

RIGHT OF ENTRY PERMIT FORMS for FORT SMITH RAILROAD CO.

A Railroad Representative must sign the Right of Entry Permit before access to Right of Way is allowed. Those requesting access to the Right of Way should sign both forms (“Permit to be on Railroad Property” and “Waiver and Release from Liability”).

Please email signed documents to Frank May, Real Estate Manager/
Right of Way Agent: fmay@pioneer-railcorp.com

If you have any questions please contact Frank May at (309) 697-1400.

FORT SMITH RAILROAD CO.
PERMIT TO BE ON RAILROAD PROPERTY

THE PARTY NAMED BELOW ("LICENSEE") HAS PERMISSION TO ENTER AND BE ON THE PREMISES OF THE FORT SMITH RAILROAD CO. ("RAILROAD") FOR THE PURPOSE AND UNDER THE TERMS AND CONDITIONS HEREIN STATED.

DUE TO THE NATURE OF RAILROAD OPERATIONS, RAILROAD PROPERTY CAN BE A DANGEROUS PLACE FOR PEOPLE AND/OR PROPERTY. LICENSEE SHALL BECOME FAMILIAR WITH AND AT ALL TIMES STRICTLY OBSERVE RAILROAD'S SAFETY RULES AND ALL OTHER RULES, REGULATIONS, AND DIRECTIONS OF THE RAILROAD'S GENERAL MANAGER, OR HIS REPRESENTATIVE.

LICENSEE SHALL STRICTLY ABIDE BY ANY AND ALL DIRECTIONS, RULES, OR CONDITIONS IMPOSED BY THE RAILROAD'S GENERAL MANAGER, OR HIS REPRESENTATIVES. LICENSEE ACKNOWLEDGES THAT RAILROAD OPERATIONS WILL CONTINUE DURING THE TIME THIS PERMIT IS IN FORCE, AND, IN ADDITION, OTHERS, MAY BE PERFORMING WORK ON THE RAILROAD RIGHT-OF-WAY WHILE THIS PERMIT IS IN FORCE. LICENSEE WILL NOT INTERFERE WITH RAILROAD OPERATIONS, OR SUCH OTHER WORK.

THIS PERMIT IS GRANTED PURSUANT TO A WAIVER AND RELEASE AGREEMENT BETWEEN THE RAILROAD AND _____.
IT WILL BE NEEDED FOR THE PERIOD OF _____ TO _____. THE TERMS,
CONDITIONS AND PROVISIONS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE,
FOR THE SOLE PURPOSE OF:

_____.

THIS PERMIT MAY BE REVOKED AT ANY TIME BY RAILROAD IF LICENSEE FAILS OR NEGLECTS TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT, OR IF SAFETY SO REQUIRES.

THIS PERMIT MUST BE SIGNED BY THE LICENSEE. LICENSEE, BY SIGNING, ACKNOWLEDGES THAT HE HAS READ THIS PERMIT AND AGREES TO AND WILL ABIDE BY THE TERMS AND CONDITIONS THEREOF. LICENSEE SHALL KEEP A COPY OF THIS PERMIT IN HIS POSSESSION AT ALL TIMES WHILE ON RAILROAD PROPERTY AND WILL SHOW IT TO ANY RAILROAD EMPLOYEE OR REPRESENTATIVE UPON REQUEST.

ISSUED TO:

By: _____
FORT SMITH RAILROAD CO.

WAIVER AND RELEASE FROM LIABILITY

Fort Smith Railroad Co. (hereinafter "Railroad") has agreed to allow _____ ("Permittee") to enter upon the real estate and right-of-way ("Premises") of the Railroad during daylight hours, from _____ through _____, as provided in the Permit to be issued pursuant hereto, and provided he does so in accordance with the terms and conditions of this Waiver and said Permit. Such entry shall be solely for the purpose of _____.

Permittee shall be permitted to walk upon the Premises, but he shall not place any vehicles or equipment upon the tracks, ties, ballast or roadbed of Railroad. 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 FORT SMITH RAILROAD CO., and PIONEER RAILCORP, 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 the Railroad's tracks, Premises or equipment, he 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, derailment, 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 this privilege purely as an accommodation to Permittee's business pursuits, and not for any value or compensation for Railroad, and Permittee is assuming all risk of injury, including resulting death, or loss of or damage or destruction of his 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 the Railroad, have a current "Permit to be on Railroad Property", and he 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 has READ and fully understands this WAIVER and is executing it voluntarily for the purposes stated therein.

Dated: _____

