



**INDEMNIFICATION
and
ASSUMPTION OF LIABILITY AGREEMENT**

SCRRA FORM NO. 5

SCRRA File No.	
SCRRA Project/Task No.	
Subdivision	
Mile Post	
Thomas Guide Page	

The Contractor, hereby requests permission to encroach onto the Southern California Regional Rail Authority (SCRRA) and Member Agency Right-of-Way.

- Location of Work: _____
- Purpose/Description: _____

1. **Definitions**

- A. Contractor is an individual, firm, partnership or corporation, or combination thereof, private, municipal or public, including joint ventures, which are referred to throughout this document by singular number and masculine gender. For purposes of this agreement, Contractor also includes any subcontractor, supplier, agent or other individual entering the Right-of-Way during performance of work.
- B. Indemnitees are SCRRA, Member Agencies, and Operating Railroad, and their respective officers, commissioners, employees, agents, successors and assigns.
- C. Operating Railroad is/are any passenger or freight-related railroad company(s) validly operating on SCRRA and Member Agency track(s). Operating Railroads are any combination(s) of the National Railroad Passenger Corporation, (AMTRAK) the Union Pacific Railroad Company, (UPRR) and the BNSF Railway Corporation. (BNSF)
- D. Right-of-Way is defined herein to mean the real and/or personal property of SCRRA and/or Member Agencies.
- E. SCRRA is a five-county joint powers authority, created pursuant to State of California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to build and operate the "Metrolink" commuter train system in the five-county area on rail rights-of-ways owned by the Member Agencies. The five-county Member Agencies are comprised of the following: Los Angeles County Metropolitan Transportation Authority (MTA), Ventura County Transportation Commission (VCTC), Orange County Transportation Authority (OCTA), San Bernardino Associated Governments (SANBAG), and Riverside County Transportation Commission (RCTC).



- F. SCRRRA Employee-In-Charge (EIC) is a Southern California Regional Rail Authority employee or contractor (SCRRRA General Code of Operating Rules and Territory Qualified) providing warning to Public Agency or Contractor personnel of approaching trains or on track equipment and who has the authority to halt work and to remove personnel from the Right-of-Way to assure safe work.
- G. SCRRRA Safety Trainer is a qualified SCRRRA employee or contracted employee (SCRRRA General Code of Operating Rules qualified) as authorized by the SCRRRA Director of Engineering and Construction to provide Contractor training.

2. **Entry onto Right-of-Way**

No verbal approvals will be granted. A fully executed copy of this Form 5 must be in the possession of the Contractor at the encroachment site and must be produced upon request by SCRRRA or Member Agency's representative. If said Agreement is not produced, SCRRRA has the right to delay access to the Right-of-Way until the Contractor demonstrates possession of the Form 5. SCRRRA EIC must be present whenever the Contractor enters into the Right-of-Way. SCRRRA will also provide additional personnel and equipment for protection deemed necessary by SCRRRA. SCRRRA may authorize encroachment onto the Right-of-Way without presence of an EIC depending on the nature and location of the encroachment. SCRRRA involvement in providing positive protection shall not relieve the Contractor from its complete responsibility for the adequacy and safety of its operation. The Contractor shall furnish information so that SCRRRA can take all precautionary safety measures. If, for any reason, it is necessary to change the time and/or date when encroachment is required, the Contractor shall contact SCRRRA's ROW Encroachments Administrator and not enter the Right-of-Way until it has been approved in writing and appropriate safety protection can be rescheduled.

3. **Termination of Agreement**

SCRRRA or Member Agency reserves the right to terminate or revoke this Agreement at any time upon two hours notice; however, in the event of an unsafe condition on the Right-of-Way, SCRRRA shall have the right to terminate this Agreement immediately, without any advanced notice. Unless subsequently modified, extended, terminated or revoked by SCRRRA, this temporary Agreement shall extend until access to the Right-of-Way is no longer necessary. The Contractor agrees to notify SCRRRA, in writing, when work is completed. The Contractor shall also complete and return the Confirmation of Completion form.

