



LIMITED RIGHT OF ENTRY PERMIT (Construction)

This **LIMITED RIGHT OF ENTRY PERMIT** ("Permit") is granted by **DENTON COUNTY TRANSPORTATION AUTHORITY** ("DCTA"), a regional transportation authority created, organized and existing pursuant to Chapter 460, Texas Transportation Code, as amended (the "Act") to _____ ("Permittee"), a _____, acting herein by and through its duly authorized official, whose mailing address is _____, _____, Texas _____, for the consideration and subject to the restrictions, conditions, and agreements stated herein.

WHEREAS, pursuant to that certain *Transportation and Access Agreement and Easement* dated and effective May 25, 2010, between DCTA and Dallas Area Rapid Transit ("DART") ("the DART Agreement"), DCTA is operating, and maintaining a public rail transportation system within the former Missouri-Kansas-Texas rail corridor from Mile Post 742.42 in the City of Carrollton, Texas, to Mile Post 721.53 in the City of Denton, Texas, ("the DCTA Corridor") which is presently owned by DART; and

WHEREAS, pursuant to agreements between and/or among DCTA, DART, and Dallas, Garland & Northeastern Railroad ("Railroad"), both passenger and freight railroad operations are occurring on the DCTA Corridor; and

WHEREAS, Permittee desires to enter the DCTA Corridor for the Permitted Purpose, as defined below;

NOW THEREFORE, DCTA does hereby grant to Permittee a non-exclusive revocable license to enter on, over, across and upon that certain portion of the DCTA Corridor between Mile Post _____ and Mile Post _____ in Denton County, Texas ("the Licensed Premises") for the Permitted Purpose subject to the following terms and conditions:

- 1. Permitted Purpose:** The "Permitted Purpose" as that phrase is used in this Permit, shall mean the performance of construction activities by Permittee or Permittee's employees and/or contractor generally described in Exhibit "A" hereto.
- 2. Term:** Permittees right to enter the Licensed Premises for the Permitted Purpose shall begin at _____ on _____, **20**____ and end at _____ on _____, **20**____, unless this Permit is terminated earlier as provided herein or extended by written agreement of the Parties.
- 3. Consideration:** In consideration for the granting of this Permit Permittee shall pay DCTA (a) a one-time payment by Permittee to DCTA the sum of **TEN AND NO/100 (\$10.00) DOLLARS** (the "Permit Fee").
- 4. Cost:** Permittee shall be solely responsible for all costs relating to performing the Permitted Purposes. Upon completion of the Permitted Purpose and prior to termination of this Permit, Permittee shall restore the Licensed Premises to the same condition as when Permittee entered upon the Licensed Premises unless DCTA consents to Permittee



leaving the Licensed Premises in a different condition.

5. **Performance of Work - Generally:** Permittee and/or its contractor shall use reasonable care, to avoid damaging any existing buildings, equipment and vegetation on or about the Licensed Premises and any adjacent property owned by or under the control of DCTA, DART, or Railroad. If the failure to use reasonable care by Licensee and/or its contractor results in damage to the Licensed Premises or such adjacent property, Permittee and/or its contractor shall immediately make appropriate replacement or repair the damage at no cost or expense to DCTA, DART and/or Railroad. If Permittee or its contractor fails or refuses to make such replacement, DCTA shall have the right, but not the obligation, to make or affect any such repair or replacement at the sole cost and expense of Permittee, which cost and expense Permittee agrees to pay to DCTA upon demand. Permittee shall require that the work and activities associated with the Permitted Purpose shall be conducted in such a manner and at such times to not endanger or interfere with DCTA's or Railroad's operations, and in accordance with the regulations and instructions of DCTA and the Railroad.
6. **DCTA to Review Plans:** Prior to the commencement of any work on the Licensed Premises by Permittee or its contractor, Permittee shall submit to DCTA for review and approval Permittee's plans and specifications for the portion of Permittee's project to be constructed within the DCTA Corridor. Permittee, its employees, contractors, and subcontractors shall perform that portion of the Work located in the DCTA Corridor strictly in accordance with the plans and specifications approved by DCTA. Permittee shall further submit to DCTA, for approval, all construction details, falsework and other incidentals not detailed in plans, insofar as they are located within the DCTA Corridor or otherwise may reasonably affect DCTA or its property and/or operations. Not later than sixty (60) days following completion of Permittee's work within the DCTA Corridor, Permittee shall deliver to DCTA a full set of as-built drawings showing all improvements made by or on behalf of Permittee within the DCTA Corridor including, but not limited to, all materials, equipment, and other personal property,
7. **Operational Safety Matters:** Permittee, its contractors and subcontractors, and the employees of any of the foregoing, shall at all times comply with the following operational safety measures while present in the DCTA Corridor:
 - a. Flagger(s), who are representatives of DCTA engaged to protect DCTA's interest while in the DCTA Corridor and who have been determined by DCTA to be knowledgeable and qualified to perform flagging duties within the DCTA Corridor in accordance with DCTA's operating and safety rules must be present and on-duty.
 - b. No work or other activity shall be conducted less than twenty-five feet (25.0') from the closest rail of any DCTA track (also referred to as "the Foul Zone") or perform any work in which a catastrophic event could cause equipment, people or materials to enter into the Foul Zone unless the above mentioned flaggers are present.
 - c. Every person working under the control of Permittee or otherwise under authority of Permittee pursuant to this Permit who are engaged in any activity that requires



