

SANTA PAULA BRANCH LINE RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (“**Agreement**”) is dated _____, 2024 (“**Effective Date**”) and is between the Ventura County Transportation Commission (the “**VCTC**”), Sierra Northern Railway (“**Railroad**”), and _____ (“**Contractor**”).

Contractor has requested permission to temporarily enter upon Santa Paula Branch Line (“**SPBL**”) railroad property owned by the VCTC and leased by Railroad. The VCTC and Railroad are agreeable subject to the terms and conditions set forth herein.

The parties agree as follows:

Article 1. RIGHT GRANTED

Contractor intends to temporarily have personnel and equipment on the SPBL to complete the following work and related activities (collectively the “**Work**”): _____ . The VCTC and Railroad hereby grant Contractor the right, during the term of this Agreement, upon and subject to each and all of the terms, provisions, and conditions herein contained, and in performance of the Work, to enter upon and have ingress to and egress from the portion of the SPBL located at _____ and shown on **Exhibit A** hereto (the “**Property**”).

This Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee, or other interest in the Property to Contractor. This Agreement is not exclusive, and the VCTC and Railroad specifically reserve the right to grant other rights of entry upon, or within the vicinity of, the Property.

Article 2. TERM, TERMINATION

The grant of right herein made to Contractor shall commence on _____, 2024 and continue until _____, 2024, unless sooner terminated as herein provided, or until such time as Contractor has completed its Work on the Property, whichever is earlier. Contractor agrees to notify the VCTC and Railroad when it has completed its Work on the Property.

This Agreement may be terminated by any party on 10 calendar days’ written notice to the other parties.

Upon the earlier of the completion of the Work or the termination of this Agreement, Contractor shall, at its own cost and expense, remove all of its property from the Property and restore the Property to the same condition in which it was prior to Contractor’s entry, including the removal of all trash. In case Contractor fails to restore the Property to its prior condition within 10 business days after the effective date of termination of this Agreement, the VCTC or Railroad may proceed with such work at Contractor’s expense.

In the event the VCTC or Railroad authorizes Contractor to take down any fence or structure on the Property, or in any manner to move or disturb any of the VCTC's or Railroad's other property in connection with the Work, Contractor shall as soon as possible, and at Contractor's sole expense, restore such fence or structure or other property to the same condition as it was before such fence or structure was taken down or such other property was moved or disturbed, and Contractor shall indemnify and hold harmless the VCTC and Railroad, and the VCTC's and Railroad's respective officers, officials, employees, representatives, agents, and volunteers against and from any and all liability, loss, damages, claims, demands, costs, and expenses of whatsoever nature, including court costs and reasonable attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss, or destruction grows out of or arises from the taking down of any fence or structure or the moving or disturbance of any of the VCTC or Railroad's property. The VCTC and Railroad will not pay Contractor for any betterments or improvements in such fence and other property that may be made by Contractor.

If Contractor fails to remove any of its property as set forth above, the VCTC and Railroad shall have the right to dispose of, sell, store, or cause to be stored any such property and Contractor shall reimburse the VCTC and Railroad for their costs in disposing of, selling, storing, or causing to be stored the same.

Article 3. FEES

As compensation for the rights herein granted, Contractor shall pay a license fee ("**License Fee**") to Railroad in accordance with the following schedule:

Number of Working days on the Property	Fee
1 day	\$1,575
2 days	\$2,625
3 days	\$4,200
4-5 days	\$5,575
More than 5 days	\$6,300
More than 15 days	\$10,500

The License Fee shall be payable at the time of Contractor's execution of this Agreement and this Agreement shall not become effective until full payment of the License Fee. The License Fee shall be in addition to any applicable flagging, switching, or other costs payable to Railroad under this Agreement.

Article 4. COMMON CARRIER TERMS AND CONDITIONS

The Property is in active use as a common carrier railroad. The terms and conditions set forth in **Exhibit B** hereto are thus hereby made a part of this Agreement and all Work performed by Contractor on the Property shall be performed in a manner reasonably satisfactory to Railroad's General Manager or Track and Maintenance Manager (each of whom is hereinafter a "Railroad Representative").

