The policy shall cover the Permittee's errors and omissions for operations under this Agreement and the resulting damages including, but not limited to, economic loss to the Railroad.

The policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, The City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation. The Permittee shall furnish the Risk Manager of the JPB with the Certificate(s) of Insurance required hereunder prior to the commencement of work. The Certificate shall also provide that the Permittee's policy will not be cancelled or have coverage reduced without thirty (30) days written notice to the Risk Manager of the JPB.

Required: Yes No (g) Contractors' Pollution Liability Insurance and Environmental Liability Insurance.

The Permittee shall, at its own cost and expense, procure and maintain Contractor's Pollution Liability and Environmental Professional Liability Insurance. The Contractors' Pollution Liability Coverage (but not any Professional Liability Coverage) shall include as additional insureds the Peninsula Corridor Joint Powers Board, The City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, the Union Pacific Railroad Company, and the National Railroad Passenger Corporation and their respective directors, officers, employees, agents and volunteers while acting within such capacity, and their successors or assignees, as they now, or they may hereafter be constituted, singly, jointly or severally.

This insurance shall provide coverage of at least \$ ___ million for each pollution incident and annual aggregate shall include, but not be limited to, coverage for bodily injury; property damage; and economic loss to the Railroad. The policy shall include coverage for, but not be limited to, loss caused by sudden and accidental discharges, gradual discharges, clean-up of pollutants and disposal thereof. Coverage shall be extended to liability assumed in this contract. In the event of a loss, the Permittee shall be responsible for payment of any deduction or retention stipulated in the policy. The policy shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, The City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, The Union Pacific Transportation Company, and the National Railroad Passenger Corporation.

Coverage may be by endorsement to the general liability and automobile policies or by a separate policy. Limits of liability will not be less than the limits required for Commercial General Liability Insurance above.

The Permittee shall furnish the Risk Manager of the JPB with the Certificate(s) of Insurance required hereunder Prior to the commencement of work. The Certificate shall also provide that the Contractors' policy will not be cancelled without thirty (30) days prior written notice to the Risk Manager of the JPB.

The Permittee's Business Automobile Coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including but not limited to the perils of collision and upset.

(h) General Insurance Provisions

All policies will be issued by insurers acceptable to the Railroad (generally with a Best's Rating of A 10 or better). Upon evidence of financial capacity satisfactory to Railroad, Permittee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Permittee's personnel and equipment have been removed from the railroad property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencing work or entering onto the Property, Permittee shall provide the Risk Manager of the JPB with a Certificate(s) of Insurance evidencing the coverage(s) listed above. The Certificate shall stipulate that the insurance company(ies) issuing such policy(ies) shall give written notice to the Risk Manager of the JPB of any material alteration or reduction in coverage of aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.

In the event of the discovery of Hazardous Materials on the Property, if Permittee undertakes any remediation or clean-up, Permittee shall designate the disposal site and provide a certificate of insurance from the disposal facility to the JPB. Additional insurance coverage may be required by JPB, such as Environmental Impairment Liability Insurance with limits of not less than \$3,000,000 per occurrence and \$6,000,000 annual aggregate, including, but not limited to gradual pollution coverage and sudden and accidental pollution coverage.

In addition to the requirements described above, any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be complied with. The Permittee and/or its contractors shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Risk Manager of the JPB with the required evidence of insurance.

(i) Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

(1) Policy retroactive date coincides with or precedes the Permittee's start of work (including subsequent policies purchased as renewals or replacements).

(2) Permittee shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.

(3) If insurance is terminated for any reason, Permittee agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement or Permit.

(4) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

(j) Performance Bond.

Permittee shall at all times maintain a performance bond covering its work on the structure in the full amount of its contract price with Agency, and shall name Agency as a beneficiary thereon.