

## **WAIVER AND RELEASE FROM LIABILITY**

Chicago Rock Island & Pacific Railroad LLC and / or one or more of its subsidiaries ("Railroad") has agreed to allow \_\_\_\_\_ ("Permittee") to temporarily enter upon certain real property, easement(s) and / or rights-of-way ("Premises") which are owned, operated, managed, and / or leased by Railroad, during daylight hours, between 7:00 AM and 7:00 PM CST, as provided in the Permit to be issued pursuant hereto. Permittee's privilege of entry or presence on the Premises is subject to Permittee doing so in accordance with the terms and conditions of this Waiver, said Permit, Railroad's Right of entry Insurance Requirements, all applicable Boring, Digging, and Drilling Riders, Agreement(s), and Railroad's Utility Accommodation Policy (collectively, the "Railroad Documents"). Such entry shall be solely for the purpose of the following:

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Permittee shall be permitted to walk upon the Premises, but he/she shall not place any vehicles or equipment upon the tracks, ties, ballast, or roadbed of Railroad. Permittee is further responsible for the entire cost of all repairs and remediation performed by Railroad or one of its contractors due to damages resulting from digging, drilling, and / or boring under the track(s) including but not limited to track undermining, washouts or other track damage and/or stability issues that may arise subsequent to Permittee's entry onto the Premises. For and in consideration of said privilege being extended to Permittee, which Permittee stipulates to be fair and adequate consideration for its compliance with the terms in the Railroad Documents, Permittee hereby agrees and warrants as follows:

1. Permittee hereby agrees, for itself, its heirs, administrators, executors, personal representatives, insurers, officers, directors, employees, agents, parents, subsidiaries, affiliated companies, contractors, subcontractors, successors and assigns (hereinafter collectively "Permittee"), to WAIVE, RELEASE, INDEMNIFY, HOLD HARMLESS, DEFEND, AND FOREVER DISCHARGE RAILROAD AND THE OWNER OF THE PREMISES, IF NOT RAILROAD, and their respective officers, directors, employees, agents, attorneys, insurers, parents, governing entities, subsidiaries, affiliates, lessors, lessees, contractors, subcontractors, successors and assigns (hereinafter collectively the "Railroad") of and from all claims, demands, liabilities, actions, causes of action, damages, suits, judgments, fines, charges, penalties, assessments, costs and expenses, of every kind and nature, including, but not limited to: costs related to environmental remediation, liability for death or injury to any and all persons, loss or damage to any and all property, contractual damages court costs, and reasonable attorney fees (hereinafter "Losses"), that arise in connection with Permittee's entry or presence on, in, or near the tracks, Premises, property, structures, equipment or facilities of Railroad, or while Permittee is otherwise engaged in the activity described hereinabove, regardless how remote or attenuated such connection may be, except to the extent such Loss is proximately caused by the gross negligence of Railroad. Permittee further waives any other right or claim he may have against Railroad arising out of or resulting from any accident; delay; derailment; collision; failure of any equipment, structure or facility; including, but not limited to, any rights arising under any theory of tort, strict liability, or otherwise. Permittee further agrees that the above and immediately foregoing WAIVER of claims against Railroad and the owner of the Premises shall apply regardless of whether such Loss is due in whole or in part to the negligence of Railroad or the owner of the Premises.
2. Permittee agrees that while on or in the vicinity of the Premises or Railroad's tracks or equipment, Permittee will not sell, distribute, possess or consume any alcoholic beverage, illegal or controlled substance, firearm, explosive, or other dangerous article. Permittee agrees to fully indemnify and hold harmless Railroad and the owner of the Premises against any and all Losses, including court costs and attorney fees, sustained by

Railroad or any crew member, passenger, spectator, or any other person or entity whatsoever, arising out of or resulting directly or indirectly from any activity by Permittee, or any negligent, intentional, or illegal act or omission Permittee commits while on or around Railroad's or the owner's tracks, property, Premises or equipment. Nothing in this Waiver shall be construed as creating establishing any relationship of buyer / seller; employer / employee; agent / fiduciary; contractor / client; or contractor / subcontractor between Railroad and Permittee.

