



SAMPLE RIGHT-OF-ENTRY PERMIT

FOR SMART USE ONLY

Date

RIGHT-OF-ENTRY PERMIT

This Right-of-Entry Permit (“Permit”) is entered into as of _____ (“Effective Date”) by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT ("Permittor") and _____ ("Permittee"), _____ (Address).

1. Permit. Permittor hereby permits Permittee to enter upon Permittor's property located at _____, in _____, County of _____, California, near Milepost _____, as described in the attached Exhibit A _____ ("Premises"), which _____ incorporated by this reference, subject to all existing licenses, easements, encumbrances, and claims of title affecting Premises and upon the terms and conditions contained herein. No work shall commence on Premises until Permittee accepts this Permit. The doing of any work under this Permit shall constitute acceptance of these Permit provisions.

2. Exclusive Use. This Permit is for Permittee's exclusive use and is not assignable without the prior consent of Permittor.

3. Purpose. The permitted purpose of Permit shall be solely for entry upon Premises for _____ at _____, California, near Milepost _____, as described in the attached Exhibit B, including bringing all necessary personnel and equipment onto Premises as necessary for the permitted purpose ("Project").

4. Term. This Permit shall be effective at such time as the fees identified in Section 6 have been paid and shall continue until _____, and then shall automatically terminate unless extended by mutual written agreement. If the fees are not received within fifteen (15) days from the date of this Permit, then Permit shall be null and void.

Permittor reserves the right to revoke or modify this Permit at any time prior to the termination date upon forty-eight (48) hours advance notice from Permittor to Permittee.

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If Permittee requires use of Premises prior or subsequent to the foregoing dates, then Permittee shall request approval from Permitter at least forty-eight (48) hours prior to the time requested. Permittee shall pay additional fees as set forth in Section 6 below for such additional use.

5. Permit Shall Remain On-Site. A copy of this Permit must be kept on the site of Premises at all times during the term of this Permit and shall be shown to any representative of Permitter upon demand. Project may be suspended if this Permit is not at Premises.
6. Permit Fees and Costs. As compensation for use of Premises, Permittee shall pay the costs for review of Permit application, design and construction plans, preparation of Permit, and any inspection of activity or construction authorized by this Permit, including but not limited to, expenses incurred by Permitter, which costs and expenses Permittee shall pay upon demand. Permittee shall pay to Permitter upon execution hereof the sum of One Thousand Dollars (\$1,000.00), which is an estimate of such costs and expenses.
7. Project Plan. Project shall be performed in accordance with a plan identifying the sequence of operations, schedules and locations for said Project. The plan shall be submitted to Permitter in advance of any work for Permitter's approval and such work shall be subject to monitoring and inspection by Permitter.
8. Cost of Work, Protection of Traffic, and Working Procedures. All costs related to Permittee's operations upon Premises shall be at Permittee's expense. All work upon or in connection with the use of Premises shall be done at such times and in such manner as not to interfere with the current or future use of Premises. Permittee shall be responsible for the provision of barriers, directions, signage, and other forms of notice to the general public to assure the safe, smooth, and uninterrupted flow of traffic around Project site and on and about Premises. Permittee shall keep Permitter's Premises in a reasonably neat and safe condition failing which Permitter, after twenty-four (24) hours prior notice to Permittee, may do so at Permittee's expense.

Permittee shall comply with the regulations of the instructions of Permitter's representatives relating to the proper manner of protecting the tracks, pipelines, wire lines, signals, and all other property at said location, the traffic moving on such tracks, and the removal of tools, equipment, and materials.

All work by Permittee upon Premises shall be performed in a good and worker-like manner satisfactory to Permitter. Since there is the possibility of the existence of pipelines or other structures beneath Premises, if Permittee should excavate or drill, then Permittee's forces shall explore such structures with hand tools to a depth of at least eight feet (8') below the surface of the ground or, at Permittee's option, use suitable detection equipment prior to drilling or excavating with mechanized equipment. Absence of markers does not constitute a warranty by Permitter of no subsurface installations. It shall be Permittee's responsibility to



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determine the existence of any underground facilities and Permittee shall call Underground Service Alert at 1 (800) 642-2444 prior to beginning any work on the property.

Permittee shall telephone Qwest Communications, Inc., at 1 (800) 283-4237 (a 24-hour number) to determine whether a telecommunications system is buried anywhere on the property. If there is, Permittee shall telephone the owner of the system designated by Permitter, arrange for a cable locator and make arrangements for relocation or other protection for the system prior to beginning any work on the property.

Any open holes shall be satisfactorily covered at all times when Permittee's forces are not physically working in the actual vicinity. Upon completion of work, all holes will be filled in to meet the surrounding ground level with clean, compacted, earthen material and the property left in a neat and safe condition reasonably satisfactory to Permitter.