flagger(s), as described in Section 7.b., above, shall have received within the 365 day period prior to the date the work is to be performed, attended a creditable Roadway Worker Protection course and have successfully passed all required examinations associated with that course. Permittee, Permittee's contractor, or the employee working within the DCTA Corridor will provide proof of course completion upon request from DCTA or its representatives. Whether or not the above mentioned Roadway Worker Protection course is creditable shall be determined at the sole discretion of DCTA.

- d. All equipment, tools and materials must be stored not less than twenty-five (25) feet from the closest rail of any operable track unless otherwise approved in writing by DCTA. Explosives or other highly flammable substances or any hazardous materials regulated pursuant to federal or state regulation shall not be stored on DCTA property, including, but not limited to, the DCTA Corridor, without the prior written approval of DCTA.
 - e. Permittee shall remove or have removed all tools, equipment and materials from the DCTA Corridor promptly upon completion of work, but in no case later than ten (10) unless a longer period is authorized in writing by DCTA.
 - f. Permittee shall reimburse DCTA for all costs and expense incurred by DCTA in connection with the provision of any services or work in relation to the Permittee's work as described in Exhibit "A", including without limitation the expense of furnishing such inspectors, watchmen and flagmen as DCTA deems reasonably necessary or which are otherwise requested by Permittee, the installation and removal of falsework beneath tracks which DCTA is required to do in order for Permittee to construct its work as described in Exhibit "A".
 - g. Permittee understands and acknowledges that flagging and safety rules will be administered by CTC, Inc. (CTC), through the CTC Roadway Worker Safety Training, conducted at 9601 Camp Bowie West, Fort Worth, Texas 76116.
8. **Required Notifications:** Prior to entering the Licensed Premises pursuant to this Permit, Permittee shall provide notification to DCTA as follows:
- a. No prior notification is required if a work schedule setting forth the specific dates and times during which Permittee and/or its contractor will be performing work within the DCTA Corridor is set forth in Exhibit "A", hereto, and entry into the Licensed Premises occurs within those dates and times.
 - b. If Permittee must enter the Licensed Premises in a situation constituting an Emergency Event (as defined below), Permittee shall notify DCTA by telephone not later than one hour prior to entry into the Licensed Premises at the following phone numbers:
 - i. Between the hours of 5:00 AM and 11:00 PM Central Time, contact Mr. Alex Ison, Signal Supervisor, at 817-471-7132 (cell)



- ii. At anytime, contact Mr. Danny Bailey, DCTA Rail Operations, at (972) 966-5103 or (512) 848-7399 (cell).
- c. In all other situations not described in Paragraphs a. or b. of this Section 8, Permittee shall notify DCTA not later than fifteen (15) days prior to entry into the Licensed Premises by providing written notice to DCTA in accordance with Section 14.a., below.
- d. Permittee shall notify DCTA that the work described in Exhibit "A" is completed not later than five (5) business days after the work is completed, such notification to be in accordance with Section 14.a., below.
- e. For purposes of Section 8.b., above, an "Emergency Event" shall mean an event in which Permittee requires access to the Licensed Premises to perform repairs, replacement, or maintenance to Permittee's leased or owned property or facilities located within the DCTA Corridor, which, if not performed within a short time after the discovery of the need for such repair, replacement, or maintenance, will reasonably:
 - i. result in personal injury or death or damage to or destruction of real or personal property;
 - ii. endanger the public health or safety; or
 - iii. result in an interruption of utility, communication, or data transmission services to the public or a governmental entity whose operations are dependent on such transmission.

