

**THIS PERMIT IS NOT IN EFFECT UNTIL IT IS EXECUTED BY WMATA**

(FOR INFORMATION PURPOSES ONLY, ORIGINAL WILL BE PROVIDED BY WMATA UPON APPROVAL OF WMATA'S OFFICE OF JOINT DEVELOPMENT AND ADJACENT CONSTRUCTION AS TO WORK TO BE PERFORMED. TERMS AND CONDITIONS SUBJECT TO CHANGE) January 2012

PCN 250  
WMATA PARCEL NO.:

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
REAL ESTATE PERMIT**

**THIS REAL ESTATE PERMIT** (hereinafter "**Permit**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic with principal offices at 600 Fifth Street, NW, Washington, DC 20001 (hereinafter "**WMATA**") and **CORPORATION** with principal offices at \_\_\_\_\_ (hereinafter "**Permittee**"). Permittee and WMATA are sometimes referred to herein jointly as the "**Parties**" or individually as a "**Party**."

**WITNESSETH:**

**RECITAL 1**, Permittee has requested permission from WMATA to enter upon and use a portion of WMATA's property adjacent to the Metrorail Station and lying south of Interstate, west of \_\_\_\_\_ Street in \_\_\_\_\_ County, as shown on **Exhibit A** attached hereto (hereinafter "**Permitted Premises**") to perform work relating to the as more fully described in **Section 3** below; and

**RECITAL 2**, WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultants (hereinafter "**Contractor**" and collectively with the Permittee "**Permitted Parties**" or individually a "**Permitted Party**") the right and privilege to enter upon and use the Permitted Premises to perform the above-referenced work upon the terms and conditions specifically set forth in this Permit.

**NOW, THEREFORE**, in consideration of the sum of **THREE THOUSAND FIVE HUNDRED DOLLARS** (\$3,500.00), ("**Permit Fee**") and for the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals.**

The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. **Permitted Access.**

This Permit allows Permitted Parties and others acting on behalf of Permitted Parties to enter onto the Permitted Premises for the use permitted by **Section 3** below, provided that the terms and conditions contained herein are met. Notwithstanding anything to the contrary in this Permit, access is hereby granted only for purposes of the work to be done

by Permittee or by its Contractor for Permittee.

**3. Use of Permitted Premises.**

In accordance with the terms and conditions of this Permit, WMATA grants unto Permitted Parties the right to access the Permitted Premises for the following purposes:

- (i) The installation and construction of all proposed improvements as
- (ii) \_\_\_\_\_

**4. Description of Permitted Premises.**

The Permitted Premises which is the subject of this Permit is located south of west of Street and east of Drive in County, Virginia, adjacent to the Metrorail Station, all as more fully shown on **Exhibit A** attached hereto.

**5. Conditions on Use.**

**5.1** This Permit may only be exercised by Permitted Parties upon WMATA's review and written approval of the plans and schedules for, but not limited to, design, construction, safety, structural monitoring and traffic.

**5.2** All work shall be planned and performed in accordance with the requirements of WMATA's *Adjacent Construction Project Manual, Rev.4* or as further revised (hereinafter "**Adjacent Construction Project Manual**"). If certain requirements listed as terms and conditions in this Permit differ from those in the *Adjacent Construction Project Manual*, Permittee shall immediately contact WMATA's Supervisor of Field Projects or the Construction Inspection Facilitator (see **Subsection 5.9** below) in writing for written clarification.

**5.3** Permitted Parties shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and written approval, at least seven (7) copies of all plans to include:

Design Phase

- (1) Construction drawings and specifications, including construction staging and safety plans.
- (2) Product information, cut sheets, etc., as applicable.

Construction Phase

- (3) Diagrams, shop drawings, cut sheets, product information, details of planned construction staging/safety plans, materials, specifications and schedules. Additionally, Permittee shall submit the requisite drawings and schedules for each installation and each operation.

**5.4** WMATA will review and provide written comments or approval on the above submittals to Permitted Parties within thirty (30) business days after receipt of the documents. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until WMATA conveys final written approval. The document submittal approved by WMATA shall constitute the Approved Construction Drawings and Specifications (hereinafter "**Approved Construction Drawings and Specifications**"). No work on the Permitted Premises shall commence until Approved Construction Drawings and

Specifications are finalized.

