

INSURANCE REQUIREMENTS
For Fairplay Station at Churchman's Crossing
Elevator Design and Construction Project

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
CHICAGO UNION STATION COMPANY (CUSCO)
WASHINGTON TERMINAL COMPANY (WTC)
Revised as of April 16, 2013

DEFINITIONS

In these Insurance Requirements, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation and, as appropriate, its subsidiaries Chicago Union Station Company ("CUSCO") and Washington Terminal Company ("WTC"). "Contractor" shall mean the party identified as "Permittee" in the Temporary Permit to Enter Upon Property Agreement or the party with whom Amtrak has contracted in another agreement (e.g., Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase Agreement or Force Account Agreement), as well as its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter Upon Property Agreement or other such agreement, as applicable.

INSURANCE

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Operations. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak's written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. Contractor shall require all subcontractors to carry the insurance required herein or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to Amtrak so stipulates. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted. Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of Contractor. Employer's Liability coverage with limits of not less than \$1 million each accident or illness shall be included.

In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and Outer Continental Lands Act Endorsement are required.

2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor with respect to all operations to be performed and all obligations assumed by Contractor under the terms of the Agreement. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and no exclusions for Explosion/Collapse/Underground (X-C-U) applicable or added.

The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. 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. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry.

Coverage under this policy shall have limits of liability of not less than **\$20** million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

3. **Automobile Liability Insurance** covering the liability of Contractor arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. Coverage under this policy shall have limits of liability of not less than **\$5** million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

In the event Contractor or any subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to **\$5** million each occurrence.

4. **Railroad Protective Liability (RRP) Insurance** covering the Operations performed by Contractor or any subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than **\$5** million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A **\$10** million annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Operations.

5. **All Risk Property Insurance** covering damage to or loss of all remaining personal property of Contractor, its contractors and subcontractors used during Operations including, but not limited to, tools, equipment, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed for the full replacement cost value. Insurance policies of Contractor, its contractors and subcontractors, covering tools, equipment and other personal property will include a waiver of subrogation and any other rights of recovery in favor of Amtrak and Contractor.
6. **Contractor's Pollution Liability Insurance** covering the liability of Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the Operations of Contractor, with National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence. The coverage shall be maintained during the term of the project, and for at least two (2) years following Amtrak's acceptance of the completion of all Operations to be performed.
7. **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor, its subcontractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than \$2 million per claim.

Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Contractor.

8. **Professional Liability Insurance** covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Operations, regardless of the type of damages. The coverage shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof. The policy shall have a retroactive date that precedes any design work on the project and shall have limits of liability of not less than \$2 million per claim and \$2 million in the annual aggregate.

If Contractor is not performing professional design or engineering services, Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

9. **Waiver of Subrogation** As to all insurance policies required herein, Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak and, as appropriate, CUSCO and WTC, and their agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.
10. **Punitive Damages** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.
11. **Claims-Made Insurance** If any liability insurance specified above shall be provided on a claims-made basis then, in addition to coverage requirements above, such policy shall provide that:
 - a. The retroactive date shall coincide with or precede Contractor's start of Operations (including subsequent policies purchased as renewals or replacements);

- b. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
 - c. Contractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., CGL, Professional Liability) for at least three (3) years following completion of the Operations; and
 - d. If insurance is terminated for any reason, Contractor will purchase an extended reporting provision of at least six (6) years to report claims arising from Operations.
12. **Evidence of Insurance** Contractor shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing Operations. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies. **THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING.** The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Operations without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Director I&C Projects
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

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John R. Kotula
Delaware Transit Corp.
119 Lower Beech St.
Wilmington, DE 19805