Permittee agrees to reimburse Permitter for the cost and expense to Permitter of furnishing any materials or performing any labor in connection with the use of Premises, including, but not limited to, the installation and removal of such false work and other protection beneath or along the railroad tracks, and the furnishing of such security persons, flaggers, and inspectors as Permitter deems necessary. Prior to incurring any cost or expense, Permitter shall reasonably notify Permittee of the same. Said reimbursement shall be paid by Permittee to Permitter within thirty (30) days after presentation of a bill.

Permittee shall fully pay for all materials joined or affixed to Premises, and shall pay in full all persons who perform labor on Premises. As Permitter is a public entity, its property is not subject to mechanics' or materialmen's liens, and nothing in this Permit shall be construed to make its property subject to such liens. However, if any such liens are filed, Permittee shall immediately remove them at Permittee's own expense, and shall pay any judgment which may be entered. Should Permittee fail, neglect, or refuse to do so, Permitter, after 48 hours prior notice to Permittee, shall have the right to pay any amount required to release any such liens, or to defend any action brought, and to pay any judgment entered. Permittee shall be liable to Permitter for all costs, damages, reasonable fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment. Permitter may post and maintain upon Premises notices of non-responsibility as provided by law.

Permittee shall cooperate with Permitter in making any tests Permitter requires of any installation or condition which in Permitter's reasonable judgment may have an adverse effect on any of the facilities of Permitter. All costs incurred by the tests, or any corrections required as a result of such tests, shall be borne by Permittee.

Permittee shall take protective measures necessary to keep Permitter's facilities, including track ballast, free of sand or debris resulting from its use of Premises. Should any damage occur to Permitter's facilities as a result of Permittee's use of Premises, Permittee shall

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immediately notify Permitter. Permitter may require Permittee to contact the operator of any rail service on the rail line to make arrangements to ensure the safe performance of any work and agrees to give Permitter ten (10) calendar days of written notice prior to commencement of the work in the event such arrangements need to be made. Any damage to Permitter's facilities resulting from Permittee's use of Premises will be repaired or replaced by Permitter at Permittee's sole cost and expense, which Permittee shall pay to Permitter promptly upon demand.

9. No Crossing of Tracks. Permittee shall not be permitted to cross Permitter's tracks located near Premises but shall gain access to and from Premises only by use of designated public streets.
10. No Hazardous Materials. No hazardous materials shall be handled at any time upon Premises.
11. Mechanized Equipment. Under no condition shall Permittee be permitted to place or store any mechanized equipment, tools or other materials within twenty-five feet (25') of the center line of Permitter's nearest railroad tracks.
12. Indemnity and Insurance. Permittee shall release, defend (with counsel reasonably satisfactory to Permitter) and indemnify Permitter, its successors and assigns, any railroad company operating on Premises, and their respective directors, officers, employees, and agents (collectively, "Indemnitees") from and against all liability, cost, and expense for loss of, or damage to, property and for injuries to, or death of, any person (including, but not limited to, the property and employees of each party) when arising or resulting from the use of Premises by Permittee, its agents, employees, contractors, subcontractors, or invitees; or Permittee's breach of these provisions. The duty of Permittee to indemnify and save harmless the Indemnitees includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties under this Section 12, that Permittee will indemnify and hold harmless the Indemnitees from any and all claims, suits, or actions arising from any cause whatsoever as set forth above, other than the active negligence, willful misconduct, or criminal acts of the Indemnitees. Permittee waives any and all rights to any type of express or implied indemnity against the Indemnitees arising out of Permittee's use of or activities on Premises. This indemnity shall survive termination of this Permit. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

Prior to entry upon Premises, Permittee shall provide Permitter with satisfactory evidence, in the form of a Certificate of Insurance, that Permittee is insured in accordance with the following, which insurance shall remain in effect throughout the term of this Permit:

- a. Workers' Compensation and Employers' Liability Insurance. Permittee shall

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procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance in accordance with the laws of the State of California. Employers' Liability Insurance shall have coverage for a minimum liability of Two Million Dollars (\$2,000,000) covering Permittee's employees engaged in the work. Permittee shall insure the procurement and maintenance of such insurance by all contractors or subcontractors engaged on project.

Prior to commencement of any work hereunder, Permittee shall deliver to Permittor a Certificate of Insurance which shall stipulate that thirty (30) days advance written notice of cancellation or non-renewal shall be given to Permittor.

- b. Personal Injury and Property Damage Liability Insurance. Permittee shall also procure and maintain Personal Injury and Property Damage Liability Insurance, including, but not limited to, what is commonly referred to as coverage for "XCU Hazards" (Explosion, Collapse, and Underground Property Damage) which shall include as additional insured Permittor, its successors and assigns, any railroad company operating on Premises, and their respective directors, officers, employees and agents (collectively, "Insureds"), as they now or as they may hereafter be constituted, singly, jointly, or severally. Such insurance shall include Automobile Bodily Injury and Property Damages coverage including owned, hired, and non-owned vehicles.

Said insurance shall be subject to a combined single limit of liability of not less than Five Million Dollars (\$5,000,000).