- 5.5** No changes may be made to the Approved Construction Drawings and Specifications without the prior written approval of WMATA's Construction Inspection Facilitator (see **Subsection 5.9** below).
- 5.6** If construction is being done in phases, then prior to each phase of construction as described in **Subsection 5.3** above, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval at least seven (7) copies of the required design and construction documents.
- 5.7** The safety and traffic maintenance plans, operation sequences and equipment positioning plans must ensure adequate safety for WMATA employees and the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA in writing prior to the start of any work.
- 5.8** WMATA's approval of the Approved Construction Drawings and Specifications is solely for WMATA's own purposes and benefit, does not constitute review or approval thereof for any other purpose or for Permitted Parties' or any third party's benefit, and may not be relied on for any such other purpose or benefit. WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications including the Approved Construction Drawings and Specifications.
- 5.9** Permitted Parties shall contact WMATA's Supervisor of Field Projects, Mr. William Milner of the Office of Joint Development and Adjacent Construction, telephone: 301-618-1001 (office) or 202-253-7226 (cell) to schedule a pre-construction and pre-activity meeting. This request shall be made at least ten (10) business days prior to any planned start of work on the Permitted Premises. At this meeting, Mr. Milner will designate WMATA's Construction Inspection Facilitator and provide Permitted Parties with the requisite contact information for the Construction Inspection Facilitator.
- 5.10** Upon written approval from WMATA, Permitted Parties may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities.
- 5.11** Swinging a crane and suspended loads over WMATA property/facilities is strictly prohibited except with WMATA's written approval. If WMATA authorizes construction activities which involve swinging a crane and suspended loads over WMATA property/facilities, such work shall be performed only during a work window within WMATA's non-revenue hours. Currently this work window is 00:30 a.m. to 04:30 a.m., Monday to Friday and 03:30 a.m. to 05:30 a.m. on Saturday and Sunday. This work window is subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements. Crane certification/inspection paperwork must be submitted to WMATA's Construction Inspection Facilitator. Attached to the crane certification must be: (i) the crane operation plans; and (ii) a description of the crane work plan and time frames. All construction equipment used in the work shall be oriented in accordance with the

instructions of WMATA's Construction Inspection Facilitator.

- 5.12 When support functions and electrical power outages are required, WMATA's Construction Inspection Facilitator must be contacted at least sixty (60) calendar days prior to the requested start of the respective work. The **General Orders and Track Rights System (GOTRS) Rail Support Request** form(s) must be submitted to the WMATA Office of Joint Development and Adjacent Construction a minimum of thirty (30) calendar days preceding the WMATA Operating Week, which begins Saturday morning at 00:01 a.m., to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible. No Rail Support Request will be accepted without a previously approved Site Specific Work Plan ("SSWP") and Approved Construction Drawings and Specifications.
- 5.13 Permitted Parties planning to work within twenty-five (25) feet of WMATA's operating tracks must undergo WMATA safety training. WMATA's Construction Inspection Facilitator must be contacted at least ten (10) business days prior to the desired training date. The *Certification of Eligibility for WMATA Contractor Identification (ID) Card* form and *Authorization for Release of Personal Information for a Metro Contractor Identification* form must be completed and submitted to WMATA's Construction Inspection Facilitator prior to the class date.
- 5.14 Permitted Parties shall monitor or cause to be monitored the Metrorail structures and tracks during any construction or installation within WMATA's Zone of Influence, proximate to WMATA structures and interests, as that term is further defined and explained in WMATA's *Adjacent Construction Project Manual*. Monitoring and contingency plans must be approved by WMATA in writing prior to the start of the work. The monitoring plans must include threshold values and survey control data. Monitoring Reports shall be submitted to WMATA in accordance with the SSWP.
- 5.15 Wooden construction fencing shall be installed at the boundary of the areas with public access. The fencing shall be at least six-feet high and be of substantial construction using one (1) hour fire-rated materials.
- 5.16 Temporary sidewalks or pedestrian ways which will be in use more than ten (10) calendar days shall be constructed of four (4) inch thick Portland cement concrete or four (4) inches of asphaltic concrete placed and finished by a machine.
- 5.17 All work within twenty-five (25) feet of WMATA's tracks must be done during a work window within WMATA's non-revenue hours. Currently this work window is 00:30 a.m. to 04:30 a.m., Monday to Friday and 03:30 a.m. to 05:30 a.m. on Saturday and Sunday. This work window is subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements. Work in this location may require a "red tag" power outage as determined by WMATA's Construction Inspection Facilitator who must be contacted at least sixty (60) calendar days prior to the requested start date to coordinate the power outage and escort (see **Subsection 5.12** above).
- 5.18 During pre-construction surveys and construction inspections, WMATA escorts