Article 5. EXPENSES; PROPERTY DAMAGE; LIENS

Contractor shall bear any and all costs and expenses associated with Contractors Work, use of the Property, as well as any and all costs or expenses incurred by the VCTC or Railroad relating to damage caused by Contractor's Work or use of the Property. Contractor agrees to reimburse the VCTC and Railroad for any and all expenses incurred by the VCTC and Railroad in relation to Contractor's Work or use of the Property.

Contractor shall be responsible for any and all damages to the Property arising from the Work or Contractor's presence on the Property, including loss, damage, or theft of appurtenances or equipment located on the Property. Contractor's responsibility under this section includes damages caused directly or indirectly by the acts or omissions of Contractor or its officers, agents, employees, representatives, guests, patrons, volunteers, invitees, and subcontractors.

Contractor shall pay in full all persons who perform labor or provide materials for the Work. Contractor shall not permit or suffer any mechanic's or materialman's liens of any kind or nature to be enforced against any property of the VCTC or Railroad for such Work. Contractor shall indemnify and hold harmless the VCTC and Railroad from and against any and all liens, claims, demands, costs, or expenses of whatsoever nature in any way connected with or growing out of the Work, including any labor performed and any materials furnished.

Section 6. ASSUMPTION OF RISK

Contractor accepts the Property in its present condition and hereby assumes the risk of any injury to and death of persons and damage to or destruction of property resulting from the condition of or any defects anywhere in or upon or related to Property, regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects exist at the commencement of this Agreement or at some later time.

No termination of this Agreement shall release Contractor from any liability or obligation hereunder resulting from any acts, omissions, or events happening prior the termination of this Agreement and restoration of the Property to its prior condition.

Article 7. INSURANCE

Before commencing Work on the Property, Contractor agrees to procure and maintain, at its sole cost and expense, the following insurance coverage with an insurer or insurers and in a form reasonably satisfactory to the VCTC and Railroad, which insurance shall be maintained in force during the life of this Agreement:

Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, and bodily injury and property damage, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if the Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage, required whenever work is performed.

Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease, required whenever work is performed.

If Contractor maintains higher limits than the minimums shown above, the VCTC and Railroad require, and shall be entitled to, coverage for the higher limits maintained by Contractor.

The insurance policies set forth above shall contain, or shall be endorsed to contain, the following provisions:

Additional Insured Status: The VCTC and Railroad, and their respective officers, officials, employees, representatives, agents, and volunteers are to be covered as additional insureds on all policies except the workers' compensation policy. The workers' compensation insurer shall agree to waive all rights of subrogation against the VCTC and Railroad, their respective officers, officials, employees, representatives, agents, and volunteers for losses arising from the Work on the Property. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of both CG 20 10 and CG 20 37 (if a later edition is used).

Railroad Endorsement: Contractor's insurance shall not contain any exclusions for work performed, or activities, on or near a railroad or railroad track. Contractor's insurance shall also include the following endorsement: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing the "Premises" as the Property.

Primary Coverage: For any claims related to this Agreement, Contractor's insurance coverage shall be primary as respects the VCTC, Railroad, and their respective officers, officials, employees, representatives, agents, and volunteers. Any insurance or self-insurance maintained by the VCTC, Railroad, or their respective officers, officials, employees, representatives, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the VCTC and Railroad.

Waiver of Subrogation: Contractor hereby grants to the VCTC and Railroad a waiver of any right to subrogation which any insurer may acquire against the VCTC or Railroad, or their respective officers, officials, employees, representatives, agents, or volunteers, by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation but this provision applies regardless of whether or not the VCTC or Railroad have received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the VCTC and Railroad. The VCTC and Railroad may require Contractor to purchase coverage with a lower deductible or retention or to provide proof of ability to pay any and all losses and related investigations, claim administration costs, and defense expenses within any retention. If any insurance policy includes a self-insured retention, nothing shall prevent any of the parties from satisfying or paying the self-insured retention. If any insurance policy states that the self-insured retention must be paid by a named insured as a precondition of the insurer's liability (or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention), such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the VCTC and Railroad.