At the request of SCRRRA or Member Agency, Contractor shall remove from the Right-of-Way any employee or other individual who fails to conform to the instructions of SCRRRA's or Member Agency's representative. Any right of Contractor to enter upon the Right-of-Way shall be suspended until such request of SCRRRA or Member Agency is met. Contractor shall defend, indemnify and hold harmless SCRRRA and Member Agency against any claim arising from the removal of any such employee or other individual from the Right-of-Way.

4. **Indemnification**

Contractor, on behalf of itself and its employees, subcontractors, agents, successors, and assigns, agrees to indemnify, defend, by counsel satisfactory to SCRRRA and Member Agency, and hold harmless "Indemnitees", and each of them to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including incidental consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses, and experts' and actual



attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions of the Contractor, or its officers, directors, affiliates, subcontractors or agents or anyone directly or indirectly employed by them or for whose acts the foregoing persons are liable (collectively, "Personnel") in connection with or arising from the presence upon or performance of activities by the Contractor or its Personnel with respect to the Right-of-Way, (ii) bodily and/or personal injury or death of any person (including without limitation employees of Indemnitees) or damage to or loss of use of Right-of-Way resulting from such acts or omissions of the Contractor or its Personnel, or (iii) non-performance or breach by Contractor or its Personnel of any term or condition of this Agreement, in each case whether occurring during the term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurrent or comparative) on the part of Indemnitees, unless caused by the sole negligence or willful misconduct of Indemnitees, and is in addition to any other rights or remedies, which Indemnitees may have under the law or under this Agreement.

Claims against the Indemnitees by the Contractor or its Personnel shall not limit the Contractor's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation of the amount or type of damages, compensation, or benefits payable by or for the Contractor or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

The provisions of this section shall survive the termination or expiration of the Agreement.

5. **Assumption of Liability**

To the maximum extent allowed by law, the Contractor releases Indemnitees from and assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Right-of-Way and any other property of, or under the control or custody of, the Contractor or its personnel in connection with any acts undertaken under or in connection with this Agreement. The Contractor's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvements (including easement, lease or license agreements for other existing improvements and utilities) on the Right-of-Way, accident or fire or other casualty on the Right-of-Way, or electrical discharge, noise or vibration resulting from SCRRRA, Member Agency, and Operating Railroad transit operations on or near the Right-of-Way and any other persons or companies employed, retained or engaged by SCRRRA or Member Agency. The Contractor, on behalf of itself and its Personnel (as defined in Section 4, "Indemnification") as a material part of the consideration for this Agreement, hereby waives all claims and demands against the Indemnitees for any such loss, damage or injury of the Contractor and/or its Personnel. The Contractor waives the benefit of California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The provisions of this Section shall survive the termination or expiration of this Agreement.

6. **Reimbursement of Costs and Expenditures**

The Contractor agrees to reimburse SCRRRA or Member Agency actual cost and expense reasonably incurred for all services and work performed in connection with work and safety

services, including without limitation the expense of engineering plan review, administrative costs to process approvals and agreements, annual overhead rates, safety training, utility marking (if necessary and requested) and SCRRA EIC and protective services as SCRRA deems necessary. SCRRA will charge the Contractor for eight hours minimum for the EIC services if the Contractor cancels SCRRA services after SCRRA EIC is on site on the day of the appointment.

The Plan review, administrative, safety training, and utility marking costs and fees paid to SCRRA as a part of the Right-of-Entry are not refundable. Refer to SCRRA's Schedule of Fees for more information.