from Metrorail Operations will be required and power outages may be required. ***The General Orders and Track Rights System (GOTRS) Rail Support Account Request*** form(s) must be submitted by Permitted Parties to WMATA's Construction Inspection Facilitator sixty (60) calendar days before the requested date of work. WMATA reserves the right to charge Permitted Parties additional fees for such escorts; Permittee shall be jointly and severally liable to WMATA for any such fees if WMATA directly bills Contractor for any such fee.

- 5.19 All utilities and structures must be located by Permitted Parties in advance of work by using WMATA As-Built Drawings and Miss Utility information and must be protected from any damage. Permitted Parties should be aware that WMATA As-Built Drawings may not reflect current site conditions and WMATA will not be responsible for any damage caused by such inaccuracies. Any excavation in the vicinity of WMATA or any power company power feeders to the Metrorail system or other underground utilities within the Permitted Premises shall be through hand excavation.
- 5.20 Permitted Parties accept the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over-pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permitted Parties' responsibility to verify the actual location of existing facilities, structures and utilities on the Permitted Premises and Permitted Parties shall perform a pre-construction survey and provide WMATA with a copy. Permitted Parties agree that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.
- 5.21 Flammable liquids shall not be stored within twenty-five (25) feet horizontally or vertically, regardless of topographic or man-made barriers, of WMATA underground facilities, except in the tanks of automobiles. If a flammable liquid storage container of any kind is to be installed between twenty-five (25) and one hundred (100) feet of WMATA underground facilities, protective encasement of the storage container will be required in accordance with NFPA STD 130. Existing underground tanks located within one hundred (100) feet of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130.
- 5.22 WMATA reserves the right to inspect the Permitted Premises at any time. Additionally, WMATA reserves the right to inspect, at reasonable times, Permittee's activities for conformance with the Approved Construction Drawings and Specifications and Occupational Safety and Health Administration safety requirements to ensure that WMATA's interests (and operations) are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted Premises for the purpose of determining the safety of the work and the impact on WMATA operations, and such person(s) shall have the absolute authority to stop all work if, in WMATA's sole opinion, Permitted Parties are acting in a manner that is unsafe for WMATA operations, the work is not in full compliance with the Approved Construction Drawings and Specifications or is interfering with efficient WMATA operations.
- 5.23 Permitted Parties shall maintain "as-built" records during construction of the

improvements under this Permit. Construction impact to the Permitted Premises shall be documented in the as-built records in accordance with WMATA's *Adjacent Construction Project Manual*. Upon completion of construction, Permitted Parties shall provide WMATA with "as-built" records as follows:

- (1) Electronic as-builts:
  - (i) Three (3) compact disks with as-built files in TIF (image viewing) and PDF (portable document format) and DWG (AutoCAD) formats;
  - (ii) Overlay as-built documentation onto WMATA's as-built file(s); and
  - (iii) Engineering sections in WMATA's contract plans which are impacted by proposed modification are to be updated.
- (2) Additionally, Permitted Parties shall submit their own as-built documentation via three (3) print copies. These records shall be signed and certified by the engineer of record as "as-built."

**5.24** Permittee shall furnish WMATA with Contractor's claims, change orders and schedule updates.

**5.25** Permittee shall not be released from this Permit before written final acceptance by WMATA of the site improvements/restoration.

#### **Special Conditions on Use**

**5.26**

**6. Term of Agreement.**

This Permit commences on the Effective Date shown on page 1 and terminates on November 1, 2014 (hereinafter "**Term**") unless terminated as provided in **Sections 8, 10** or **11** below.

**7. Extension Option.**

The Parties may mutually agree in writing to extend the Term of this Permit. Permittee shall request an extension of the Term in writing at least thirty (30) calendar days prior to the expiration of the Term. WMATA's decision to grant or not grant an extension shall be in WMATA's sole and absolute discretion.