- c. Railroad Protective Liability Insurance. The Permittee shall provide, with respect to the construction activities it or any of its subcontractors perform above the railroad tracks or within fifty feet (50') horizontally of the railroad tracks, Railroad's Protective Liability Insurance with the Insurance Services Offices/Railroad Insurance Management Association (ISO/RIMA) form with pollution coverage for job site fuels and lubricants. The Permittee shall be the named insured and said policy shall cover all other railroads operating on the right-of-way. The policy shall have limits of liability of not less than Two Million Dollars (\$2,000,000) per occurrence, combined single limit, 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. Prior to commencing work or entering onto the property, Permittee shall file the original of the policy for Railroad Protective Liability with the Permittor.

Prior to entering onto Premises, Permittee shall file Certificate(s) of Insurance with Permittor evidencing the required coverage and endorsement(s) and upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

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- 1) The insurance company(ies) issuing such policy(ies) shall give written notice to Permittor of any material alteration, cancellation, non-renewal, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days notice of cancellation.
- 2) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Permittee is liable for under Sections 12 and 13, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (3) The policy shall also stipulate: Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Permittee. Said policy shall protect Permittee and the Insureds 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.

The insurance policy(ies) shall be written by an insurance company or companies acceptable to Permittor. Such insurance company shall be authorized to transact business in the state of California.

13. Permits from Other Agencies; Hazardous Materials. Permittee shall comply, at Permittee's expense, with all applicable laws, regulations, rules and orders with respect to the use of Premises, and shall obtain all required licenses, permits or other approvals in connection with Permittee's use of Premises. Permittee shall furnish satisfactory evidence of such compliance upon request of Permittor.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from Premises due to Permittee's use and occupancy thereof, Permittee, at Permittee's expense, shall clean all affected property to the satisfaction of Permittor and any governmental body having jurisdiction.

Permittee shall indemnify, hold harmless and defend the Indemnitees against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, reasonable attorneys' fees and consulting, engineering and construction costs) incurred by Permittor as a result of Permittee's breach of this section or as a result of any such discharge, leakage, spillage, emission, or pollution by Permittee, regardless of whether such liability, cost, or expense arises during or after the term of this Permit.

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14. Assumption of Risk. Permittee shall assume all risk of damage to any and all other property of Permittee, or any property under the control or custody of Permittee while upon or near Premises of Permittor incident to the use of Premises; provided, however, such assumption by Permittee shall not include any damage caused by the active negligence and/or willful misconduct of Permittor. Permittee releases Permittor from any liability, including claims for damages or extra compensation, arising from construction delays due to transportation activities by Permittor or transportation operations by any agency as authorized by Permittor.
15. Subcontractors. Any person, firm or corporation Permittee authorizes to work upon Premises, including any contractor(s) and subcontractor(s), shall be deemed to be Permittee's agent and shall be subject to all the applicable terms hereof.
16. Restoration of Premises. Upon termination of this Permit, Permittee, at its own expense, shall remove from Premises all property it owns or controls, all debris and other materials, and restore Premises to its condition prior to entry or to a condition reasonably satisfactory to Permittor. Upon Permittee's failure to do this, Permittor, upon forty-eight (48) hours prior notice to Permittee, may perform such work at Permittee's expense.
17. Severability. If any provision of this Permit shall be for any reason unenforceable, in any respect, such unenforceability shall not affect the other provisions of this Permit.
18. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Permit or to determine the rights of the parties under this Permit, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.
19. Time of Essence. Time is and shall be of the essence of this Permit and of each and every provision contained in this Permit.
20. No Third Party Beneficiaries. Nothing contained in this Permit shall be construed to create and the parties do not intend to create any rights in third parties.
21. Construction of Agreement. The provisions in this Permit shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. Permittor and Permittee agree that in the event any provision in this Permit is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Permit. Permittor and Permittee acknowledge that they have each contributed to the making of this Permit and that, in the event of a dispute over the interpretation of this Permit, the language of the Permit will not be construed against one party in favor of the other. Permittor and Permittee further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Permit.



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- 22. Relationship. The parties intend by this Permit to establish the relationship of permittor and permittee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of permittor and permittee.
- 23. Captions. The captions in this Permit are for convenience only and are not a part of this Permit. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.

If the endorsed copy of this Permit is not received within fifteen (15) days from the date of this Permit, then this Permit shall be null and void.

IN WITNESS WHEREOF, the parties have executed this Permit as of the Effective Date by their duly authorized representatives.

**SONOMA-MARIN AREA RAIL TRANSIT Permittee:
DISTRICT**

By:
Lillian Hames
General Manager

ATTEST:

By:	*By:
Title:	Title:

**

Incorporated under the laws of the State of _____

* If Permittee is a corporation, two corporate officers must sign on behalf of the corporation as follows: 1) the chairman of the board, president or vice president; and 2) the secretary; assistant secretary, chief financial officer or assistant treasurer.

EXHIBIT A

EXHIBIT B