

New York State Thruway Authority

# **Occupancy and Work Permit Accommodation Guidelines**



Office of Real Property Management

TAP-401 (7/2014)

**Submit Permit Applications to the appropriate Thruway Authority Division Permit Coordinator.**

<u>Division</u>	<u>Highway Sections</u>	<u>Division Milepost Limits</u>
New York	New York (Main Line) - Garden State Parkway Connection - New England Section - I-287 Cross Westchester*	0.00 - 76.50 GS 0.00 - GS 2.40 NE 0.17 - NE 15.01 CWE 0.00 - CWE 10.90
Albany	Albany (Main Line) - Berkshire Section	76.50 - 197.90 B 0.00 - B 24.28
Syracuse	Syracuse (Main Line)	197.90 - 350.60
Buffalo	Buffalo (Main Line) - Niagara Section	350.60 - 496.00 N 0.00 - N 21.50

**Telephone Numbers and Addresses**

<u>Telephone</u>	<u>Address</u>
Office of Real Property Management Headquarters Permit Coordinator (518) 436-2815, fax (518) 471-4442	NYS Thruway Authority P.O. Box 189 Albany, NY 12201-0189  Overnight mail: 200 Southern Blvd. Albany, NY 12209
New York Division Permit Coordinator (845) 918-2510, fax (845) 918-2596	NYS Thruway Authority New York Division 4 Executive Boulevard Suffern, NY 10901
Albany Division Permit Coordinator (518) 436-2710, fax (518) 436-0233	NYS Thruway Authority Albany Division P.O. Box 861 Albany, NY 12201-0861  Overnight mail: 270 Mt. Hope Drive Albany, NY 12209
Syracuse Division Permit Coordinator (315) 438-2420, fax (315) 461-0765	NYS Thruway Authority Syracuse Division 290 Elwood Davis Rd., Suite 250 Syracuse, NY 13088-2118
Buffalo Division Permit Coordinator (716) 635-6253, fax (716) 626-5362	NYS Thruway Authority Buffalo Division 455 Cayuga Rd., Suite 800 Cheektowaga, NY 14225

\* For the Cross Westchester Expressway (I-287), Occupancy Permits are issued by the NYS Department of Transportation and Work Permits are issued by the NYS Thruway Authority.

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## **I. INTRODUCTION**

These New York State Thruway Authority (Authority) Occupancy and Work Permit Accommodation Guidelines (Guidelines) set forth the fundamental requirements for all permitted use of real property under the jurisdiction of the Authority (Authority Property) and the issuance of Occupancy and Work Permits.

Additional requirements that pertain to all utilities that occupy Authority Property, whether pursuant to an Occupancy Permit or, for utilities that existed in the path of the Thruway prior to the construction of the Thruway, pursuant to an agreement, are contained in the Authority's Utility Occupancy Supplement (TAP-401U).

The design and construction requirements for the installation, modification, relocation, maintenance, operation and repair of all permitted facilities, including utility facilities, located over, under, along and on Authority Property, are set forth in the Authority's TAP-421 publication series:

- General Design and Construction Requirements for Occupancies (TAP-421A);
- Design and Construction Requirements for Underground Crossing of Mainline Pavement and Shoulders (TAP-421B);
- Design and Construction Requirements for Aerial Communication and Power Line Installations (TAP-421C);
- Design and Construction Requirements for Installations/Crossings on or Attached to Bridge Structures, Bridge Culverts, or Structural Retaining Walls (TAP-421D); and,
- Design and Construction Requirements for Unencased Gas Pipelines (TAP-421E).

Permittees must comply with these Guidelines, as well as Authority Rules and Regulations and all conditions included in an issued Permit. The Authority reserves the right to make changes in, or additions to, these Guidelines and such changes and additions shall be binding on all existing and new Permittees.

Copies of the most current Guidelines and appropriate Permit Applications may be obtained from the Division Permit Coordinators or from the Real Property section of the Authority's website ([www.thruway.ny.gov](http://www.thruway.ny.gov)). Information pertaining to the contents of these Guidelines may be obtained by visiting, writing, faxing or telephoning the Authority contacts listed on the inside front cover of these Guidelines.

## **II. OCCUPANCY AND WORK PERMITS**

### **A. OCCUPANCY PERMITS**

An Occupancy Permit is a revocable instrument that authorizes the use of a site specific identified portion of Authority Property (Premises).

Various uses for which Occupancy Permits are issued include, but are not limited to, utility facilities, parking, landscaping, gardening, signage, storage, and access.

The rights granted under the Occupancy Permit are non-exclusive.

An Occupancy Permit instrument is not a lease, but is merely a permit to use, and therefore a landlord-tenant relationship is not thereby created.

### **B. WORK PERMITS**

A Work Permit is a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on a site specific identified portion of Authority Property (Premises).

