



TOURIST RAIL BIKE PERMIT

THIS PERMIT (the “Permit”) is issued by the **COUNTY OF ULSTER**, a municipal corporation and a county of the State of New York, with principal offices at 244 Fair Street, Kingston, New York 12401 (the “**County**”), to the **RAIL EXPLORERS CORPORATION**, a Delaware corporation licensed to do business in the State of New York, with offices at 42 Depot Street, Saranac Lake, New York 12983 (the “**Permittee**”).

RECITALS

WHEREAS, the County owns approximately 38.6-miles of the Ulster & Delaware Railroad Corridor (“U&D Corridor”) running from the City of Kingston to the County border at Highmount in the Town of Shandaken; and

WHEREAS, the Ulster County Legislature adopted Resolution No. 488 of 2015 which delineated two segments (“Eastern Segment” and “Western Segment”) of the U&D Corridor for future tourist rail operations following the expiration of a long-term lease on the entire U&D Corridor, and required the County to release a Request for Proposals (“RFP”) within ninety (90) days of the effective date of the Resolution; and

WHEREAS, the County’s Department of Purchasing released *RFP UC16-033: Tourist Railroad Operator(s) for Ulster & Delaware Railroad* pursuant to the above-mentioned Legislative policy within said timeframe, and after consideration and review of the received proposals and subsequent interviews with said proposers, the Permittee was selected as the future tourist railroad operator for the Western Segment of the U&D Corridor for operations beginning on or after January 1, 2017; and

WHEREAS, the Permittee desires to use and occupy the Western Segment to operate tourist rail-based bicycle (“rail bike”) excursions starting in 2017 as set forth below; and whereas the County desires to issue a Permit to the Permittee to operate such tourist rail bike excursions under the terms and conditions as set forth below in this Permit.

NOW, THEREFORE, the County hereby grants this Permit to the Permittee, subject to the following covenants and conditions.

ARTICLE 1

GRANT OF PERMIT; DESCRIPTION OF PROPERTY

1.1. GRANT. The County hereby grants to Permittee, and Permittee hereby accepts from the County, a non-exclusive, non-assignable Permit subject to the covenants, limitations and conditions set forth herein for the sole use, occupancy and operation of tourist rail bike excursions.

1.2 DESCRIPTION OF PROPERTY COVERED BY THE PERMIT. The property subject to this Permit, also known as a portion of the “Western Segment” of the U&D Corridor, shall extend approximately 6.2 miles from Route 28A (approximately Milepost 21.6) in Boiceville in the Town of Olive to the east side of Bridge Street in Phoenicia (approximately Milepost 27.8) in the Town of Shandaken. The property shall also include rails, ties, other track materials (“OTM”), sidings, switches, ballast materials, supporting embankment/substructure, drainage ditches and swales, culverts, railroad grade crossings, mile markers, signage, passenger loading platforms, ticket booths, parking facilities, and other structures necessary for or related to tourism railroad operations and maintenance (“the Property”). A more detailed description of the Property is set forth in the annexed Schedule “A” to this Permit.

ARTICLE 2
CONDITION AND LIMITATION; RESTRICTIONS OF USE

2.1 PROPERTY PERMIT IN AS IS CONDITION. THE PROPERTY IS PROVIDED IN “AS IS” CONDITION AND SUBJECT TO ANY COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS-OF-WAY, OR OTHER EASEMENTS OR AGREEMENTS EXISTING IN OR AFFECTING THE TITLE TO THE PROPERTY AS AND WHEN ACQUIRED BY THE COUNTY AND AS SUBSEQUENTLY CAUSED BY THE COUNTY.

2.2 LIMITATION OF USE UNDER PERMIT. The Permit granted to Permittee shall be used for the sole purpose of operating tourist rail bike excursions on the Property and for no other purposes whatsoever, (the “Permitted Uses”).

