

ALL COMPLETED INSURANCE DOCUMENTS DESCRIBED BELOW MUST BE FORWARDED TO:

EntryPermit@mnr.org

Except that as otherwise provided in this Article and/or the Specifications, the Permittee and/or their Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through the FINAL COMPLETION of contract, policies of insurance as herein below set forth, written by companies with an A.M. Best Company rating of A-/"VII" or better, and approved by Metro-North Railroad/MTA and shall deliver evidence of such policies. These policies must: (i) be written in accordance with the requirements of the paragraphs below, as applicable; (ii) be endorsed in form acceptable to include a provision that the policy will not be canceled, materially changed, or not renewed, unless at least thirty (30) days prior written notice to Metro-North Railroad/MTA c/o MTA Risk and Insurance Management Department - Standards, Enforcement & Claims Unit, 2 Broadway – 21st floor, New York, NY 10004 and (iii) state or be endorsed to provide that the coverage afforded under the Permittee and/or their Contractor's policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to Metro-North Railroad/MTA, and also that the Permittee and/or their Contractor's policies, primary and excess, must be exhausted before implicating any Metro-North Railroad/MTA policy available. (iv) In addition, the Permittee's and/or their Contractor's policies shall state or be endorsed to provide that, if a subcontractor's policy contains any provision that may adversely affect whether the Permittee's and/or their Contractor's policies are primary and must be exhausted before implicating any Metro-North Railroad/MTA policy available, the Permittee's and/or their Contractor's and subcontractor's policies shall nevertheless be primary and must be exhausted before implicating any Metro-North Railroad/MTA policy available. At least two (2) weeks prior to the expiration of the policies, the Permittee and/or their Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies. Except as otherwise indicated in the detailed coverage paragraphs below, self insured retentions and policy deductibles shall not exceed \$100,000.00, unless such increased deductible or retention is approved by Metro-North Railroad/MTA. The Permittee and/or their Contractor shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. The insurance monetary limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies.

- A. **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than \$2,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the laws of the state in which the work is to be performed.
- B. **Commercial General Liability Insurance** (I.S.O. CG 00 01 04 13 Form or equivalent approved by Metro-North Railroad) in the Permittee's and/or their contractor's name with limits of liability in the amount of at least \$3,000,000 each occurrence/\$3,000,000 General Aggregate Limit (other than products-completed operations)/\$3,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Metro-North Railroad/MTA policy available.

Such policy should be written on an occurrence form, and should include:

- Contractual coverage for liability assumed by the Permittee and/or their Contractor under this agreement.

- Personal and Advertising Injury Coverage.
- Products-Completed Operations.
- Independent Contractors Coverage.
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary.
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be voided where necessary.
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- Additional Insured Endorsement (I.S.O. Form CG 20 26 07 04 or CG 20 26 04 13 version or equivalent approved by Metro-North Railroad) listing:
 - Metro-North Railroad (MNRR), Metropolitan Transportation Authority (MTA), Midtown TDR Ventures, LLC & Midtown Trackage Ventures LLC, Argent Ventures LLC, State of Connecticut and Connecticut Department of Transportation (CDOT), National Railroad Passenger Corp (AMTRAK), CSX Transportation, Inc. & New York Central Lines, LLC, and Delaware & Hudson Railway Company Inc. (D&H) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

C. **Business Automobile Liability Insurance** - (I.S.O. Form CA 00 01 10 13 or equivalent approved by the Railroad). **If vehicle enters Agency's property or is used as part of service provided**, in the Permittee's and/or their Contractor's name with limits of liability in the amount of \$2,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The policy shall be extended to include employees of any insured acting in the scope of their employment.

- If the project involves transporting and/or disposing of any hazardous material or waste from the jobsite, the Permittee and/or their Contractor or any subcontractor performing such work must add the MCS-90 to the automobile policy. The CA9948 endorsement is also required if transported to a site outside of NYS. (**Additional pollution liability insurance maybe required.**)
- The policy limits of liability must be increased to at least \$5,000,000 each occurrence pursuant to federal, state or local laws, rules and regulations, and
- Copies of the MCS-90 and CA9948 endorsements, if applicable, shall be provided for review as part of the insurance submission.