Work Permits are required for all work conducted on Authority Property under an Occupancy Permit. Work Permits may not be required when activities are regulated by a contract or agreement, depending upon the terms contained therein. A separate Work Permit is required for each location unless an Annual Work Permit is issued as described below. Except under very limited circumstances, an Occupancy Permit must be in place before a Work Permit will be issued.

The Authority may require a separate Work Permit each time the Premises are entered for the purpose of maintaining facilities authorized under an Occupancy Permit, lease or grant of easement.

The Permittee's contractors and/or subcontractors, if any, may be required to each individually obtain the necessary Work Permit prior to entering the Premises.

Annual Work Permits are Division specific instruments that may be issued where an occupant of Authority Property has an on-going requirement to maintain facilities authorized under an Occupancy Permit, lease or grant of easement (e.g., snow removal, waste disposal, tree trimming, etc.).

The work authorized by a Permit shall be performed in a professional manner to the satisfaction of the Authority. All work by or for a Permittee shall be done at no expense to the Authority.

Note: A Construction Permit may be required for certain construction activities on the Premises. Construction Permits can be obtained from the Division or Headquarters Code Enforcement Officer.

## **III. PERMIT REQUIREMENTS, CONDITIONS AND PROVISIONS**

### **A. REVOCABILITY**

All Permits are revocable unilaterally by the Authority and their duration is at the Authority's sole discretion. Permittees shall maintain all installations on the Premises, as authorized by the Permit, subject to the risk of relocating or removing such installations at the Permittees' own expense pursuant to the direction of the Authority.

### **B. APPLICATION, FEES AND EXPENSES**

#### **1. Permit Application**

The Authority reserves the right to review and approve or reject all requests for the use and occupancy of Authority Property, and all requests for work to be conducted on such Property.

##### **a. Occupancy Permit Application**

Requests for approval to use and occupy Authority Property are made by completing and submitting an OCCUPANCY PERMIT APPLICATION (TA-W41337).

An Occupancy Permit Application must be accompanied by detailed plans and maps indicating the proposed use and occupancy. If any structure is to be built on the Premises, engineering design plans of the structure must also accompany the Application. In most instances, as-built plans, hard copy and electronic, will be required upon completion of the work. All Applications must be submitted to the Division Permit Coordinator. Once an Occupancy Permit is approved, the Permittee must obtain a Work Permit for all work to be conducted on the Premises.

The nature of the Application and the size of the project may affect the length of time it takes the Authority to process an Occupancy Permit Application. If a submitted Application is not signed or is found otherwise deficient or unacceptable, the Authority will return the Application package (minus the Application fee) to the applicant for signature and/or correction. The applicant must resubmit the Application within 30 business days of the date the Authority rejected the Application or a second Application fee will be required.

Once a copy of the approved Occupancy Permit is received by the Permittee, the Permittee shall contact the Division Permit Coordinator at least 24 hours prior to the use of the Premises as authorized by the Permit.

The Permittee must submit to the Division Permit Coordinator written requests for changes to an issued Permit; the Permittee must receive an amended Occupancy Permit before implementing any requested changes.

b. Work Permit Application

Requests for approval to perform work on Authority Property are made by completing and submitting a WORK PERMIT APPLICATION (TA-W41338). The nature of the Application and the size of the project may affect the length of time it takes the Authority to process a Work Permit Application. If a submitted Application is not signed or is found otherwise deficient or unacceptable, the Authority will return the Application package (minus the Application fee) to the applicant for signature and/or correction. The applicant must resubmit the Application within 30 business days of the date the Authority rejected the Application or a second Application fee will be required.

Once a Work Permit is issued, the Permittee shall contact the Division Permit Coordinator at least 24 hours prior to the start of work (except emergency work by utility owners and environmental clean up contractors which should be reported the next working day) and within 24 hours of completing the work as authorized by the Permit. The Permittee shall begin work no later than 30 days from the date the Authority approves the Work Permit.

The Permittee must submit to the Division Permit Coordinator written requests for changes to an issued Permit; the Permittee must receive the amended Permit before implementing any requested changes.

2. Permit Fees

The Authority reserves the right to charge a Permit applicant appropriate Application and/or Annual Fees for Occupancy and Work Permits. Such fees are set forth in the Authority's Fee Policy for Occupancy and Work Permits, as amended.

3. Expenses

In addition to the Application and/or Annual Fees, the Permittee must also pay any and all expenses (e.g., labor, materials, equipment, etc.) incurred by the Authority as a result of the Permittee's actions.

**C. PROPERTY CONDITION AND MAINTENANCE**

The Permittee must properly maintain the Premises at all times throughout the occupancy or period of usage for work.

The Permittee shall at all times maintain the Premises in a condition at least equal to that at the beginning of the occupancy or period of usage for work, ordinary wear and tear damage by the elements excepted. The Authority shall be the sole judge of the condition of the Premises.