2.3 RESTRICTIONS ON PERMITTEE’S USE OF THE PROPERTY. The following restrictions on the Permittee’s use shall apply:

- i. The Permittee’s use of the Property shall be for the Permitted Uses which shall include ticket sales, merchandise sales, food concessions, maintenance, repair and rehabilitation of equipment, and other activities directly related to the operations of tourist rail bike excursions;
- ii. The Permittee understands and agrees that the rail bike excursions are to operate under all applicable Federal Railroad Administration (“FRA”) Rules and Regulations, if any such rules are applicable to the operations of the Permittee, or become applicable anytime during the period covered by the Permit. The operation is to have the status of a tourist excursion ride, and no railroad train services will be operated nor will the operation be considered a common carrier service;
- iii. The Permittee shall not use or permit others to use the Property for any freight, passenger, tourism or other train operations, nor shall the Permittee seek any regulatory approval to conduct freight, passenger or tourism train service without the express written and prior consent of the County;
- iv. The Permittee shall not erect or place or allow to be erected or placed upon the Property, any buildings, structures, fixtures, equipment, material, or obstructions of any kind, either temporary or permanent, without the express prior written consent of the County;

- v. The Permittee shall not conduct on the Property any uses or commercial concessions unrelated to the Permitted Uses without the express prior written consent of the County, except as provided above in subparagraph 2.3 (i) of this Permit;
- vi. Permittee shall not place or store, or allow others to place or store, within the Property any of the following: any flammable, explosive, hazardous, toxic, or corrosive materials except fuel kept in the fuel tanks of legally parked vehicles or material otherwise necessary for operation and maintenance, including, but not limited to fuel tanks for operation of maintenance or transport equipment providing that the fuel tanks have secondary containment; debris of any description; and/or waste, garbage, litter or any material commonly referred to as "junk." Permittee is responsible for keeping and maintaining the Property in a safe, orderly and clean condition, and for the regular and prompt removal of all waste, debris, clutter, garbage, rubbish, and litter. The Permittee shall notify and document to the County any new suspected encroachments on the Property or damages suspected to be caused by the Permittee or any other parties.
- vii. The Permittee shall not alter and/or improve any part of the Property, including construction or installation of supporting facilities, structures, signage (except such signage as is requested by the FRA and/or the New York State Department of Transportation) and replacement of culverts without the express permission and prior written consent of the County.
- viii. The Permittee shall comply with all local and State building standards/codes and local and State permitting requirements for any installation or repair of any utilities and/or support facilities.
- ix. The Permittee shall not, without first obtaining the express prior written consent of the County: remove any mature trees (greater than 5 inches at DBH) outside of ten (10) feet from the centerline of the rails (unless the trees interfere with the operations contemplated by this Permit; e.g., leaning trees); install sidings or track spurs; install any new passenger loading facilities; conduct any excavation of rock or embankment; conduct any removal or replacement of culvert structures; nor conduct any other activities that significantly alter the Property or impact surrounding properties. The County shall have no responsibility for the loss or destruction of any improvements made by the Permittee or for the personal property stored or being used on the Property.
- x. The use of herbicides and pesticides is prohibited on County-owned property, as per Chapter 284, Article II of the Ulster County Code, including the Property under this Permit, and the Permittee shall not use other herbicides, pesticides, and/or other materials, such as salt, chemicals or other toxic materials, to control vegetation unless granted a written waiver by the County. The Permittee shall conduct regular mechanical control of vegetation on and along the entire Property, including any unused sections of the Property.
- xi. The Permittee shall not store any discarded railroad ties or other materials on the Property for more than thirty (30) days, and the Permittee shall dispose of waste or discarded ties and/or timbers according to applicable Regulations, and retain documentation of said disposal.
- xii. The Permittee shall not cause, or allow others to cause, any pollution, hazardous materials, solid waste, sewage, chemicals, or wastewater of any kind to be deposited

or otherwise released to the environment on any part of the Property. In the event of a release, the Permittee must follow any and all regulatory reporting requirements including but not limited to the New York State Department of Conservation Chemical and Petroleum Spill requirements. The Permittee shall additionally notify the County in the event of any spill or release.

- xiii. The Permittee shall install and maintain all necessary facilities, engineering controls and best management practices to contain possible spills of fuel, hydraulic fluids, oils, lubricants, and other materials used for maintenance and operation of equipment and ensure proper, secure storage of any such materials, and proper labeling and handling of those materials.

