



Right of Entry Permit

FOR SMART USE ONLY

Permit Number 2019 – ROE –000
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 (“Permitter”) and _____ (“Permittee”), _____(address).

1. Permit. Permitter hereby permits Permittee to enter upon Permitter's property located _____ in _____, County of _____, California, near Milepost _____, as described in the attached **Exhibit A** ("Premises"), which is 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 Permitter.
3. Purpose. The permitted purpose of Permit shall be solely for entry upon Premises for _____, 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 automatically terminate on _____ 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.

Permitter 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 Permitter to Permittee.

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

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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. Any additional costs for inspectors/safety monitors will be billed at the completion of work.
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, Access Requirements, 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.

Not less than 72 hours prior to entering the Premises, Permittee shall submit a Track Access Permit in a form approved by Permitter. A sample of Permitter's current Track Access form is attached hereto as **Exhibit C**. As a condition of access, Permitter may require any combination of the following safety measures:

- a) Completion of Railroad Workplace Safety training mandated by the Federal Railroad Administration (49 C.F.R. Part 214). Permittee shall ensure that all Permittee's employees, contractors and subcontractors who will access the Premises complete the necessary on-line training and shall submit documentation of the completion of such training by each such employee, contractor and subcontractor, in the form of a Certificate of Completion, to Permitter with the Track Access Permit
- b) Hiring a railroad approved EIC contractor, at Permittee's expense, for the duration of the work in SMART's right of way. Permittee may choose from any contractor

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on Permitter's approved list or submit an alternate EIC contractor for consideration. Permitter will reserve the right to approve or deny any alternate EIC contractor submissions. The EIC must be onsite during all work on the railroad right of way.

Depending on the work, one or more flaggers may also be required at Permittee's expense.

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 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.

Fiber optic cable systems may be buried on the Permitter's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. It shall be Permittee's responsibility to telephone 1 (800) 336-9193 to determine if fiber optic cable is buried anywhere on the Permitter's property. This number can be used during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) and is also a 24-hour, 7-day number for emergency calls.

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.

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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 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

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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.

All personal property of Permittee, including, but not limited to fixtures, equipment, or related materials upon the Property, will be at the risk of OWNER only, and Permitter will not be liable for any damage thereto or theft thereof, whether or not due in whole or in part to the negligence of Permitter.

Prior to entry upon the Property and commencement of construction activities, Permittee shall provide Permitter with satisfactory evidence, in the form of a Certificate of Insurance, that Permittee is insured in accordance with the following. Said insurance shall remain in effect throughout the term of this License:

a. Workers' Compensation and Employers' Liability

Permittee shall 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 \$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 in the construction, operation or maintenance of the Conveyor.

b. Commercial General Liability

Permittee shall procure and maintain Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence.

Said policy shall either include a Railroads CG 24 17 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of construction or demolition operations within 50 feet of any railroad property and

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affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing, or provide evidence that said policy does not have any railroad exclusions. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

c. Professional Liability

Permittee shall procure and maintain Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

d. Automobile Liability

Permittee shall procure and maintain Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$2,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

e. Contractors Pollution Liability

Contractors Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Permit. Coverage shall include the Permittee as the named insured and shall include coverage for acts by others for whom the Permittee is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

f. Railroad Protective Liability

Prior to commencement of construction activities, Permittee shall procure and maintain Railroad Protective Liability insurance, in Permitter's name, with limits of liability of no less than \$5,000,000 per occurrence, for losses arising out of

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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 additional named insureds shall be the Sonoma-Marina Area Rail District and the North Coast Railroad Authority, and shall cover all other railroads operating on the right-of-way.

Prior to entering onto the Property, Permittee shall file Certificate(s) of Insurance with Permitter 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:

- 1) SMART, its officers and employees, shall be named as additional insured on all policies listed above.
- 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, 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.
- 4) Permittee hereby grants to Permitter a waiver of any right to subrogation which any insurer of said Permittee may acquire against Permitter by virtue of the payment of any loss under such insurance. Permittee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Permitter has received a waiver of subrogation endorsement from the insurer.
- 5) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

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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.