To this end the Permittee agrees to the following:

1. The Permittee shall be solely responsible for the installation, maintenance, and repair of any facilities placed on the Premises pursuant to the Permit.
2. The Permittee shall, at its sole cost and expense, take good care of the Premises and make all repairs necessary to keep it in good order, condition and repair, including all improvements, building equipment, and the installation and maintenance of all Permittee's property and fixtures thereon. In the event of any damage to or destruction of the Premises or any improvements thereon from any causes whatsoever, the Permittee shall promptly give written notice thereof to the Authority. The Permittee shall promptly restore and repair the Premises as nearly as possible to its condition immediately prior to such damage or destruction unless the Authority and the Permittee mutually agree in writing that such repair and restoration is not feasible, or unless the Authority for any other reason advises the Permittee in writing that such repair or restoration is not required or desired. In no way shall the foregoing limit the Authority's rights or remedies with respect to any damages.
3. The Permittee shall exercise due diligence in maintaining the Premises.
4. The Permittee shall maintain the security of the Premises and provide the Authority with access, including all applicable keys and security codes.
5. The Permittee shall immediately undertake corrective measures as directed by the Authority when the Authority determines that a safety hazard exists on the Premises. When scheduling such corrective measures, the Permittee shall take into consideration planned Authority construction.
6. The Permittee shall be responsible for trash pick-up and solid waste removal from the Premises including all costs for such pick-up and removal.

#### **D. TRAFFIC CONTROL PLAN**

Whenever a Permittee's work or maintenance activity will affect the movement of Thruway traffic or Thruway traffic safety, the Permittee shall implement a temporary traffic control plan approved by the Authority to ensure the safe movement of traffic in and around the work site and the safety of the Permittee's workforce.

## **E. RIGHT TO ENTER**

The Authority reserves the right to enter upon the Premises at any time for any purpose.

## **F. RIGHT TO INSPECT**

The Authority reserves the right to inspect at any time any work being performed on the Premises, and the Permittee agrees to pay all expenses incurred by the Authority for the inspection of the work. The Authority reserves the right to charge against the paid surety deposit and/or posted performance bond the total of any and all expenses incurred by the Authority for the inspection of the work.

A Permittee must notify the Authority when work being performed pursuant to a Permit has been completed and the Authority shall have the right to make a final inspection of the work. The Authority will advise the Permittee if there are any deficiencies in the work performed that require correction. Unfinished or unsatisfactory work that the Permittee refuses to correct will be completed by the Authority, or by the Permittee's bonding company, if applicable, at the cost of the Permittee. The Authority may require that the Permittee provide the certification of a licensed New York State professional engineer that the work conforms with the terms of the Permit. Performance of an inspection by the Authority does not constitute an assumption of liability by the Authority for such work.

## **G. RIGHT TO STOP WORK**

Notwithstanding the issuance of a Permit, the Authority reserves the right to stop at any time any work being performed on the Premises. The Permittee, its contractors and/or subcontractors, shall immediately cease work upon orders from the Authority. Once work has been stopped, the Permittee shall immediately commence any corrective work ordered by the Authority.

## **H. RESTRICTIONS IN USE OF AND WORK PERFORMED ON AUTHORITY PROPERTY**

The Permittee shall not take any action or use, occupy, suffer, or permit the Premises or any part thereof to be used in any manner, or suffer or permit anything to be brought onto the Premises or kept thereon, that would, in the Authority's judgment:

- Cause, or be likely to cause, death or injury to any person or damage to the Premises or to any personal property;
- Constitute a public or private nuisance;
- Violate any applicable building code for any structure or improvement on the Premises;

- Violate any applicable federal, state or local law, regulation or ordinance;
- Cause an increase in insurance premiums on policies that may be held by the Authority covering the Premises;
- Violate any Rule or Regulation promulgated by the Authority;
- Construct, maintain or allow the placement of any advertising devices on the Premises, without the express written consent of the Authority;
- Disturb in any manner, or attach to in any manner, any underground or overhead utility facilities, without submitting written documentation to, and obtaining approval from, the owner of the utility facility;
- Perform any work on, or construction/modifications to, the Premises except that which is specifically authorized by a Work Permit. When the work specified by a Work Permit is completed, additional work and/or reentry to the Premises for the purposes of conducting work is prohibited without a new or amended Work Permit; or,
- Impair the Authority's use of the Thruway System or adversely affect the safety of the traveling public and the free and safe flow of traffic.

## **I. ABUTTING LANDOWNERS**

Nothing contained in these Guidelines, nor any Permit issued by the Authority, shall be deemed to authorize Permittees to engage in any activities that interfere with or access the property rights of abutting landowners. Prior to undertaking work on Authority Property that requires access through, or interferes with, an abutting landowner's property, Permittees must obtain any necessary authorization from the abutting landowner(s).

## **J. COMPLIANCE WITH GOVERNMENTAL REGULATIONS**

Permits shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

The Permittee shall observe all federal, state and local laws, rules, regulations, orders and directives that may pertain or apply to the Premises, the operations of the Permittee on the Premises or its occupancy of the Premises.