**8. Payment by Permittee.**

In consideration of the permission granted by WMATA to Permittee hereunder, Permittee hereby covenants and agrees to pay WMATA the non-refundable Permit Fee which shall be paid upon Permittee's execution of this Permit. Permittee's failure to pay the Permit Fee shall entitle WMATA to terminate this Permit in its sole and arbitrary option by notice given to Permittee at any time before the Permit Fee is paid, without any opportunity to cure being provided.

**9. Assignment.**

This Permit is not assignable or transferable by Permittee in any way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and contractors only.

**10. Suspension/Termination.**

- 10.1 WMATA may suspend this Permit, in whole or in part, at its sole option and discretion at any time, if any condition created by Permitted Parties on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, or the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions, whether Federal, State, county or municipal, relating to this Permit and/or any Permitted Party's work hereunder. If Permitted Parties do not correct the condition which serves as the basis for WMATA's suspension decision within ten (10) calendar days following receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit, in whole or in part, by notice to Permittee without any further opportunity to cure such condition.
- 10.2 This Permit may also be terminated or revoked by WMATA, in whole or in part, at its sole option and discretion, at any time, if deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement.
- 10.3 This Permit may be terminated at any time by Permittee by providing ten (10) calendar days prior written notice to WMATA.
- 10.4 Upon termination or earlier revocation of this Permit, all Permitted Parties shall remove their equipment and restore the Permitted Premises in accordance with **Section 15** below. All obligations and liabilities of Permitted Parties under this Permit shall survive the termination of this Permit pursuant to this Section or the expiration of the Permit pursuant to **Sections 6** and, if applicable, **7** above.

11. **Default/Termination.**

Permittee shall be deemed to be in default of this Permit if any Permitted Party shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of ten (10) calendar days after written notice is given by WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this Permit by written notice to Permittee, whereupon this Permit shall end and all rights of Permitted Parties hereunder (but not their liabilities) shall expire and terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this Permit, Permittee shall at once remove all Permitted Parties, their persons and equipment from the Permitted Premises, and restore the Permitted Premises in accordance with **Section 15** below. WMATA may enter into or repossess the Permitted Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal. Nothing in this **Section 11** shall be deemed to limit in any way WMATA's independent right under **Section 10** above to suspend or terminate this Permit.

12. **Conduct of Work.**

In the conduct of work undertaken herein, Permitted Parties shall require all parties working on the Permitted Premises to exercise all normal and reasonable safety precautions. Permitted Parties shall maintain the Permitted Premises in a clean and presentable manner.

13. **Employee and Public Safety.**  
Barricades, fences, signs, lanterns and other suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permitted Parties at their sole cost and expense.
14. **Security.**  
Permitted Parties shall maintain the security of the Permitted Premises to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.
15. **Restoration.**  
Upon the first to occur of the expiration or termination of this Permit and the completion of all activities, Permitted Parties shall remove all of their equipment and restore the Permitted Premises to its previous condition, or in accordance with the pre-approved plans and specifications, and to WMATA's satisfaction.
16. **Responsibility for Licenses and Permits.**  
Permitted Parties shall be responsible for obtaining any necessary licenses and permits for the work authorized under this Permit, including transportation and disposal of materials.
17. **Compliance with Orders and Directions of WMATA.**  
With respect to all work authorized under this Permit, Permitted Parties shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written.
18. **Non-Interference with WMATA Activities.**  
Pursuant to the terms of this Permit, Permitted Parties may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA. Without limiting the foregoing, Permitted Parties must comply with any "maintenance of traffic" plan required by WMATA and/or the applicable state Department of Transportation.
19. **Damage to WMATA Property.**  
Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused in whole or in part by the acts or omissions of any Permitted Party and others acting on behalf of a Permitted Party in carrying out the operations authorized under this Permit. Permittee shall ensure that such repair or replacement is carried out within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of an emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.
20. **Utility Charges.**  
Permitted Parties, at their sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during occupancy thereof when and as the same shall become due and payable. Permitted Parties are prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.

**21. Indemnification.**

**21.1** Permittee shall, and Permittee shall contractually require all Permitted Parties to, indemnify, defend and hold harmless WMATA, its directors, officers, employees and agents from any and all claims, actions, proceedings, liabilities, losses, demands, damages, obligations, penalties, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, including employees of Permittee or any Permitted Party, and for loss or damage to any property, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work authorized by this Permit and/or any acts in connection with activities to be performed under this Permit resulting in whole or in part from the acts, errors or omissions of Permittee or any Permitted Party, or any employee, agent or representative of Permittee or any Permitted Party.