Verification of Coverage: Contractor shall furnish the VCTC and Railroad with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the VCTC and Railroad before commencement of any Work on the Property; provided, however, that any failure to obtain the required documents prior to the commencement of the Work on the Property shall not diminish Contractor's obligation to provide them. The VCTC and Railroad reserve the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Article 8. COMPLIANCE WITH LAWS

In the prosecution of the Work, Contractor shall obtain all applicable permits and comply with all applicable federal, state, and local laws, regulations, and enactments. Contractor shall use only such methods as are consistent with safety, both as concerns Contractor, Contractor's officers, agents, employees, representatives, guests, patrons, volunteers, invitees, and subcontractors, any property of the VCTC or Railroad, and the general public. All Federal Railroad Administration regulations shall be followed when Work is performed on the Property. If any failure by Contractor to comply with any such laws, regulations, and enactments results in any fine, penalty, cost, or charge being assessed, imposed, or charged against the VCTC or Railroad, Contractor shall reimburse and indemnify the VCTC and Railroad for any such fine, penalty, cost, or charge, including reasonable attorney's fees, court costs, and expenses. Contractor further agrees, in the event of any such action and upon notice thereof being provided by the VCTC or Railroad, to defend such action free of cost, charge, or expense to the VCTC and Railroad.

Article 9. INDEMNITY

Contractor agrees to and shall indemnify, defend, and hold harmless the VCTC and Railroad, and their respective officers, officials, employees, representatives, agents, and volunteers from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto), arising out of or in connection with the Work or this Agreement, including any action or omission of, or actions or omissions permitted by, Contractor or its officers, agents, employees, representatives, guests, patrons, volunteers, invitees, and subcontractors.

Contractor's obligation to defend, indemnify, and hold the VCTC and Railroad, and their respective officers, officials, employees, representatives, agents, and volunteers harmless under the provisions of this Article is not limited to or restricted by any requirement in this Agreement to procure and maintain a policy of insurance.

The indemnification and defense obligations of this Agreement shall survive its expiration or termination.

Article 10. NO JOINT VENTURE OR RELATIONSHIP

Nothing herein contained shall constitute a partnership between, or joint venture by, the parties or constitute any party the agent of the others. No party shall hold itself out contrary to the terms of this Article and no party shall become liable by any representation, act, or omission of the other parties contrary to the provisions hereof. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such third party whether referred to herein or not.

Contractor's personnel performing Work, or otherwise acting, under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees or agents of Contractor and not employees or agents of the VCTC or Railroad. However, at the request of the VCTC or Railroad, Contractor shall during the term of this Agreement remove from the Property any person or entity who fails to comply with the requirements of this Agreement or, in the VCTC's or Railroad's sole discretion, has created or believed to be creating a dangerous or nuisance condition on the Property. Contractor shall indemnify the VCTC and Railroad against any claim arising from the removal of any such person or entity from the Property.

Article 11. CANCELLATION

Should Contractor cancel the Work, or any portion thereof, Contractor agrees to reimburse the VCTC and Railroad for any expenses incurred by the VCTC and Railroad on behalf of Contractor in preparation for or execution of the canceled Work.

This Agreement may be terminated at any time if and when the Property is required for public emergency use. The VCTC or Railroad may also terminate this Agreement at any time, without liability to Contractor, if it is determined, in the VCTC's or Railroad's sole discretion, that Contractor has failed to strictly comply with this Agreement.

Article 12. MODIFICATIONS; WAIVER

All modifications of, waivers of, and amendments to this Agreement or any part hereof must be in writing signed on behalf of each of the parties. No failure or delay by either party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege hereunder.

Article 13. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign, sublet or subcontract this Agreement, or any interest therein, without the prior written consent of the VCTC and Railroad and any attempt to assign, sublet, or subcontract without such consent shall be void. If the VCTC and Railroad gives Contractor permission to subcontract all or any portion of the Work, Contractor is and shall remain responsible for all subcontracted Work and all subcontracted Work shall be governed by the terms of this Agreement.