The provisions of this section shall not be construed as a submission by the Authority to the application to itself of such laws, rules, regulations, requirements, ordinances, codes, orders or directives.

## **K. GOVERNMENTAL CHARGES**

In addition to any Authority permit fees, the Permittee shall promptly pay any and all taxes, assessments, fees or other charges that may be levied, assessed or imposed by any governmental or other lawful authority upon or against the Permittee's facilities, operations or occupancy.

## **L. ENVIRONMENTAL LAWS**

### **1. General**

The Permittee, at its sole expense, shall, with respect to the Premises covered by a Permit, including, but not limited to, any improvements located thereon strictly comply or cause strict compliance with all applicable Environmental Laws. As used herein, the term "Environmental Law" shall mean each and every federal, state, county and municipal statute, ordinance, rule, regulation, order, code, directive and requirement applicable to Hazardous Materials, as defined in Section III. L. 2. hereof, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders and decrees, now or hereafter promulgated thereunder, and permits, licenses and deed restrictions now or hereafter required thereby, and amendments and successors to such statutes, regulations, orders and decrees as may be enacted or promulgated from time to time: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.); the Uranium Mill Tailings Radiation Control Act (42 U.S.C. § 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.); the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.); the Endangered Species Act (16 U.S.C. § 1531); the New York State Environmental Conservation Law and the New York State Navigation Law; and any common law theory based on nuisance, trespass, negligence, strict liability, aiding and abetting or other tortious conduct.

The Permittee shall, upon written request from the Authority, provide proper documentation that the Permittee or any Permittee Party (as defined in Section IV. A.) is in compliance with all applicable Environmental Laws for activities being conducted on or about the Premises. The Permittee shall, in writing, require each Permittee Party, upon written request from the Permittee or the Authority, to provide proper documentation that such Permittee Party is in

compliance with all applicable Environmental Laws for activities being conducted on or about the Premises.

2. Prohibition on Hazardous Materials

The Permittee shall not, and shall not permit any Permittee Party or any other persons in or about the Premises, to generate, store, handle, treat, dispose of, or Release any “Hazardous Material” upon the Premises, except as allowed by applicable laws. As used herein, the term “Hazardous Material” shall include, but not be limited to, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, “Hazardous Wastes,” hazardous substances, hazardous materials, or word of similar meaning or regulatory effect under any Environmental Law, or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials soil vapor intrusion, flammables and explosives. As used herein, the term “Hazardous Wastes” shall mean those wastes identified in Part 371 of Title 6 of New York Codes, Rules and Regulations. As used herein, the term “Release” shall include, without limitation, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

3. Environmental Conditions

The Permittee shall not cause or permit the occurrence of any Environmental Condition on or at the Premises. As used herein, the term “Environmental Condition” shall mean any condition with respect to the Premises (including any conditions contained therein or derived therefrom, of any kind or nature, including without limitation, structural, architectural, engineering and environmental conditions) soil, surface waters, groundwaters, land, stream sediments, surface or subsurface condition and ambient air (including, but not limited to, Hazardous Materials on or about the Premises) whether or not yet discovered, that violates or requires any act pursuant to any Environmental Laws.

4. Representation and Warranty Regarding Hazardous Materials

The Permittee represents and warrants that the Permittee does not intend to, and will not, use any Hazardous Material (as defined in Section III. L. 2.) on the Premises. The Permittee must receive the written approval of the Authority prior to using any Hazardous Material (as defined in Section III. L. 2.) on the Premises.

**5. Notification of the Authority and Permittee Responsibility with Regard to Environmental Conditions**

In the event of any Environmental Condition (including, without limitation, the presence or Release of any Hazardous Material), the Permittee must immediately notify the Authority in writing and by phone.

If the Environmental Condition appears to be the result of conduct of the Permittee or any of the Permittee Parties, including, but not limited to, any Release of Hazardous Materials resulting from the use, operation and/or maintenance of the Premises, the Permittee shall promptly remediate such Environmental Condition to the satisfaction of the Authority. In the event the Permittee does not with reasonable promptness remediate such Environmental Condition, the Authority may, at its option, elect to remediate same and recover all direct and indirect costs incurred for such remediation through appropriate legal means for such recovery.

In the event the Permittee encounters any Environmental Condition in connection with the Premises not introduced directly or indirectly by the Permittee or by any of the Permittee Parties, the Permittee shall be responsible and held liable for any investigation, removal, or remedial activities or measures necessitated by the increase in areal extent or severity of the Environmental Condition which was caused, either in whole or in part, by the Permittee's actions or activities or that of any of the Permittee Parties. If the Permittee does not with reasonable promptness perform such investigation, removal or remedial activities or measures, the Authority may, at its option, elect to do so and recover all direct and indirect costs incurred for same through appropriate legal means for such recovery.