**21.2** Permittee shall, and Permittee shall contractually require all Permitted Parties to, indemnify, defend and hold harmless WMATA, its directors, officers, employees and agents from any and all claims, actions, proceedings, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorney's fees, related to, arising from or attributable to any effluent or other hazardous waste or substance, toxic waste or substance, contaminant, pollutant, petroleum or petroleum-based product, asbestos, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permitted Parties or anyone acting on their behalf.

**21.3** If any claim, demand, action or proceeding relating to the indemnification required by this **Section 21** is brought against WMATA, then upon written notice from WMATA to Permittee, Permittee shall, at Permittee's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. Permittee shall be jointly and severally liable with any Contractor directly responsible for any claim, demand, action, proceeding, liability, loss, damage, obligation, penalty, cost, charge or expense arising under this Permit, and nothing in this Permit shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

**21.4** Permittee understands and agrees that it is Permittee's and all Permitted Parties' responsibility to provide indemnification to WMATA pursuant to this **Section 21**. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of insurance to fully fund any indemnification shall not relieve Permittee and other Permitted Parties of any obligation assumed under this indemnification.

**22. Insurance.**

**22.1** Permittee shall procure and cause all Permitted Parties to procure, at their sole cost and expense, and maintain in force at all times during the Term of this Permit, the insurance marked by an "X" in **Section 22.10** below. No work may proceed until evidence of insurance has been received and approved in writing by WMATA,

and WMATA may suspend any work in progress if it determines that work is proceeding without such approved insurance in effect. All insurance companies must have an A.M. Best rating of "A-/VII" or better and be approved by WMATA. All required insurance policies must:

- (1) Be written in accordance with the requirements as applicable;
- (2) Be endorsed to include a provision that the policy shall not be canceled, materially changed, or nonrenewed without at least thirty (30) calendar days prior written notice to WMATA's Office of Insurance;
- (3) State or be endorsed to provide that the coverage afforded under the policies shall apply on a primary basis and not on an excess or contributing basis with any policies that may be available to WMATA; and
- (4) Have self-insurance retentions or policy deductibles no greater than \$100,000, unless approved in writing by WMATA.

**22.2** As may be required in any insurance policy carried by any Permitted Party, this Permit is understood and agreed to be a written contract or an Insured Contract between that Permitted Party and WMATA.

**22.3** The insurance limits required herein may be met through primary and umbrella/excess policies. Policies written on a claims made basis are not acceptable, except for Professional Liability.

**22.4** Permitted Parties shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA, or Permitted Party may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted to WMATA so stipulates.

**22.5** The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Permit or standards in the industry change. If requested by WMATA, Permittee shall require Permitted Parties to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this Subsection shall constitute a default in accordance with **Section 11** above.

**22.6** Permittee shall require Permitted Parties to furnish evidence of all required insurance in the form of a certificate of insurance (hereinafter "**COI**"), including all applicable endorsements, at least ten (10) business days prior to the start of any work on the Permitted Premises. However, if Railroad Protective Liability and/or Builder's Risk insurance is required, a copy of the entire policy shall be submitted to WMATA. WMATA reserves the right to receive copies of any other policies of required insurance as denoted below. If requested by WMATA, Permittee shall have Permitted Parties deliver to WMATA, within ten (10) business days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

**22.7** COIs shall:

- (1) Disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage;
- (2) Show WMATA as an Additional Insured for Commercial General Liability and Automobile Liability;
- (3) Reference this Permit or the **PCN** number appearing on the top left-hand side of the first page of this Permit;
- (4) Include as attachments all required endorsements;
- (5) Include policy numbers in all endorsements; and
- (6) Show WMATA as the Certificate Holder.

**22.8** At least two (2) weeks prior to the expiration of the policies, Permittee shall have Permitted Parties provide renewal COIs and all applicable endorsements to WMATA, with terms and limits no less favorable than the expiring insurance policies (including the complete Railroad Protective Liability Insurance policy, if applicable).