ARTICLE 3

RESERVATION OF RIGHTS BY COUNTY

3.1 COUNTY PROPERTY USE RESERVATION. The County shall at all times have the right to construct and /or maintain and to permit others to construct and/or maintain in, over, under and or along the Property; i) any road, bridge, and/or supporting structures and ii) any snowmobile, bicycle and/or hiking or walking trails and/or paths and/or crossings; iii) any overhead and/or underground pipes, conduits, cables, including fiber optic cables, wires, water pipes, sewer pipes lines and/or utilities of any kind or nature, now or hereafter installed in, upon, under, or across the Property, and to use, repair and remove the same. The County further reserves the right to grant public access for recreational or other activities on or across any part or all of the Property as long as such access does not interfere with the Permitted Uses of the Property by the Permittee. Such determination shall be at the sole discretion of the County. All rights not expressly granted to the Permittee are reserved by the County.

3.2 RIGHT OF FIRST REFUSAL. If during the term of the Permit the Permittee obtains any property interest whatsoever adjoining the Property that is the subject of this Permit, the County shall have a right of first refusal to purchase such property interest upon the expiration or revocation of the Permit. If the County exercises such right of first refusal, it shall purchase such property at the cost paid for by the Permittee plus the cost of all improvements or, if an agreement about such cost cannot be reached between the County and the Permittee, the purchase price shall be determined by the average of three (3) independent appraisers to be selected by the County and paid for by the County.

ARTICLE 4

TERM OF PERMIT

4.1 TERM. This Permit shall be effective January 1, 2017 and end December 31, 2021.

ARTICLE 5
ANNUAL USE FEE

5.1 ANNUAL USE FEE. In addition to all other obligations, costs, liabilities, expenses etc. assumed in this Permit by the Permittee, the Permittee shall pay the County an Annual Use Fee for use and occupancy of the Property, which shall be payable in six equal installments on May 1, June 1, July 1, August 1, September 1, and October 1 of each Permit year. The following schedule details the annual Use Fee amounts and payment schedule for each year of the Permit:

- i. **2017:** The Annual Use Fee for 2017 shall be **TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS** to be paid in six equal installments of Three Thousand Three Hundred Thirty-Four and 00/100 (\$3,334.00) Dollars;
- ii. **2018:** The Annual Use Fee for 2018 shall be **TWENTY-TWO THOUSAND AND 00/100 (\$22,000.00) DOLLARS** to be paid in six equal installments of Three Thousand Six Hundred Sixty-Six and 00/100 (\$3,666.00) Dollars;
- iii. **2019:** The Annual Use Fee for 2019 shall be **TWENTY-FOUR THOUSAND, TWO HUNDRED, SIXTEEN AND 00/100 (\$24,216.00) DOLLARS** to be paid in six equal installments of Four Thousand Thirty-Six and 00/100 (\$4,036.00) Dollars;
- iv. **2020:** The Annual Use Fee for 2020 shall be **TWENTY-SIX THOUSAND, SIX HUNDRED, FORTY AND 00/100 (\$26,640.00) DOLLARS** to be paid in six equal installments of Four Thousand Four Hundred Forty and 00/100 (\$4,440.00) Dollars;
- v. **2021:** The Annual Use Fee for 2021 shall be **TWENTY-NINE THOUSAND, THREE HUNDRED, FOUR AND 00/100 (\$29,304.00) DOLLARS** to be paid in six equal installments of Four Thousand ~~Four~~ ^{Eight} Hundred Eighty-Four and 00/100 (4,484.00) Dollars.

5.2 SECURITY DEPOSIT. Within thirty (30) days of the issuance of this Permit as acknowledged by its execution by the Permittee, the Permittee shall pay a sum of **Ten Thousand and 00/100 Dollars (\$10,000.00)** made payable to the County of Ulster as Security Deposit for use and occupancy of the Property ("Security Deposit"). This Security Deposit shall be held by the County's Commissioner of Finance in a non-interest bearing account and returned at the end of the term of this Permit if the Permittee complies with all provisions and conditions of this Permit. The County may use some or all of the Security Deposit to address and remedy issues or in instances of Failure to Perform as described further in this Permit. In the event that the County uses some or all of the Security Deposit to address and remedy issues, the Permittee shall provide payment within thirty (30) days of notification by the County to restore the Security Deposit to the full amount of **Ten Thousand and 00/100 (\$10,000.00) Dollars** or the County may suspend or revoke the Permit.

