

HUDSON BERGEN LIGHT RAIL (HBLR)

TEMPORARY ACCESS PERMIT (TAP)

INDEMNIFICATION AND INSURANCE REQUIREMENTS

Please find below the insurance requirement section of the temporary access permit ("TAP") on the Hudson-Bergen Light Rail ("HBLR"). Please review this section and ensure that you satisfy all obligations specific to your project.

Please remember to add the following as additional insured to any policy: **The State of New Jersey; New Jersey Transit; and ACI-Herzog Joint Venture** (the NJ Transit contract operator of the HBLR). In the description section of the General liability certificate of insurance, please briefly describe the scope of the work (one or two sentences) and also add the following statement: **"Exclusion for work performed within 50 feet of a railroad is deleted on the General Liability Policy."**

Additionally, please specifically be advised that you may need to purchase a **Railroad Protective Insurance Policy** in addition to general liability coverage. Please refer to Section 25(f), below, to determine whether you will need to purchase this coverage. The Railroad Protective Coverage must name **New Jersey Transit AND ACI-Herzog Joint Venture** as Insureds.

In order to expedite these insurance requirements, please provide your insurance agent with a copy of this correspondence to assist the agent in providing proper insurance compliance.

INSURANCE SECTION OF ACCESS PERMIT

24. Indemnification

- (a) To the fullest extent permitted by Law, the Permittee, and any of its Contractors, shall indemnify, defend, keep and save harmless the State of New Jersey, NJ Transit, its Contract Operators, and other railroad(s) operating on the affected property, their successors, assigns, contractors, agents, employees, servants or officials, and each and every one of them or any other designee of NJ Transit, (the "Indemnified Parties") from and against any and all claims, just or unjust, made against NJ Transit or the Indemnified Parties on account of personal injuries, deaths, occupational disease of any person, including any of Permittee's or Contractor's employees or agents, losses of any kind whatsoever, damages to property, suits, liabilities, judgments, claims for infringement of patent, trademark or copyright, cost and expenses which may in anywise accrue against

the NJ Transit or Indemnified Parties in consequence of the granting of a Permit or which may in anywise result therefrom, and whether or not it shall be alleged or determined that the cause thereof was the negligent acts or omissions of the NJ Transit or the Indemnified Parties and the Permittee shall appear, defend and pay, as its own expense, all costs, including counsel fees, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the NJ Transit or the Indemnified Parties in any such action, the Permittee shall, at its own expense, satisfy and discharge the same.

- (b) The light rail operations at or near the Facilities the site of the Work involve some risk, and the Permittee, as part of the consideration for a Permit, and with full knowledge and appreciation of such risk, shall release and waive any right to ask for or demand any special, direct, incidental, indirect, punitive, reliance, or consequential damages, whether foreseeable or not, for or on account of any loss or injury to any property of the Permittee and its employees, including property in the care, custody, and control of the Permittee, and to the Facilities and contents thereof that are over, under, upon, or in the property of NJ Transit or the Contract Operator, including loss of, or interference with, service or use thereof, or loss of profits or revenue, cost of capital, cost of replacement services, claims of customers or third parties, whether or not it shall be alleged or determined that the cause thereof was breach of contract, breach of warranty, negligent acts or omissions of the Indemnified Parties or the Permittee, their successors, assigns, contractors, agents, employees, servants and officials or of other persons.

25. Insurance

In addition to other insurance carried by the Permittee, the Permittee shall carry, and cause to have carried during any Work, through and for the entire period of occupancy permitted herein, insurance coverage of the following kinds and minimum amounts:

- (a) Permittee's Comprehensive General Liability Insurance

The Permittee, and its Contractors, shall purchase and maintain a comprehensive general liability policy of insurance. This policy shall protect the Permittee, NJ Transit and the Indemnified Parties, against liability which arises in consequence of granting this Permit, including access thereto over NJ Transit's adjacent property and/or which arises from any of the claims indicated in Indemnification Section 24(a) and (b) against which the Permittee is required to indemnify NJ Transit. The policy is to be written by a good and solvent insurance company authorized to do business in New

Jersey with an A.M. BEST Insurance Rating of “A-” or better or by companies acceptable to NJ Transit. This policy shall name NJ Transit, the State of New Jersey, and the Indemnified Parties as an additional insured by policy endorsement. The liability policy(ies) and insurance shall include a cross-liability coverage providing severability of interests so that coverage will respond as if separate policies were in force for each insured. The coverage limits of the policy shall be not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. NJ Transit reserves the right to require reasonable increases in the coverage limits from time to time. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds.

(b) Automobile Liability Insurance

Minimum of two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage liability. This policy shall name NJ Transit, the State of New Jersey, and the Indemnified Parties as an additional insured.