Article 14. AMBIGUITIES

Headings used in this Agreement are used only for reference and are not intended to define, limit, expand, or describe the scope of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement; this Agreement is to be construed as if the parties had drafted it jointly.

Article 15. SEVERABILITY

If any portion of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, that portion shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be amended or reformed to the extent necessary to make such portion valid and enforceable; the remaining portions of this Agreement shall remain in full force and effect. Any such prohibition or unenforceability in any jurisdiction shall not prohibit or render unenforceable any such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision of this Agreement prohibited or unenforceable in any respect.

Article 16. GOVERNING LAW & VENUE

This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue for any action concerning the terms of this Agreement shall be in the Superior Court of the County of Ventura and the parties hereby consent to such jurisdiction and to service of process by any means authorized under California law.

Article 17. EXECUTION; COUNTERPARTS

The parties agree and represent that they have read this Agreement in its entirety, reviewed it with their respective counsel, and understand its contents. Each of the persons executing this Agreement warrants that he or she has the right and power to enter into this Agreement on behalf of the party for whom he or she is representing that he or she is executing this Agreement.

Each party agrees that this Agreement may be executed by electronic or facsimile signature, which shall be as effective as an original signature and which may be used in lieu of the original for any purpose, and in one or more counterparts, all of which together shall constitute one agreement binding on all the parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first above written.

Sierra Northern Railroad:	Contractor
By: Matt Blackburn	By:
Its: General Manager	Its:

EXHIBIT A
(Map of Property)

EXHIBIT B
COMMON CARRIER TERMS AND CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK; FLAGGING

Contractor agrees to notify Railroad Representative at least 48-hours in advance of Contractor commencing any Work on the Property and at least 24-hours prior to the performance of any Work in which any personnel or equipment may be within 20 feet of any railroad tracks or may be near enough to any railroad tracks that any equipment extension (including a crane boom) may reach to within 20 feet of any railroad tracks.

Upon receipt of such notice, Railroad Representative will determine whether one or more flagmen must be present and whether Contractor must implement any other special protective or safety measures. If any flagmen or other special protective or safety measures are performed by Railroad, such services will be provided at Contractor's sole expense with the understanding that, if Railroad provides any flagging or other services, Contractor shall pay for such services and shall not be relieved of any of its responsibilities or liabilities set forth herein.

Contractor understands and agrees that unless notice as set forth herein is provided to Railroad (telephone notice will be adequate), any personnel and equipment will be subject to removal from the Property by Railroad until such notice is given. If an emergency should arise requiring immediate attention, Contractor shall provide Railroad with as much notice as practicable before commencing any Work.

Flagging or Railroad employee time to set and remove any necessary track worker protection is billed in hourly increments at \$150.00 per hour.

Section 2. NO INTERFERENCE WITH RAILROAD OPERATIONS

The Property is part of the SPBR and in active common carrier railroad use. The grant of rights pursuant to this Agreement is thus subject and subordinate to the prior and continuing right and obligation of the VCTC and Railroad to use and maintain the Property and to construct, maintain, repair, renew, use, operate, change, modify, or relocate railroad tracks, signals, communications equipment, fiber optics, or other wirelines, pipelines, and other facilities upon, along, under, or across any or all parts of the Property, any or all of which may be freely done at any time by the VCTC and Railroad without liability to Contractor or to any other person or entity for compensation or damages. The grant of rights is also subject to all outstanding superior rights including those in favor of licensees and lessees of the SPBL or the Property, and the VCTC's and Railroad's right to renew and extend the same.

No Work shall cause any interference whatsoever with the constant, continuous, and uninterrupted use of the tracks, property (including the Property), and facilities of the VCTC or Railroad, or of the VCTC's or Railroad's lessees, licensees, or others, unless specifically permitted under this Agreement or specifically authorized in advance by the VCTC and Railroad. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the

centerline of the nearest SPBL railroad tracks and there shall be no crossings of SPBL railroad tracks except at existing and open public crossings.

