

RELEASE OF CLAIM AND INDEMNITY AGREEMENT

_____ (Hereinafter called "Permittee") requests to go onto the premises of THE BNSF RAILWAY COMPANY (hereinafter called "Railroad") at or near _____, with access to the premises limited to the area of _____, during the period _____, for the purpose of _____.

Permittee fully realizes that its presence on Railroad's premises involves danger and risk to Permittee, including the possibility of Permittee's injury or death and damage to or loss of its property. Permittee also realizes that its presence may be a cause of damage to property of others or injury or death to other persons, including employees of Railroad.

THEREFORE, in consideration of Railroad permitting Permittee to enter onto its premises for the purposes stated above and exercises/activities incidental thereto, **Permittee HEREBY RELEASES, DISCHARGES, DEFENDS, SAVES HARMLESS AND INDEMNIFIES** Railroad, its agents and employees from liability or claim for injury or death to Permittee, or any other persons, and for loss of or damage to any property which occurs as a result of Permittee's, or Permittee's servants, presence on the premises. **HE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.**

PERMITTEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILROAD OR ITS AFFILIATED COMPANIES OR WHEN CLAIMS ARE BASED ON PRODUCTS LIABILITY OR STRICT LIABILITY, TO INDEMNIFY AND HOLD HARMLESS RAILROAD AND ITS AFFILIATED COMPANIES AGAINST AND SHALL ASSUME THE DEFENSE OF, ANY CLAIMS, SUITS, AWARDS, DEMANDS EXPENSES (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES OR JUDGMENTS BROUGHT AGAINST RAILROAD OR ITS AFFILIATED COMPANIES UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT (FELA) WHENEVER EMPLOYEES OF THE RAILROAD MAKE CLAIMS FOR WHICH CONTRACTOR HAS ASSUMED THE LIABILITY HEREIN OR WHENEVER EMPLOYEES OR AGENTS OF THE PERMITTEE CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILROAD OR ITS AFFILIATED COMPANIES. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATION, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Permittee further agrees, at its expense, in the name and on behalf of Railroad, that it shall adjust and settle all claims made against Railroad, and shall, at Railroad's discretion, appear and defend any suits or actions at law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Permittee under this Agreement for which Railroad is liable or is alleged to be liable. Railroad shall give notice to Permittee, in writing, of the receipt or pendency of such claims and thereupon Permittee shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Permittee, and Permittee, at Railroad's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims of suits.

Permittee will not interview, talk with or in any way disturb any of Railroad's employees or other persons performing work on Railroad's property. Any agent, invitee or contractor performing any work, or present on Railroad's premises with or on behalf of Permittee in connection with Permittee's use of the premises shall be conclusively deemed to be the servant of Permittee acting on behalf of the Permittee. Railroad shall have the right to terminate this agreement immediately, if Railroad finds that Permittee is working in an unsafe manner or performing unsafe acts.

THE ABOVE IS UNDERSTOOD AND ACCEPTED:

Date: _____

Name: _____

Address: _____

(Signature and Printed)

Return this document to:

BNSF Automotive

Dan Meyers

P.O. Box 961051

Ft. Worth, TX 76161