(c) Contractors' and Subcontractors' Comprehensive General Liability Insurance

The Permittee shall furnish evidence by virtue of a standard certificate of insurance that, with respect to any work or activities performed by its contractors and subcontractors hereunder, they carry in their own behalf Comprehensive General Liability Insurance in the amount of \$5,000,000 per occurrence for damages arising out of bodily injuries or death and/or Property Damage. Coverage provided under this liability policy shall be on an occurrence basis and shall include, but not be limited to, premises operations liability, personal injury liability, property damage liability, contractual liability, independent contractors liability and products liability. There shall be no coverage exceptions for property containing or adjacent to railroad facilities. This policy shall name NJ Transit and the Indemnified Parties as an additional insured. The liability policy(ies) and insurance shall include a cross-liability coverage providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Should the Permittee be self-insured, it is required to supply annually a letter certifying that it is self-insured and is complying with all laws and regulations required for self-insurance.

(d) Contractor's Pollution Liability Insurance

The Permittee, or its Contractors, shall procure contractor's pollution liability insurance covering the obligations assumed under the Permit and covering claims arising out of any sudden or non-sudden pollution or impairment of the environment, including clean-up costs and defense that arise from the operation of contractor or its subcontractor. Coverage under this policy shall have limits of liability with a minimum of \$2,000,000 per occurrence. This policy shall name NJ Transit and the Indemnified Parties as additional insured.

- (e)** Professional Liability insurance with a limit of not less than five million dollars (\$5,000,000) per claim where the Work involves or includes Contractor providing or performing design, architectural, engineering, consulting, or any professional services. If Contractor's services include software development, systems development, or outsourced systems, the insurance shall include coverage for liability arising from intellectual property infringement, information technology, and software development services. If the Professional Liability insurance is claims-made, the coverage shall remain in place for the greater of: (i) three (3) years from the expiration of this Contract as amended; or (ii) three (3) years from the date Company accepts the Work.

(f) Railroad Protective Public Liability Insurance

If work is to be performed within 50 feet of the HBLR right-of-way, in addition to the above the Permittee shall furnish evidence in the form of one signed copy and one certified copy of the Railroad Protective Public Liability Insurance Policy that, with respect to the operations it, its contractors, or any of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (AAR-AASHO form) in the name of NJ Transit and ACI-Herzog Joint Venture, providing for a limit of not less than \$2,000,000 single limit bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence. (Reference: "Standard Provisions for General Liability Policies" as contained in U.S. Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, Attachment I, as amended).

(i) The address of NJ Transit Corp. shall appear as Director of Risk Management and Insurance, 283-299 Market St Suite 800, Newark, New Jersey 07105. The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted.

(g) Workers' Compensation and Employer's Liability Insurance

The Permittee shall provide to NJ Transit a certificate of insurance showing that the coverage the Permittee, its contractors and its subcontractors carry for Workers' Compensation is within the statutory limits of the State of New Jersey. In case any class of employees performing the Work under this Permit is not protected under the Worker's Compensation Statute, the Permittee shall provide and shall cause each contractor and subcontractor to provide employer's liability insurance for the protection of each of its employees as are not otherwise protected. Limits of Employer Liability are as follows:

Employer's Liability	\$1,000,000 each accident
	\$1,000,000 each employee disease
	\$1,000,000 policy limit – disease

- (h)** (i) All insurance required by the Permit shall be provided at the sole cost of the Permittee and shall be in full force and effect until all work is completed to the satisfaction of NJ Transit. Proof of insurance must be provided prior to entering upon the property, with a copy of the general accord statement being supplied to NJ Transit's Manager Right-of-Way Engineering or his representative.
- (ii) All insurance policies or certificates shall contain the following cancellation notice:

"This policy is not subject to cancellation or change until thirty (30) days after NJ Transit has received written notice thereof as evidenced by return receipt of a registered letter addressed to the Director, Risk Management and Insurance, NJ Transit Corp., 283-299 Market Street, Suite 800, Newark, New Jersey, 07105-2246."

(iii) All hazards to be covered shall include the so-called "XCU" coverage for explosion, collapse, and damage where work is to be done over or under NJ Transit owned railroad property.

- (i)** The foregoing insurance coverage is not intended to, nor does it limit the liability of the Permittee to hold the Indemnified Parties harmless as set forth in Section 24 above.

- (j) All policies shall be primary and non-contributory, and any insurance or self-insurance maintained by NJ Transit shall not contribute to any loss. Further, the insurances shall contain a waiver of subrogation in the benefit of NJ Transit.

- (k) All insurance certificates must bear this NJ Transit Permit number. The original certificate shall be provided to, and held by, NJ Transit. Copies of these certificates shall be attached to this permit as Exhibit C and shall be provided prior to the execution of the permit. Each certificate shall bear this Permit Number. An originally-signed version of the executed TAPs with all exhibits, including the COIs, will be sent by NJ Transit to the Contract Operator.

Contract Operator's Address:

ACI- Herzog Joint Venture
One Liberty Square
Suite 430
Boston, MA 02109
Attn: General Manager
Phone 571-919-6417