In the event the Permittee is given Notice of any violation of any Environmental Law, the Permittee shall immediately notify the Authority in writing and by phone and commence remedial actions as set forth herein. As used herein, "Notice" shall mean any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Materials into the waters or on the lands of the State of New York, including, but not limited to, the Premises.

**M. EMPLOYMENT PRACTICES OF PERMITTEE**

To the extent required by Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status.

**N. PROHIBITION OF EMPLOYMENT OF AUTHORITY AND STATE EMPLOYEES**

The Permittee shall not engage any person who is or has been at any time in the employ of the Authority or New York State to perform services in connection with the Permit, without the consent of the Authority. The Authority may request that the Permittee provide it with whatever information the Authority deems appropriate about such person's engagement, work cooperatively with the Authority to solicit advice from the New York Commission on Public Integrity, and, if deemed appropriate by the Authority, instruct such person to seek the opinion of the New York Commission on Public Integrity. Permittee agrees that any such employee assigned to perform services in connection with the Permit shall be assigned in accordance with provisions of the Public Officers Law and any other laws, rules, regulations, guidelines or policies applicable to the service of current or former Authority or New York State employees. Further, no person who is employed by the Permittee and who is disqualified from providing services in connection with the Permit pursuant to the Public Officers Law or any other applicable laws, rules, regulations, guidelines or policies may share in any net revenues Permittee derives from the Permit. Without limiting the Authority's rights under III. A., the Authority shall have the right to cancel or terminate a Permit at any time if any work performed in connection with the Permit is in conflict with the provisions of the Public Officers Law, other laws applicable to the service of current or former Authority or New York State employees, and/or the rules, regulations, guidelines or policies promulgated or issued by the New York Commission on Public Integrity.

**O. ASSIGNMENT/TRANSFER**

A Permit may not be assigned or transferred by the Permittee nor may the Permittee's right, interest or obligation therein be assigned, transferred or otherwise disposed of without the prior written consent of the Authority.

**P. TERMINATION**

A Permittee may not terminate a Permit without the prior written notice to the Authority. Upon termination of a Permit, the Permittee shall surrender and return the Premises to the Authority in good condition, ordinary wear and tear damage by the elements excepted. The Premises shall be free and clear of all liens and encumbrances other than those created by the Authority. The Authority shall be the sole judge of the condition of the Premises. The Permittee's obligations under this section shall survive termination of the Permit.

**1. Restoration**

Prior to the return of the Premises to the Authority, the Permittee shall completely restore the Premises in a manner authorized by, and to the satisfaction of, the Authority. Such restoration may include, but is not limited to, removal of any and all facilities and appurtenances of any kind, except for

those which the Authority has approved to remain, removal of personal property, replacement of landscaping, and general cleanup. The costs of such restoration shall be the sole responsibility of the Permittee.

**2. Abandonment**

Permittees shall remain responsible for all abandoned facilities unless otherwise determined by the Authority in writing. The Permittee shall, prior to abandoning any facilities on Authority property, contact the Authority for termination requirements. The Permittee shall restore the occupied area as described above.

**Q. ACCIDENT NOTIFICATION**

In the event of any accident on the Premises that results in personal injury or property damage, the Permittee shall immediately notify the Thruway Statewide Operations Center (TSOC) at Authority Headquarters, by calling (518) 433-4924 or 1-800-842-2233.

**R. CHANGES**

The Permittee must immediately notify the Authority in writing of any changes to the Permit information for either an Occupancy or Work Permit. Such changes include, but are not limited to:

- Applicant Identification Information
- Facility Identification Information
- Work Identification Information

Depending upon the type of change reported, the Permittee may be required to submit a new Permit Application requesting an Amended Permit.

**S. SEVERABILITY**

If any term, provision, covenant or condition of a Permit is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## **IV. LIABILITY, INDEMNITY, INSURANCE AND SURETY DEPOSITS/BONDS**

### **A. LIABILITY OF PERMITTEE**

1. The Permittee shall be responsible for any and all liabilities, penalties, fines, forfeitures, demands, losses, claims, suits, causes of action, judgments, (and the costs and expenses incidental thereto, including costs of defense, settlement, attorneys' fees, consultant fees and expert fees) and any and all damages, costs and expenses of any nature whatsoever (collectively, the "Claims", or individually a "Claim") related directly or indirectly, to:
  - a. Personal injury, death and/or damage to property arising directly or indirectly out of the installation, maintenance, use or existence of any facility or improvement authorized by, or relating to, the Permit issued to the Permittee, or arising directly or indirectly out of any work authorized by, or relating to, such Permit;
  - b. Personal injury, death and/or damage to property occasioned directly or indirectly by any act or omission of the Permittee and/or any of its officers, directors, agents, employees, contractors, subcontractors, assigns, successors, invitees and licensees (collectively, the "Permittee Parties", or individually, a "Permittee Party"); and
  - c. The use or occupancy of, or conduct of operations within, the Premises or any part thereof, by the Permittee or any of the Permittee Parties and/or any breach, violation, or non-performance on the part of the Permittee of any covenant, condition, or agreement in the Permit to be fulfilled by the Permittee.