**22.9** Evidence of insurance coverage shall be sent to:

Director  
 Office of Station Area Planning and Asset Management  
 Washington Metropolitan Area Transit Authority  
 600 Fifth Street, NW, Room 5B  
 Washington, DC 20001

With a copy to:

Director  
 Office of Insurance  
 Washington Metropolitan Area Transit Authority  
 600 Fifth Street, NW, Room 8F  
 Washington, DC 20001

**22.10** Required Insurance marked by "X":

**Commercial General Liability Insurance** with minimum limits of \$5,000,000 per occurrence, written on an occurrence form. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow the form of the underlying policy and be extended to "drop down" to become primary in the event the primary limits are reduced or aggregate limits are exhausted. The coverage shall include:

- Terrorism coverage;
- XCU coverage (explosion, collapse, and underground hazards);
- Contractual liability exclusion (applicable to work to be performed within 50 feet of railroad property) must be removed;
- Additional Insured Endorsement naming WMATA.

**Workers' Compensation Insurance** meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer's

Liability coverage with minimum limits of \$1,000,000 each accident or disease.

- [ ] **Longshore & Harbor Workers' Compensation Act Endorsement** for work performed on or over navigable waterways to cover Contractor's employees for wages, transportation, maintenance and cure, in accordance with applicable laws.
- [ ] **Maritime Coverage Endorsement (Jones Act)** for work upon navigable waterways and barges, tug boats, and all other vessels on the ocean and all intracoastal rivers and canals, covering drivers, divers, and underwater personnel, seamen, masters and members of a crew, providing remedy for damage or injury, in accordance with applicable laws.
- [ ] **Business Automobile Liability Insurance** with minimum limits of \$2,000,000 per occurrence covering Permitted Parties against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. WMATA shall be added as an Additional Insured on the policy.
- [ ] **MCS-90 Endorsement** for work involving the transportation or disposal of any hazardous material or waste off the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required.
- [ ] **Railroad Protective Liability Insurance** (hereinafter "RRPL") issued to WMATA as the Named Insured with minimum limits of \$5,000,000 per occurrence, \$10,000,000 in the aggregate, and covering the liability of all Permitted Parties for the work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of WMATA's railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party resulting from performance of work under or related to this Permit. **The original policy shall be forwarded to WMATA.**

**WMATA Blanket RRPL Program Option**

WMATA may waive the RRPL requirement that Permittee procure RRPL if: (1) the work can be covered under WMATA's blanket RRPL program; and (2) Permittee pre-pays the premium, which shall be determined by the rate schedule promulgated by the insurer in effect as of the Effective Date of this Permit.

- [ ] **Contractor's Pollution Liability Insurance** with minimum limits of \$5,000,000 per occurrence for work involving environmentally regulated substances or hazardous material exposures, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including cleanup costs and defense.

This insurance may be supplied by the Permitted Party performing the work if Permittee is not performing any of the relevant work, provided that WMATA and Permittee are named as Additional Insureds on the policy. In the event that the Permitted Party transports hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the Permitted Party's auto liability policy.

- [ ] **Pollution Legal Liability Insurance** (Non-Owned Disposal Site Coverage) with minimum limits of \$5,000,000 per occurrence. Coverage may be maintained in one of the following ways:
  - a. A stand-alone policy; or
  - b. Non-Owned Disposal Site Endorsement on Contractor's Pollution Liability policy naming WMATA as an Additional Insured; or
  - c. Contractor may designate the disposal site and provide a COI from the disposal facility naming Contractor and WMATA as Additional Insureds.
  
- [ ] **Professional Liability/Errors and Omissions Insurance** with minimum limits of \$5,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by a Permitted Party in the performance of activities under or related to this Permit, regardless of the type of damages. If the insurance is on a claims made basis, the applicable Permitted Party shall maintain continuous insurance coverage during the Term of this Permit or related agreement. The policy retroactive date must coincide with or precede the effective date of Permitted Party's services under this Permit and shall continue until the termination of this Permit or related agreement. The policy must allow for reporting of circumstances or incidents that might give rise to future claims, and an extended reporting period of at least one (1) year must be purchased in the event ongoing coverage is not maintained.
  
- [ ] **Builder's Risk Insurance/Installation Floater** on an all-risk completed value form in an amount equal to the total contract price/cost of structure, covering all materials and supplies used, or intended for use or hereafter created, installed or acquired, while in the course of building, erection, installation or assembly. Said policy shall remain in force until the construction is completed and accepted.
  