9. Indemnification:

- a. **TO THE EXTENT ALLOWED BY LAW, PERMITTEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS, DCTA, DART, RAILROAD AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY PENALTY, OR ANY DAMAGE, OR CHARGE, IMPOSED FOR ANY VIOLATION OF ANY LAW, ORDINANCE, RULE OR REGULATION ARISING OUT OF THE PERMITTED USE OF THE LICENSED PREMISES BY PERMITTEE, WHETHER OCCASIONED BY THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF PERMITTEE, ITS EMPLOYEES, OFFICERS, PARTNERS, SHAREHOLDERS, AGENTS, CONTRACTORS, INVITEES, OR GUESTS.**
- b. **TO THE EXTENT ALLOWED BY LAW, PERMITTEE SHALL AT ALL TIMES INDEMNIFY, DEFEND, AND HOLD HARMLESS DCTA, DART, RAILROAD, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES AGAINST AND FROM ANY AND ALL LOSS, COST, DAMAGE, OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR FROM ANY ACCIDENT OR OTHER OCCURRENCE CAUSING PERSONAL INJURY,**



DEATH OR PROPERTY DAMAGE RESULTING FROM OR RELATED TO USE OF THE LICENSED PREMISES BY PERMITTEE, ITS AGENTS, EMPLOYEES, PARTNERS, SHAREHOLDERS, AGENTS, CONTRACTORS, INVITEES, OR GUESTS, WHETHER OCCASIONED BY THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF LICENSEE, ITS EMPLOYEES, OFFICERS, PARTNERS, SHAREHOLDERS, AGENTS, CONTRACTORS, INVITEES, OR GUESTS. EXCEPT WHEN CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF DCTA, DART, RAILROAD OR THEIR OFFICERS, EMPLOYEES AND/OR AGENTS, AND ONLY THEN TO THE EXTENT OF THE PROPORTION OF ANY FAULT DETERMINED AGAINST DCTA, DART, OR RAILROAD FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

- c. If Permittee is a "governmental unit" as that term is defined in Tex. Civ. Prac. & Rem. Code §101.001, Permittee does not by agreement to and acceptance of this Permit waive its right to claim immunity to liability or suit or to invoke the limits of liability set forth in Chapter 101 of the Texas Civil Practices & Remedies Code, as amended, to the extent sovereign immunity has been waived by said statutes. DCTA and Permittee further acknowledge and agree that nothing in this Permit is intended to be for the benefit of any third parties except to the extent expressly provided in this Permit.
 - d. The provisions of this Section 9 shall survive the termination of this Permit, regardless of the means of termination.
- 10. Insurance:** Prior to occupancy of the Licensed Premises under this Permit, Permittee agrees to procure and maintain at its sole cost and expense the following types and amounts of insurance with an insurer or insurers and in form satisfactory to DCTA, which insurance shall be primary and non-contributory.
- a. Commercial General Liability with Contractual Liability Endorsement.
 - i. Combined single limit of not less than \$2,000,000.
 - ii. DCTA, DART, Railroad and all affiliated companies and organizations named as additional insureds without any qualification or restriction.
 - iii. DCTA must be provided 30 days notice of cancellation or modification.
 - b. Commercial Automobile Liability Policy
 - i. Combined single limit of not less than \$2,000,000.
 - ii. DCTA, DART, and Railroad named as additional insureds without any qualification or restriction.
 - iii. DCTA must be provided not less than 30 days notice of cancellation or modification.



- c. Workers' Compensation Insurance
 - i. Providing Statutory Benefits under the Workers' Compensation Act of the State of Texas and/or any other State or Federal Law or Laws applicable to the Contractor's employees performing the work under this Permit.
 - ii. Employer's Liability Insurance with limits of liability of not less than \$500,000 each accident, \$500,000 each employee for disease and \$500,000 policy limit for disease.
 - iii. Endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from DCTA, DART, and Railroad.
- d. Permittee agrees to furnish DCTA Certificates of Insurance and copies of Endorsements for Additional Insured, Waiver of Subrogation and Contractual Liability Railroads (or, as and when DCTA may direct, copies of the actual insurance policies) as evidence of the coverage's outlined in Paragraphs a, b, and c, above, and this Paragraph d. Approval will be expedited if all required coverage's and the following endorsements are included on the Certificates:
 - i. Endorsement showing DCTA, DART, Railroad and their affiliate companies and organizations named as additional insureds in as required by Paragraphs a. and b., above and requiring that DCTA be given 30 days notice of cancellation or modification. The certificate must specify that the endorsement is applicable to the General Liability and Auto Liability Policies.
 - ii. Contractual liability endorsement.
 - iii. Endorsement removing exclusions from contractual liability coverage for operations within 50 feet of a railroad or the purchase of a Railroad Protective Liability Policy with limits of liability of no less than \$2,000,000 per occurrence and \$6,000,000 aggregate.
 - iv. Endorsement removing exclusions for XCU hazards.
 - v. Waiver of subrogation endorsement specific to Workers Compensation.
- e. All policies must contain a cross liability endorsement reading as follows:

"It is agreed that the inclusion of more than one person, corporation, organization, firm or entity as insured under this policy shall not in any way affect the rights of any such person, corporation, organization, firm or entity with respect to any claim, demand, suit or judgment made, brought or recovered by or in favor of any other insured. This policy shall protect each person, corporation, organization, firm or entity in the same manner as though a separate policy had been issued to each; provided that this endorsement shall not operate to increase the company's limits



of liability as set forth elsewhere in this policy."