The definition of Permittee Parties shall not be construed to alter the requirements of Section III. O. of these Guidelines or to alter the privileges granted by the Permit, which shall not be deemed to grant the Permittee a leasehold, an easement or any other real property interest in the Premises, or any portion thereof.

2. Without limiting any of the Permittee's obligations under A.1. the Permittee hereby expressly agrees to pay for any and all Claims arising out of injury to, or destruction of, part or all of the Thruway or any other property of the Authority caused directly or indirectly by, or arising out of, the existence, maintenance or use of any facilities covered by the Permit or of the work described in the Permit or relating in any way to the Permittee's use or occupancy of the Premises. The Permittee expressly agrees to reimburse the Authority for any and all loss of revenues arising directly or indirectly out of the Permit, including, but not limited to, the performance of construction or maintenance work, or the existence of any facilities allowed by the Permit.

**B. INDEMNIFICATION OF THE THRUWAY AUTHORITY AND NEW YORK STATE**

**1. Indemnification**

Notwithstanding any other provision of law, the Permittee hereby indemnifies and agrees to protect, hold harmless, and defend the Authority, the State of New York, and their respective officers, directors, board members, agents, employees, successors and assigns, from and against any and all Claims that are directly or indirectly caused by, or that arise out of or are in any way related to: (a) the use, occupancy or operation of the Premises, or any part thereof, by the Permittee or any of the Permittee Parties; and/or (b) the act, omission or negligence of the Permittee or any of the Permittee Parties; and/or (c) any breach, violation or non-performance by the Permittee of any covenant, condition or agreement in this Permit; and/or (d) any other occurrence or circumstance arising on or about the Premises.

The Permittee agrees that such indemnity shall survive the termination of this Permit and that such indemnity shall neither be limited by reason of insurance coverage required herein nor limit the Permittee's obligation to procure the insurance required by Section IV. C. hereof.

**2. Release and Covenant Not to Sue**

The Permittee hereby releases and covenants, for itself, its board members, directors, officers, agents, and employees, and shall require the Permittee Parties that have written agreements with the Permittee (the "Permittee Party Agreements"), to release and covenant in such Permittee Party Agreements as follows: (a) that the Authority and the State of New York and their respective officers, directors, board members, agents, employees, successors and assigns are and shall be released from any and all Claims for: (i) any damage to, or loss of, property in or about the Premises belonging to the Permittee or to any of the Permittee Parties or any other persons in or about the Premises; (ii) personal injury to, or death of, persons in or about the Premises; and (iii) for any damage or loss suffered by the business of the Permittee, or any of the Permittee Parties, all from any cause whatsoever, whether said damage, loss, injury or death results from conditions arising upon the Premises or from conditions on or operation or existence of the Thruway or from any other sources; and (b) that no claim shall be made against the Authority or the State of New York and their respective officers, directors, board members, agents, employees, successors and assigns by the Permittee or by any of the Permittee Parties, for: any injury, including death, to any person or for any loss or damage to property of the Permittee or that of the Permittee Parties in or about the Premises or for any loss or damage otherwise in connection with the Permittee's use, occupancy and/or operation of said Premises or that of any Permittee Party.

The Authority shall not be liable for injury to, or death of any person occurring in, on or about the Premises or in any way relating to the use and occupancy of the Premises by the Permittee or by the Permittee Parties, or for any damage to, or loss of, property in, on or about the Premises belonging to the Permittee, or any of the Permittee Parties, or in any way relating to the use and occupancy of the Premises by the Permittee or by the Permittee Parties or for any damage or loss suffered by the business of the Permittee, or that of any of the Permittee Parties, from any cause whatsoever, whether said damage, loss, injury or death results from conditions arising upon the Premises or from other sources. Without limiting the foregoing, the Authority and the State of New York shall not be liable in any manner to the Permittee, the Permittee Parties or to any other person in, on or about the Premises, for any personal injury or death of any person in, on or about the Premises, or in any way relating to the use and occupancy of the Premises by the Permittee or by the Permittee Parties or to damage of property of the Permittee or of the Permittee Parties in or about the Premises caused by the criminal or intentional misconduct, or any act or negligence of the Permittee, any of the Permittee Parties or any other third party or caused by an accident or fire. Except as may be limited by law, in no event shall the Authority or the State of New York be liable to the Permittee or any of the Permittee Parties, or any other persons in or about the Premises, for any consequential, incidental or special damages or lost profits sustained, or alleged to have been sustained by any of them, and the Permittee hereby waives any right to same and covenants to require such a waiver in the Permittee Party Agreements.

The Permittee agrees that such release and covenant not to sue shall survive the termination of this Permit and shall neither be limited by reason of insurance coverage required herein nor limit the Permittee's obligation to procure the insurance required by Section IV. C. hereof.