- [ ] **Property Insurance** (including flood and quake, if warranted) in WMATA's name providing all-risk coverage, including terrorism, for physical damage or destruction to property with limits of not less than the full replacement cost of [describe objects being insured].
  
- [ ] **Garage Liability Insurance** with minimum limits of \$5,000,000 per occurrence.

23. **Non-Liability of WMATA.**

WMATA shall have no liability for any injury or property damage whatsoever. Neither the

grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Permit shall be deemed to waive WMATA's immunity as a sovereign entity.

**24. No Impairment of WMATA's Title.**

This Permit constitutes a mere license, and nothing in this Permit and no action or inaction by WMATA shall be construed to mean that WMATA has granted Permittee or any other person or entity any legal or equitable estate in the Permitted Premises, or any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for any right, title, interest, lien, charge, or other encumbrance upon the estate of WMATA in the Permitted Premises. In amplification and not in limitation of the foregoing, Permittee shall not allow any portion of the Permitted Premises to be used by any persons or entities in such manner as would likely impair WMATA's title or interest in the Permitted Premises or would result in a claim of adverse use, adverse possession, prescription, dedication or other similar claims with respect to the Permitted Premises or any part thereof.

**25. Compliance with All Laws, Rules and Regulations.**

Permitted Parties shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether federal or local, relating to this Permit and Permitted Parties' work hereunder. Should any Permitted Party's work involve use of, or create materials considered to be hazardous or toxic substances or waste which require special handling, Permittee shall ensure that disposal is made in accordance with applicable environmental laws and regulations including, but not limited to the *Resource Conservation Recovery Act* and the *Toxic Substances Control Act* and where required, shall include preparation and filing of reports and travel manifest documents. WMATA shall be provided with copies of all such reports and documents.

**26. Notices.**

Notices given in connection with this Permit shall be in writing and shall be sent by: (i) registered or certified mail, return receipt requested; (ii) hand delivery; (iii) a nationally recognized overnight courier service for next business day delivery; or (iv) any telecommunications device capable of creating a written record of such notice and its receipt. Notices and other communications shall be deemed to have been given on the date of actual receipt (refusal to accept delivery or inability to make delivery because the intended recipient has not provided a correct or current address shall constitute receipt as of the time of attempted delivery).

If to WMATA:

Director  
Office of Station Area Planning  
and Asset Management  
WMATA  
600 Fifth Street, NW  
Washington, DC 20001

If to Permittee:

**27. Officials Not To Benefit.**

**27.1** No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this Permit, or to any benefit that may

arise therefrom; but this provision shall not apply if this Permit is made with a corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Permittee warrants, represents and agrees that as of the date of this Permit, no person described in this Subsection, nor any entity with which such person is affiliated, has any such interest in any Permitted Party. Permittee shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty representation and agreement and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

**27.2** No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Permit.

**28. Gratuities.**

In connection with this Permit, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by a Permitted Party or any agent, representative, or other person deemed to be acting on behalf of a Permitted Party, or any contractor, subcontractor or supplier furnishing material to or performing work under this Permit, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Permit is expressly forbidden. The terms of this Section shall be broadly construed and strictly enforced in the event of violation hereto.

**29. Governing Law.**

This Permit shall be governed by the laws of the state/commonwealth in which it is located; however, to the extent that such law conflicts with the WMATA Compact, (Public Law 89-774, 80 Stat 1324, as amended), WMATA shall be governed by the WMATA Compact.

**30. Counterparts.**

The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

**31. Authority.**

The Parties represent and warrant that they have the power and authority to enter into and perform their obligations under this Permit. Additionally, the signatories to this Permit represent and warrant that they have the legal authority to bind and commit the Party he/she represents.

**32. Entire Agreement.**

This Permit constitutes the entire agreement between the Parties. The Parties acknowledge that no representations or warranties have been made except as set forth herein. This Permit shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Permit.

**IN WITNESS WHEREOF**, the Parties have caused this Permit to be executed in two counterparts as of the date and year first written above.

**WITNESS OR ATTEST:**

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Steven E. Goldin  
Contracting Officer

**WITNESS OR ATTEST:**

**CORPORATION**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_