Deductibles and Retentions

Permittee shall be responsible for payment of any deductible or retention on Permittee's policies without right of contribution from Permittor. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible of retention provision limiting payment to the name insured is not acceptable.

Self-Insurance

Permittee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to Permittor.

Claims Made Coverage

If any insurance specified above is written on a claims-made coverage form, Permittee shall:

- 1) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Permit or beginning of any work under this Permit;
- 2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- 3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Permit effective date, Permittee shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

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

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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.

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 Permitter 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 Permitter. Permittee releases Permitter from any liability, including claims for damages or extra compensation, arising from construction delays due to transportation activities by Permitter or transportation operations by any agency as authorized by Permitter.
15. Subcontractors. Any person, firm or corporation Permittee authorizes to work upon Premises, 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 Permitter. Upon Permittee's failure to do this, Permitter, 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. Permitter 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. Permitter 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. Permitter and Permittee further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of

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this Permit.

- 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.

PERMITTOR:
SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT

PERMITTEE:

By:

*By:

Laura Giraud
Real Estate Manager

Name:
Title:


*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

EXHIBIT C

Must Be Signed for Approval

 <p>RIGHT OF WAY ACCESS PERMIT</p>		One permit must be submitted for each calendar day of work.	Permit Number _____ ROE Permit _____
This form must be kept onsite by the contractor at all times. If you decide not to use your approved permit for the date requested contact Dispatch and cancel the request.		Date of Work: _____ Start Time: _____ Finish Time: _____ Crew Size: _____	
CONTRACTOR INFORMATION		Territory	
Company Name: _____	Applicant Name: _____	<input type="checkbox"/> Brazos Jct. (B-25.8 TO B-49.8)	
Phone: _____	Email: _____	<input type="checkbox"/> SMART Mainline (14.9 TO 84.7)	
Always expect a train or on track equipment. Trains may travel in both directions on any track at any time.		<input type="checkbox"/> OTHER: _____	
Supervisor on Site		EXACT WORK LIMITS:	
Supervisor Name: _____	Cell Phone: _____	FROM: _____	TO: _____
The Supervisor is required to: *Be on site at all times and reachable by Dispatch *Call OCC by phone to <u>activate</u> the Permit before work starts & call OCC to <u>deactivate</u> the Permit after work is done <u>and</u> crews are clear.		OTHER: _____	
		FORM B EIC ONLY FILL OUT BELOW	
		FORM B Limits _____ to _____	
		Short Flag Location _____ / _____	
DESCRIPTION OF WORK			
WORK CONDITIONS			
<input type="checkbox"/> Roadway Protection Certification is current	<input type="checkbox"/> Work crew may be fouling tracks	<input type="checkbox"/> Heavy equipment within right-of-way	<input type="checkbox"/> Operation of a hysrail vehicle
<input type="checkbox"/> Right of entry	<input type="checkbox"/> Outside of fouling zone		
Level of On Track Safety			
<input type="checkbox"/> Watchman Lookout	<input type="checkbox"/> Form B	<input type="checkbox"/> Track Warrant	EIC: _____
<input type="checkbox"/> Track Out of Service	<input type="checkbox"/> Approved Flagger	<input type="checkbox"/> None Required	Cell: _____
Operations Control Center Phone: 707-890-8600 <i>Submit permit requests by email to the Track Access Coordinators</i>		SMART TRACK ACCESS COORDINATORS: Marc Bader: Mbader@sonomamarintrain.org Andrew Blanchard: Ablanchard@sonomamarintrain.org	
FOR CONTROL OFFICE USE		Permit Approval: _____	Date: _____
Active Time: _____	Controller Signature: _____	ID# _____	
Clear Time: _____	Controller Signature: _____	ID# _____	