3. Scope of Indemnification, Hold Harmless Agreement, Covenants by the Permittee and Permittee Parties; and Disclaimers by the Authority
  - a. The indemnification of the Authority, its Board members, officers, directors, agents, employees, successors and assigns (the "Authority Indemnitees"), the agreement to hold harmless the Authority Indemnitees, the covenants with regard to the Authority Indemnitees, and the disclaimers by the Authority, contained in this Section IV. B. hereof shall apply to the fullest extent permitted by law.
  - b. The Indemnification of the State, its Board members, officers, directors, agents, employees, successors and assigns (the "State Indemnitees"), the agreement to hold harmless the State Indemnitees and the covenants with regard to the State Indemnitees contained in this Section IV. B. shall apply to the fullest extent permitted by law.

- c. Nothing contained in this Section IV. B. 3. shall in any way be deemed to be an admission of liability or a waiver of sovereign immunity by the Authority or the State of New York.

## C. INSURANCE REQUIREMENTS

### 1. Insurance Conditions

The Permittee must procure prior to commencement of the Permit, and maintain in full force and effect until the Permit is terminated and all work performed thereunder is completed to the satisfaction of the Authority, insurance of the kinds and in the amounts specified herein, covering all operations under the Permit, whether performed by the Permittee, or its contractor or subcontractors, in accordance with the following conditions:

- a. All insurance required by the Permit shall be obtained at the sole cost and expense of the Permittee.
- b. All insurance required by the Permit shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Authority, with an A.M. Best rating of "A-" or better. The Authority may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Authority to accept insurance placed with a non-authorized carrier under any circumstances.
- c. All insurance required by the Permit shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.
- d. The Permittee shall require that any approved contractors and subcontractors carry insurance with the same limits and provisions set forth herein except for the Owners/Contractors Protective Liability Policy, if required.
- e. The Permittee shall furnish the Authority with Certificate(s) of Insurance on ACORD Form 25, accompanied by the Authority's Supplemental Insurance Certificate (TA-W51343-9), for each insurance carrier involved. Such Certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with Authority insurance requirements set forth herein. The Permittee shall furnish the Authority with a copy of every Endorsement required herein. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board forms as listed in Sections 2. d. and e. below.

- f. All policies, by specific Endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by mail to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
- g. If insurance policies utilized for Authority projects contain Deductibles or Self-Insured Retentions (SIRs), they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Insurance policies with deductibles in excess of \$50,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority.
- h. Insurance policies with Self-Insured Retentions (SIRs) must receive prior approval by the Authority. All applications for SIR approval must be submitted to the Authority's Office of Investments and Asset Management, indicate whether the program is administered by a third party, and contain a complete description of the program. SIR programs in excess of \$50,000 must be administered by a third party administrator and must also meet additional security requirements. The Authority at its sole discretion reserves the right to require the Permittee to provide additional collateral or to reject the use of a SIR by the Permittee. The Permittee will be solely responsible for all claims, expenses and loss payments within the retention limit.
- i. The Permittee shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Authority, within twenty (20) days of such request.
- j. Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Permittee's obligation to maintain such insurance.
- k. Failure to maintain the required insurance and provide proof of such coverage to the Authority may, in the Authority's sole discretion, result in termination of this Permit.
- l. At least two weeks prior to the expiration of any policy required by this Permit, evidence of renewal or replacement policies of insurance with terms no less favorable to the Authority than the required minimum amounts set forth in Standard Insurance Limits – Work & Occupancy Permits (TAP-526) shall be delivered to the Authority in the manner required for service of notice in Paragraph C.1.f. above.

- m. If, at any time during the term of this Permit, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Permit or proof thereof is not provided to the Authority, the Permittee shall immediately cease work. The Permittee shall not resume work until authorized to do so by the Authority. Any delay, time lost, or additional cost incurred as a result of the Permittee not having insurance required by the Permit or not providing proof of same in a form acceptable to the Authority, shall not give rise to a delay claim or any other claim against the Authority.
- n. By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect the Permittee, and such coverages and limits shall not be deemed a limitation on the Permittee's liability under the indemnities granted to the Authority under any provision of the Permit or these Guidelines.
- o. The Permittee and its contractors and subcontractors shall waive all rights against the Authority and its agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, Business Auto Policy, and Umbrella policy, as required.
- p. Subject to Authority approval, the Permittee may elect to self-insure the CGL and Umbrella coverage, provided evidence of tangible net worth in a sufficient amount is provided to the Authority. The approval of a Permittee's request to self-insure is in the Authority's sole discretion. If self-insurance is approved, all of the provisions of the Permit relating to or affected by insurance required to be maintained by the Permittee shall apply as if the Permittee had in fact maintained policies of insurance in lieu of self-insurance, including, without limitation, benefits, if any, available to additional insureds. The Authority shall receive the same coverage and protection under the Permittee's self-insurance as if it were named as an additional insured under the policies required pursuant to this section. The Permittee waives all subrogation rights under such self-insurance to the same extent such waiver is required under third party insurance. **Please note that generally the Authority approves only governmental agencies and utility companies for self-insurance.**
- q. The Permittee shall provide a copy of the Authority Insurance Requirements to its insurance producer(s) and insurance carrier(s).

