

ENCROACHMENT PERMIT

This Agreement, made this 25 day of January, 2024 by and between Peninsula Corridor Joint Powers Board, a public agency, ("JPB") and the Girl Scouts of Northern California-Greater Bay Area, a California corporation ("Permittee").

Witnesseth:

1. For the period of February 11, 2024 thru March 17, 2024 on Monday - Friday from 4pm-7pm and Saturday and Sunday 9am-7pm, JPB hereby allows Permittee to enter upon the property of JPB located at the Belmont (as shown on Exhibit A), San Carlos, Redwood City, Mountain View, California Avenue, Palo Alto (as shown on Exhibit B), Burlingame (as shown on Exhibit C) Menlo Park, Sunnyvale, Lawrence, Santa Clara and San Jose Diridon Caltrain Stations in the Counties of San Mateo and Santa Clara, State of California, (hereinafter referred to as "Property"), as may be necessary in connection with fund raising activities by Permittee. The Property shall be used for no other purpose than the sale of Girl Scout Cookies and Nuts as specified in the Agreement.

2. Permittee agrees to:

(a) Occupy, use and maintain the Property in such manner and at such times as shall not endanger or interfere with JPB's operations and in accordance with the regulations of the JPB and instructions of JPB's representative. **Permittee will not be allowed on any Station Platforms.** Permittee shall be responsible to assure the smooth and uninterrupted flow of traffic in and around the Property and the proper control of crowds in and around the Property. Permittee shall maintain the Property in a reasonably neat and safe condition.

(b) Refrain from conducting any construction activities on the property.

(c) Keep all equipment, tools and materials stored at least twenty (20) feet from the centerline of any operable track. Explosives or other highly inflammable substances will not be brought onto or stored on the Property.

(d) Remove all of Permittee's tools, equipment and material from the Property promptly upon completion of activities authorized by this Agreement. Permittee shall restore the Property to the same state and condition as when Permittee entered thereon, including the clean-up of any debris and garbage.

(e) Reimburse JPB for any cost and expense incurred by JPB in connection with said occupancy and use of the Property, including without limitation the restoration of the Property to the same condition as when Permittee entered thereon, or to a condition satisfactory to JPB's representative.

3. Permittee agrees to and shall indemnify and hold harmless JPB, its member agencies (the San Mateo County Transit District, the City and County of San Francisco and the Santa Clara Valley Transportation Authority), Union Pacific Railroad Company and TransitAmerica Services Inc. ("TASI") and their respective directors, officers, agents, and employees (collectively referred to as "Indemnitees") from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorney's fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with the occupancy or use of the Property, or any work done, action taken or permitted by Permittee, its subcontractors, agents or employees under this Agreement. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH PERMITTEE AND JPB, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH INDEMNIFIES THE INDEMNITEES FOR THEIR OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT INDEMNITEES FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE INTENTIONAL MISCONDUCT OF THE INDEMNITEES. This indemnity shall survive the termination of this Agreement.

4. Prior to the occupancy and use of the Property, Permittee agrees to procure and maintain throughout the term of this Agreement, at its sole cost and expense, the following kinds of insurance, which shall include as additional insureds the Peninsula Corridor Joint Powers Board, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the San Mateo County Transit District, Union Pacific Railroad Company, TransitAmerica Services Inc. (TASI) and their respective directors, officers, employees and agents (collectively referred to as "Insureds"), with an insurer or insurers and in a form satisfactory to JPB:

1. Minimum Types and Scope of Insurance

A. Workers Compensation and Employers' Liability Insurance.

- 1) Workers Compensation with Statutory Limits and/or Federal Employers Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- 2) If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
- 3) If the California Labor Code requiring Workers' Compensation applies, the Permittee shall also maintain Employer's Liability coverage with minimum limits of \$2 million.

- 4) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

B. Commercial General Liability Insurance.

Commercial General Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$2 million per occurrence or claim and a general aggregate limit of at least \$2 million. Such insurance shall cover all of Permittee's operations both at and away from the project site.

- 1) This insurance shall include coverage for, but not be limited to:

- Premises and operations.
- Products and completed operations.
- Contractual liability.
- Personal injury.
- Advertising injury.
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- 2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Separation of Insureds Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

C. Business Automobile Liability Insurance.

Business Automobile Liability insurance providing bodily injury and property damage coverage of at least \$2 million per accident or loss.