- f. Unless Permittee's insurance covers the operations of Permittee's contractors and subcontractors, Permittee shall require all contractors and subcontractors engaged by Permittee to perform work within the Licensed Premises pursuant to this Permit to comply with the provisions of this Section 8 in the same manner as Permittee.
11. **Removal from Licensed Premises:** At the request of DCTA or Railroad, Permittee shall remove from the DCTA Corridor any employee of Permittee, or Permittee's contractor or subcontractor who fails to comply with DCTA and/or Railroad's operating and safety rules and any right of Permittee to enter upon the DCTA Corridor shall be suspended until compliance with such rules is obtained. To the extent allowed by law, Permittee shall indemnify DCTA and the Railroad against any claim arising from the removal of any such employee from the DCTA Corridor.
12. **Identification:** Company-issued photo identification is required of all Permittee's employees, contractors, and subcontractors working on the Licensed Premises which clearly identifies the person as someone authorized to be on the Licensed Premises pursuant to this Permit.
13. **Termination:** The Permit shall terminate on the earliest of:
- a. The date set forth in Section 2, above, as the end of the Term; or
 - b. The date established by mutual written agreement of the Parties; or
 - c. The date Permittee has completed all work and/or other activities related to the Permitted Purpose and has completed restoration of the Licensed Premises as required by Section 4, above; or
 - d. 5:00 p.m., Central Time on the fifth (5th) day following DCTA's delivery of notice to Permittee of Permittee's non-compliance with the provisions of this Permit if Permittee has failed to cure such non-compliance by that time; provided, however, if the non-compliance is the failure to comply with a DCTA and/or Railroad operating and safety rule pursuant to Section 11, above, termination shall be at 5:00 p.m. Central Time on the second (2nd) day after delivery of the notice to Permittee if Permittee remains out of compliance with such operating or safety rule unless the notice of non-compliance expressly provides a longer period for Permittee to come into compliance; or
 - e. The date any of the insurance coverage required to be provided by Permittee and/or its contractors or subcontractors pursuant to Section 9, above, expires without being renewed.
14. **Miscellaneous.**
- a. **Notice.** When written notice is permitted or required by this Permit, it shall be



deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the parties at the following addresses:

DCTA: Denton County Transportation Authority
1955 Lakeway, Suite 260
Lewisville, Texas 75067
ATTN: Rail Development

With Copy to: Peter G. Smith, General Counsel
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

PERMITTEE: _____

Either party may change its address for notice by giving the other party notice thereof.

- b. **Parties Bound.** This Permit shall be binding upon and inure to the benefit of the executing parties.
- c. **Entirety and Amendments.** This Permit embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Licensed Premises and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought.
- d. **Governing Law; Venue.** This Permit shall be construed under and in accordance with the laws of the State of Texas. Venue for any dispute between the parties to this Permit arising from or related to this Permit shall be in a state court in Denton County, Texas, the personal jurisdiction to which the parties hereto agree to submit.
- e. **Number and Gender.** Words of any gender used in this Permit shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.
- f. **Assignment.** This Permit is not assignable.
- g. **No Joint Enterprise.** The parties do not intend this Permit to be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this Permit are separate and distinct. It is not the intent



of any of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship. This Permit does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the parties hereto.

- h. **Counterparts.** This Permit may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
- i. **Waiver of Default.** It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
- j. **No Property Conveyance.** Permittee understands, acknowledges, and agrees that this Permit is solely contractual and does not constitute a conveyance of an interest in real property.
- k. **Effective Date.** This Permit shall become effective on the date it is signed by the authorized representatives of DCTA and Permittee.
- l. **DART as Third Party Beneficiary.** Permittee understands, acknowledges, and agrees that to the extent any right of indemnification or other obligation stated herein is expressly made in favor of DART, DART constitutes a third party beneficiary of this Permit with the right to enforce said provisions in this Permit without the necessity of DART acknowledging its rights as a third party beneficiary hereto.



DENTON COUNTY
TRANSPORTATION
AUTHORITY

PERMIT NO. _____
Mile Post: _____

SIGNED AND AGREED this ____ day of _____, 20__.

DENTON COUNTY TRANSPORTATION
AUTHORITY

BY: _____
Raymond Suarez, CEO

SIGNED AND AGREED this ____ day of _____, 20__.

PERMITTEE

BY: _____

Printed Name: _____

Title: _____



DENTON COUNTY
TRANSPORTATION
AUTHORITY

PERMIT NO. _____
Mile Post: _____

EXHIBIT "A"
DESCRIPTION OF PERMITTED PURPOSE