## 2. Coverages

The types of insurance required by the Authority are described below. The required minimum amounts of these insurances are set forth in Standard Insurance Limits – Work & Occupancy Permit (TAP-526) which is available from the Division Permit Coordinator. Additional coverage may be required based on the type and extent of the Permit.

a. **Commercial General Liability Insurance** - The Permittee shall maintain Commercial General Liability (CGL) Insurance with the following coverages:

- Each Occurrence Limit (see TAP-526)
- General Aggregate (see TAP-526)
- Products/Completed Operations (same as Aggregate Limit)
- Personal/Advertising Injury Liability (same as Occurrence Limit)
- Fire Damage Legal Liability (\$100,000)
- Medical Expense (\$5,000)

CGL Insurance shall cover liability arising from the Premises operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability.

b. **Commercial Umbrella Liability Insurance** - If the Permittee maintains Commercial Umbrella Insurance (Umbrella), it must be on a “follow form” basis.

The Authority shall be included as an Additional Insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent, under the CGL, business auto and the Umbrella policies, as required.

c. **Business Auto Liability Insurance** - If a motor vehicle is used during the performance of work under the Permit, the Permittee shall maintain Business Automobile Liability coverage which shall cover liability arising out of Permittee’s use of any motor vehicle, whether owned, leased, hired, or non-owned. The amount of coverage is listed in TAP-526.

If the Permit involves the removal of hazardous waste or environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

d. **Workers’ Compensation & NYS Disability Benefits Insurance** - The Permit shall be void and of no force and effect unless the Permittee shall provide and maintain coverage during the life of the Permit for the benefit of such employees as are required to be covered by the Workers’ Compensation/Disability Benefits Law.

If the Permit involves work on or near a shoreline, a U.S. Longshore and Harborworkers' Compensation Act Endorsement must be provided. The Maritime Coverage Endorsement, on an "if any" basis, shall be attached to the policy.

The Permittee must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision. Evidence of Workers' Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- C-105.2 – Certificate of Workers' Compensation Insurance
- U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance

e. **NYS Disability Benefits Insurance** - Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law
- DB-155 – Certificate of Disability Self Insurance
- CE-200 – Certificate of Attestation of Exemption (This form will only be accepted as evidence of an exemption from providing Disability Benefits.)

f. **Railroad Protective Liability Insurance** - In the event that any work to be performed under the Permit involves railroad property or right-of-way, the Permittee shall provide and maintain Railroad Protective Liability coverage in the amounts required by the respective railroad.

## D. SURETY/BOND REQUIREMENTS

1. The Authority reserves the right to require the Permittee, as well as its contractors and/or sub-contractors, to furnish the following Surety or Bonds at the Permittee's sole expense:
  - a. **Surety Deposit** - A cash deposit which ensures that all expenses incurred by the Authority in relation to the Permit including, but not limited to, traffic control, engineering, inspections, restoration of property, etc., are reimbursed by the Permittee. The Authority will determine the amount of

the Surety Deposit and will indicate that amount on the approved Permit Application; or,

- b. **Performance/Restoration Bond** - Covering the faithful performance of the Permittee. The Performance/Restoration Bond shall be in the amount established by the Authority which amount will be indicated on the approved Permit Application.
  - If Bonds are provided, the Bonds shall be written by Sureties that are:
    - > licensed to provide surety bonds in New York State;
    - > on the U.S. Treasury Department List of Approved Sureties; and,
    - > otherwise acceptable to the Authority.
  - The Permittee shall pay the premiums for the Bonds, with the Authority listed at the Obligee.
  - The Bonds shall be dated no later than the date of issuance of the Permit. The Bonds shall be delivered to the Division Permit Coordinator. No work or occupancy shall commence until the Authority has accepted the Bonds.
  - Executed original Power of Attorney, Surety and Corporate Acknowledgement forms, and the Surety's most recent financial statement shall accompany the Bonds.
  - The Permittee shall provide a copy of the Authority Bond Requirements to its insurance producer(s) and insurance carrier(s).
2. The Authority reserves the right to hold Surety Deposits and/or Performance/Restoration Bonds until such time that the Authority determines that all work has been completed, the Authority expenses incurred have been reimbursed, and all disturbed areas within the Premises have been restored to their original condition. If the Authority determines the Surety Deposit to be excessive, any unused monies will be returned by the Authority to the Permittee.
3. The amount of the Surety Deposit/Performance/Restoration Bond shall in no way limit the Permittee's obligations imposed by these Guidelines and the Permit.