3. In executing this Waiver, Permittee acknowledges that there are risks involved with railroad operation and the activity to be performed by Permittee, including, but not limited to: accidents, derailments, collisions, failure of equipment, fire, human negligence and other incidents which may or may not be foreseeable. Permittee acknowledges that there are risks associated with railroad rights-of-way, such as the Premises, including, but not limited to: splintered ties, sharp metal objects, uneven surfaces, noxious plants, biting and stinging insects, snakes, spiders, and other wildlife, trash, buried track material, etc. Permittee accepts the premises "AS IS, WHERE IS," and with all risks. Permittee expressly waives all right to assert any claim against Railroad and the owner of the Premises based on the condition of the Premises, other premises liability theory, and / or failure to warn Permittee of any danger. Permittee agrees that Railroad is affording Permittee this privilege purely as an accommodation of convenience to Permittee's business pursuits with third-party(ies), and not for any value, benefit or compensation for or from Railroad, and Permittee assumes all risk of Losses to Permittee, including but not limited to injury, death, and loss, damage or destruction of Permittee's property, while Permittee is on the Premises. Permittee understands and agrees that that Railroad nor the owner of the Premises receives any value or benefit of any kind, type, or nature whatsoever, whether direct or indirect, from Permittee's entry or presence on the Premises, and that Permittee's entry and presence on the Premises impose upon Railroad and the owner of the Premises a significant level of risk, and corresponding potential harm, Loss, liability, environmental impact, and other damages which arises directly from Railroad's agreement to grant Permittee the privilege of entry onto the Premises.
4. Permittee shall, at all times while on the Premises or the property of Railroad, have a current "Permit to be on Railroad Property," and Permittee acknowledges that failure to comply with the terms and conditions contained therein shall be grounds to terminate Permittee's right to be on the Premises or Railroad property, with or without notice or opportunity to correct or cure. Railroad reserves the right to revoke any permit issued in accordance herewith at Railroad's sole discretion, at any time, for any reason whatsoever, or for no reason at all, without providing justification or explanation of its reasoning to Permittee. Upon revocation of any permit issued hereunder, or at the direction of Railroad, Permittee shall immediately exit the Premises, and shall cause all of its personnel, contractors, subcontractors, vehicles, tools, and equipment to be exit the Premises. Permittee shall solely bear the full cost and risk of Losses associated with any partial work performed for and / or contractual liability to any third-party(ies) arising in connection with its exit from the premises, including but not limited to materials and consumables expended by Permittee.
5. Permittee agrees, warrants, represents, and covenants that its respective signatory(ies) hereto possess the full, actual, and absolute authority to legally bind Permittee to the terms of this Waiver. Any subsequent claim or assertion by Permittee that its signatory(ies) hereto lacked the authority to bind Permittee to the terms hereof shall be considered a material breach hereof, and such claim or assertion shall be understood to be: baseless, made in bad faith, null and void, and of no legal effect whatsoever. Moreover, if Permittee claims or asserts that its signatory(ies) hereto lack the authority to execute this Waiver and / or to bind Permittee to the terms hereof, Permittee shall be deemed to have admitted to all allegations asserted in any subsequent legal action or proceeding by Railroad or the owner of the Premises under this Waiver and to have admitted its liability for all damages, including punitive damages alleged therein, and shall waive its right to contest or deny the same in any proceeding arising from or in connection with such legal action or proceeding or this Waiver.

The terms and provisions of this Waiver shall survive the completion of the project described herein, and shall indefinitely remain in full force and effect. Permittee acknowledges that it has READ and fully understands this WAIVER and is executing it voluntarily for the purposes stated therein.

Dated: \_\_\_\_\_

“PERMITTEE”

“RAILROAD”

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Company: Chicago Rock Island & Pacific Railroad, LLC  
dba Rock Island Rail