Section 3. PROTECTION OF FIBER OPTIC CABLES

Fiber optic cables may be buried on the Property, the protection of which is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to conducting any Work, Contractor shall contact USA North 811 (at 811 or 800-642-2444), and telephone the Union Pacific Railroad Company (at 1-800-336-9193) to determine if fiber optic cable is buried anywhere on the Property. If it is, Contractor or Union Pacific will telephone the telecommunications companies involved, arrange for a cable locator, and make arrangements for relocation of other protection of the fiber optic cable prior to commencing any Work on the Property.

In addition to other indemnity provisions in this Agreement, Contractor shall indemnify and hold the VCTC and Railroad harmless against and from all costs, liabilities, and expenses whatsoever (including, without limitation, reasonable attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor or its officers, agents, employees, representatives, guests, patrons, volunteers, invitees, and subcontractors, that causes or in any way or degree contributes to (i) any damage to or destruction of any telecommunications system on the Property, (ii) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents, and/or employees, on the Property, or (iii) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication companies. Contractor shall not have or seek recourse against the VCTC or Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to any telecommunication company using the Property or a customer or user of services of the fiber optic cable on the Property.

Section 4. RAILROAD SAFETY

Safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the Work. As reinforcement and in furtherance of overall safety measures to be observed by Contractor, special safety rules, including the following, shall at all times be observed:

A. Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. Contractor shall have proper first aid supplies available on the job site so prompt first aid services can be provided to any person who may be injured on the job site. Contractor shall promptly notify the VCTC and Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the Work performed on the Property. Contractor shall have a non-delegable duty to control its employees while they are on the Property to be certain they do not use, are not under the influence of, and do not have in their possession any alcoholic beverage or illegally obtained drug, narcotic, or other illegal substance.

B. Contractor's employees shall be suitably dressed to perform their duties safely and

in a manner that will not interfere with their vision and hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear footwear that has thin soles or heels that are higher than normal. In addition, Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules or regulations, or Railroad Officials overlooking the Work. In particular, the protective equipment to be worn shall be:

- i.** Protective head gear that meets American National Standard Z89.1, latest revision. It is suggested that all hard-hats be affixed with Contractor's logo or name.
- ii.** Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1, latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
- iii.** Hearing protection which affords enough attenuation to give protection from noise levels occurring on the Property.

C. All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of Railroad Representative any of Contractor's equipment is unsafe for use on the Property, Contractor, at the request of Railroad Representative, shall remove such equipment from the Property.

D. If Contractor will have or does have men or equipment within 20 feet of the centerline of any track, then Contractor's employees who will be or are within such zone shall be trained in Railroad's trackworker safety program prior to working within such limits and shall follow all Railroad's trackworker safety rules and procedures. If Contractor's employees have been trained by another common carrier railroad within the prior six months, only refresher training will be required on Railroad's trackworker safety program and rules. Contractor shall pay for Railroad's trainer time at \$75.00 per hour. Strict compliance with Railroad's trackworker safety program will be required at all times, and Contractor will indemnify and hold the VCTC and Railroad harmless from any fines or fees caused by Contractor's failure to comply at all times with Railroad's trackworker safety program.

E. Contractor shall not cross any trackage of SPBL with any vehicles except at existing and open public crossings.

F. In live track operations, a distance of 20 feet from track must be maintained unless the Work necessitates working in closer proximity to the track, in which case Contractor's employees and equipment must have prior authorization from Railroad. When so authorized, a Railroad flagman must be present. Contractor's employees must be familiar with procedures to clear personnel and equipment from the track area for approaching trains. In addition, the following safety procedures shall be adhered to by all of Contractor's employees:

Always be on the alert for moving equipment while working near any railroad tracks or facilities.

Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

In passing around ends of standing cars, engines, railroad machinery, and other on-track equipment, leave at least one rail car length (50 feet) between yourself and the end of the equipment.

Avoid walking or standing on track at any time. When it is necessary to walk or work on track, always keep a sharp lookout in both directions for approaching trains.

Before stepping or crossing tracks, look in both directions first. The same is true when walking around machinery and equipment on and about the tracks.

Do not sit on, lie under, or cross between cars except as required in performance of your duty, and only when track and equipment are under proper protection.

In multiple track territory, do not stand on one track while a train is passing on another.