

WAIVER AND RELEASE FROM LIABILITY

Chicago Rock Island & Pacific Railroad LLC (hereinafter "Railroad") has agreed to allow

_____ ("Permittee") to enter upon the real estate and right-of-way ("Premises") of the Railroad during daylight hours, between 7:00 AM and 7:00 PM CST, as provided in the Permit to be issued pursuant hereto, and provided he/she does so in accordance with the terms and conditions of this Waiver and said Permit. Such entry shall be solely for the purpose of the following:

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 any repairs needed due to damages resulting from boring under the track(s) including but not limited to track undermining, washouts or other track damage and/or stability issues. For and in consideration of said privilege being extended to Permittee, which Permittee stipulates to be fair and adequate consideration for this Waiver and Release, Permittee, hereby agrees as follows:

1. Permittee hereby agrees, for himself/herself, his heirs, administrators, executors, personal representatives, insurers, officers, directors, employees, agents, parents, subsidiaries, affiliated companies, successors and assigns (hereinafter collectively "Permittee"), to WAIVE, RELEASE, INDEMNIFY, HOLD HARMLESS AND FOREVER DISCHARGE **CHICAGO ROCK ISLAND & PACIFIC RAILROAD LLC**, and their respective officers, directors, employees, agents, attorneys, insurers, parents, subsidiaries, affiliates, lessors, lessees, successors and assigns (hereinafter collectively the "Railroad") of and from any claims, demands, liabilities, actions, causes of action, damages, suits, judgments, fines, penalties, costs and expenses, including, but not limited to, court costs and reasonable attorney fees (hereinafter "Loss"), resulting from or in any way related to any injury, including resulting death, or loss of or damage to property, that occurs while 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, except to the extent such loss is 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 foregoing WAIVER shall apply regardless of whether such Loss is due in whole or in part to the negligence of Railroad.
2. Permittee agrees that while on or in the vicinity of Railroad's tracks, Premises or equipment, he/she will not sell, distribute, possess or consume any alcoholic beverage, illegal substance, firearm, explosive, or other dangerous article. Permittee agrees to fully indemnify and hold harmless Railroad against any and all Loss, 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 tracks, property, Premises or equipment.

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 right-of-ways, 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 agrees that Railroad is affording him/her this privilege purely as an accommodation to Permittee's business pursuits, and not for any value or compensation for or from Railroad, and Permittee is assuming all risk of injury, including resulting death, or loss of or damage or destruction of his/her property, while engaging in such activity. The parties acknowledge that Permittee is not an employee or agent of Railroad and is not providing any service of any value to Railroad.
4. Permittee shall, at all times while on the property of Railroad, have a current "Permit to be on Railroad Property," and he/she acknowledges that failure to comply with the terms and conditions contained therein shall be grounds to terminate Permittee's right to be on Railroad property, with or without notice or opportunity to correct.
5. The provisions of this Agreement shall survive the completion of the project described herein, and remain in full force and effect in accordance with the terms herein.
6. Permittee acknowledges that he/she has READ and fully understands this WAIVER and is executing it voluntarily for the purposes stated therein.

Dated: _____

"PERMITTEE"

Name: _____

Signature: _____

Company: _____

"RAILROAD"

Name: _____

Signature: _____

Company: Chicago Rock Island & Pacific Railroad

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