- 1) This insurance shall include coverage for, but not be limited to:

- All Owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

D. Property Insurance.

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

1) This insurance shall include coverage for, but not be limited to:

- a) Permittee's own business personal property and equipment to be used in performance of this Agreement.

2) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

2. ENDORSEMENTS

A) Additional Insured.

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services Inc., and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

B) Waiver of Subrogation.

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc., and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

C) Primary Insurance.

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB.

D) Separation of Insureds.

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TASI and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the JPB's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Permittee. The purpose of this coverage is to protect Permittee and the JPB in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

3. EVIDENCE OF INSURANCE

Prior to the effective date of the agreement, Permittee shall provide to Insurance Tracking Services, Inc. (ITS), the JPB's authorized insurance consultant, a Certificate of Insurance with respect to each required policy to be provided by the Permittee under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB permit number and name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801
OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the Permittee shall promptly deliver to ITS a certificate of insurance with respect to

each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after to the expiration date of any policy.

4. GENERAL PROVISIONS

A. Notice of Cancellation.

Each insurance policy supplied by the Permittee shall provide at least 30 days' written notice to Permittee of cancellation or non-renewal. Permittee must then provide at least 30 days' prior written notice to the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled. Submit written notice to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

B. Acceptable Insurers.

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 10 or better).

C. Self-insurance.

Upon evidence of financial capacity satisfactory to the JPB and Permittee's agreement to waive subrogation against the JPB respecting any and all claims that may arise, Permittee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

D. Failure to Maintain Insurance.

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Permittee's personnel and equipment have been removed from the JPB property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

E. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- (1) Policy retroactive date coincides with or precedes the Permittee's start of work (including subsequent policies purchased as renewals or replacements).
- (2) Permittee shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- (3) If insurance is terminated for any reason, Permittee agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- (4) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

F. Deductibles and Retentions

Permittee shall be responsible for payment of any deductible or retention on Permittee's policies without right of contribution from the JPB. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable. In the event that the policy of the Permittee or any subcontractor contains a deductible or self-insured retention, and in the event that the JPB seeks coverage under such policy as an additional insured, Permittee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Permittee, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Permittee or subcontractor is not a named defendant in the lawsuit.

G. Relation to Indemnity

Liability of Permittee under Section 3 of this agreement shall not be limited to the coverage provided under the insurance required herein.

5. Permit Fee has been waived for this event.

6. This Agreement shall automatically terminate on March 17, 2024 at 8:01 p.m. unless extended by mutual written agreement. The Agreement may be terminated immediately by the JPB if any term of this Agreement is breached and not promptly remedied by Permittee.

7. The permission herein given shall not be assigned by Permittee without the prior written consent of JPB, except in the case of subcontractors who shall be deemed agents of Permittee subject to the terms of this Agreement.

8. No vehicular crossing over JPB's track shall be installed or used by Permittee without prior written permission of JPB.

9. At the request of JPB, Permittee shall remove from the Property any employee, member, representative or volunteer of Permittee or any subcontractor who fails to conform to the instructions of JPB's representative in connection with the occupancy or use of the Property, and any right of Permittee to enter upon the Property shall be suspended until such request of JPB is met. Permittee shall indemnify JPB against any claim arising from the removal of any such employee, representative, worker, volunteer or subcontractor of Permittee from the Property.

10. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

11. This Agreement represents the full, complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes any other prior or contemporaneous agreements, statements or representations, whether written or oral.

12. This Agreement shall be construed, interpreted and governed by and in accordance with the laws of the State of California.

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

Peninsula Corridor Joint Powers Board

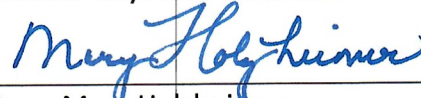
E-SIGNED by John Hogan
on 2024-01-29 23:59:56 GMT

By: John Hogan
Its: Chief Operating Officer, Rail

Approved as to Form:

E-SIGNED by Michael Conneran
on 2024-01-29 23:31:39 GMT

Girl Scouts of Northern California
Greater Bay Area – San Jose Office



By: Mary Holzheimer
Its: Director, Risk Management &
Dispute Resolution