D. **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form approved by Metro-North Railroad), covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:

- The following are the "Named Insureds" for this coverage:
 - Metro-North Railroad (MNRR), Metropolitan Transportation Authority (MTA), Midtown TDR Ventures, LLC & Midtown Trackage Ventures LLC, Argent Ventures LLC, State of Connecticut and Connecticut Department of Transportation (CDOT), National Railroad Passenger Corp (AMTRAK),

CSX Transportation, Inc. & New York Central Lines, LLC, and Delaware & Hudson Railway Company Inc. (D&H) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

- The limit of liability shall be at least \$2,000,000 each occurrence, subject to a \$6,000,000 annual aggregate.
- Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA).
- Policy Endorsement CG 28 31 - Pollution Exclusion Amendment is required to be endorsed onto the policy when environmental-related work and/or exposures exist.
- Indicate the Name of the Permittee and/or their Contractor to perform the work, the name of Metro-North Railroad for whom the work is being performed and the Contract description and number.
- Evidence of Railroad Protective Liability Insurance must be provided in the form of the Original Policy. A detailed **Insurance Binder (ACORD or Manuscript Form)** will be accepted pending issuance of the Original Policy, which must be provided within 30 days of the Binder Approval.

E. Insurance Submission:

1. **Initial Evidence of Insurance:** The Permittee and/or their Contractor shall furnish evidence of all policies before any work is started to Metro-North Railroad email at **EntryPermit@mnr.org**
2. **Renewal Insurance:** After the Contractor's insurance has been approved, a "compliant message" verifying insurance compliance will be sent to the Contractor via the MTA Certificate of Insurance Management System (CIMS), Complianz™. It will also provide the email address for all insurance renewals, specific to this contract. **Do not bundle certificates as each contract is assigned a specific email address.**

Except for the **Railroad Protective Policy**, certificates of Insurance may be supplied as evidence of the policies described above, unless otherwise noted herein. However, Metro-North Railroad reserves the right to request copies of such policies described above. If requested by Metro North, the Contractor shall deliver to Metro-North within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If requested by Metro-North Railroad, the Permittee and/or their Contractor shall deliver to Metro-North Railroad, within forty-five (45) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted, it must: (1) be provided on Metro-North Railroad Certificate of Insurance Form or MTA Certificate of Insurance Form for Joint Agency Agreements; (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds and Named Insureds as required herein. The Permittee and/or their Contractor must provide a physical copy of the Additional Insured Endorsement (I.S.O. Form CG 20 26 07 04 or CG 20 26 04 13 version or equivalent, as applicable) and the endorsement(s) must include the appropriate policy number; (5) reference the Permit by number on the face of the certificate; and (6) expressly reference the inclusion of all required endorsements.

The Railroad Protective Liability Insurance Policy, described in "D" above, must be provided in the form of the Original Policy. A detailed Insurance Binder, ACORD or Manuscript Form, will be accepted pending issuance of the Original Policy. The Original Policy must be submitted within 30

days of the Binder Approval. [Follow the instructions that will be sent via the MTA Certificate of Insurance Management System (CIMS), Complianz™ following the INITIAL insurance approval.]

- F. No Limit on Contractor's Liability:** Nothing herein contained shall be deemed to limit the Permittee and/or their Contractor liability to the limits of liability, or coverage of the Policies above their renewals, or replacement.

- G. Notice of Occurrence:** The Contractor shall immediately file with the MNR's Legal Department, 420 Lexington Avenue, 11th Floor, New York, NY 10170, a notice of any occurrence likely to result in a claim against the MNR and shall also file with the Legal Department detailed sworn proof of interest and loss with the claim. This paragraph shall survive the expiration or earlier termination of the Permit or License Agreement.

- H. Insurance Not in Effect:** If, at any time during the period of this Agreement, insurance as required is not in effect, or proof thereof is not provided to Metro-North Railroad, Metro-North Railroad shall have the options to: (i) direct the Permittee and/or their Contractor to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.