The Contractor also agrees to reimburse SCRRA, any Member Agency and/or any Operating Railroad for any and all cost and expense incurred as a result of Contractor's work which may result in (i) unscheduled delay to the trains or interference in any manner with the operation of trains, (ii) unscheduled disruption to normal train operation, (iii) unreasonable inconvenience to the public or private user of the system, (iv) loss of revenue, and (v) alternative method of transportation for passengers. SCRRA will submit final bills to the Contractor for cost incurred.

SCRRA will provide the cost of all SCRRA services based on Contractor's input. Prior to commencement of work, the Contractor shall provide deposit representing the estimated expense to be incurred by SCRRA and Member Agency in connection with said work. As the work progresses, SCRRA may require additional progress payments as the scope of work changes or becomes clearer. SCRRA may discontinue services to Contractor pending receipt of progress payments. The deposit and progress payments shall be applied to SCRRA's and Member Agency's actual costs and expenditures. The Contractor shall be responsible to pay any amount exceeding the above payments upon receipt of notice or invoice by SCRRA. SCRRA shall exercise its best efforts to provide final invoicing to Contractor within 90 days following completion of the work; however, Contractor acknowledges that it shall be responsible for payment of all expenses incurred by SCRRA and Member Agency in connection with the work even if the final invoicing is provided to Contractor thereafter. Upon completion of all work, any payments in excess of SCRRA's and Member Agency's costs and expenditures shall be returned to the Contractor within a reasonable time.

If the Contractor stop the work in the right-of-way for three months or longer and then plans to resume the work, he/she shall notify SCRRA as per contact information shown in Section 10 below prior to resumption of the work.

7. Safety and Protective/Flagging Services Notification

The Contractor and his subcontractors shall be required to attend a SCRRA Safety Orientation Class prior to receiving permission to enter the Right-of-Way. The Contractor shall request SCRRA's consultant/contractor for safety training by calling 1-877-452-0205 to arrange for third party safety training. Allow 72 hours from the request for safety training to arrange the training. Upon completion of safety training and prior to start of work activities, the Contractor shall notify SCRRA's consultant/contractor at (714) 920-9037 a minimum of fifteen (15) working days prior to beginning work on the Right-of-Way and secure any safety EIC services SCRRA deems necessary. This prior notification does not guarantee the availability of on track-safety protection for the proposed date of work. In no event shall SCRRA be liable to Contractor in the event that track safety protection cannot be provided due to force majeure event or for any other reason. SCRRA will advise Contractor as soon as reasonably practicable once it is determined that track safety protection will be unavailable on a proposed date of construction.

8. Emergency Telephone Numbers

The Contractor must immediately contact SCRRA in case of accidents, personal injury, defect in track, bridge or signals, or any unusual condition that may affect the safe operation of the railroads. The following are SCRRA's emergency numbers:

Signal Emergencies and Grade Crossing Problems	(888) 446-9721
Metrolink Chief Dispatcher	(909) 596-3584 or (888) 446-9715
Metrolink Sheriff's Dispatcher	(323) 563-5280
Signal and Communications Cable Location	(909) 592-1346

9. California Law/Venue

This agreement shall be construed and interpreted in accordance with and governed by the laws of the State of California. Venue shall be located in courts in Los Angeles County.

10. SCRRA Contact

All information and documents shall be submitted to the following:

Assistant Director, Standards and Design
Southern California Regional Rail Authority (SCRRA)
2558 Supply Street
Pomona, California 91767
Attn: Mr. Christos Sourmelis - ROW Encroachments Coordinator
Email: sourmelisc@scrra.net
(909) 392-8463



The Contractor hereby agrees to the terms as set forth in this Agreement, and hereby acknowledges receipt of this Agreement.

(Name of Applicant)

(Signature)

(Address)

(Print Name)

(Title)

(Telephone)

(Applicant's State License No.)

(Fax)

(Email)

Receipt of the foregoing agreement is hereby acknowledged on this _____ day of _____ 20____

By: _____
ROW Encroachments Coordinator

By: _____
Assistant Director, Standards and Design

[Approved as To Form By Legal Counsel]