5.3 ADDRESS FOR PAYMENT. All payments of Annual Use Fee and Security Deposit must be paid by bank check, cashier's check or money order payable to the Ulster County Commissioner of Finance, PO Box 1800, Kingston, New York 12402.

5.4 NO OTHER AGENCY. The County has no knowledge of any other agencies such as,

but not limited to local, State, Federal, private or corporate entities or agencies that have authority to subject the Permittee to additional use or occupancy fees.

ARTICLE 6
MAINTENANCE, REPAIR AND INSPECTION RESPONSIBILITIES AND
OBLIGATIONS OF PERMITTEE

6.1 PERMITTEE'S GENERAL MAINTAINANCE, REPAIR AND INSPECTION DUTIES. The Permittee, subject to the terms and conditions of this Permit, and at no cost to the County shall be responsible for the following:

- i. Removal of all woody debris, plant material, fallen rocks, sediment, and other waste that blocks or impairs the functioning of existing drainage structures, including ditches, swales and culverts;
- ii. Chipping and/or removal and proper disposal from the Property of all fallen trees and large branches blocking or encroaching upon the tracks or drainage facilities and shall not allow anything to obstruct or compromise the drainage facilities. Under no circumstances shall chipped or cut material be placed in wetlands and/or adjacent waterways;
- iii. No burning of any debris or materials, including woody debris, at any time on the Property;
- iv. Maintaining in good repair, all ancillary structures, including but not limited to, ticket booths, maintenance structures, loading platforms, fencing, signage, and parking facilities so that they do not become unsightly or degraded;
- v. All arrangements for services, including but not limited to utilities, sanitation, and removal of garbage, debris, brush, weeds, trees, woody debris, rubbish, litter, snow and ice shall be made by the Permittee at the Permittee's expense. The County shall have no responsibility to provide any services;
- vi. Maintaining the entire Property in a neat and clean manner and addressing any unsafe, hazardous, nuisance or unsightly conditions, including but not limited to, graffiti , vandalism, overgrowth of vegetation, obstruction by fallen trees and branches, storage of waste or refuse, storage of any trains or inoperable rail equipment, degradation of road crossings, deterioration of supporting facilities, and/or presence of other potential nuisances or hazards to the adjoining properties or the general public;
- viii. Maintaining the Property in compliance with any and all applicable local, county, state, and federal laws, ordinances, codes, rules, and regulations ("Regulations") affecting the maintenance and use of the Property and operation of the rail bikes and equipment. Permittee shall not conduct or allow any use or activity on the Property inconsistent with any Regulations and shall not conduct or allow any use or activity on the Property which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval;
- ix. All costs of testing and cleanup for any fuel spills or chemical contamination caused by the Permittee on the Property.

6.2 MAINTENANCE OF THE PROPERTY. The Permittee shall maintain the Property for safe and legal operation of tourist rail bikes. Such maintenance shall include, but is not

limited to, maintenance and clearance of existing drainage facilities, upkeep of the ballast and underlying railroad embankment, vegetative control, maintenance of vertical and horizontal clearances, tie replacement, and joint defect repairs.

6.3 INSPECTIONS BY PERMITTEE. The Permittee shall perform regular on-site inspections of the Property used for tourist rail bike excursions and provide documentation of such inspections to the County's Commissioner of Public Works upon request. The Permittee shall also be responsible for regular safety inspections all of equipment used to support the operation and maintenance of the tourist rail bike excursions and provide documentation of such inspections to the County's Commissioner of Public Works upon request. The Commissioner of Public Works shall determine the form and type of documentation that is acceptable. The County may periodically inspect the Property to ensure the same is in good repair and maintenance, and structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist.

ARTICLE 7 **ADDITIONAL DUTIES AND RESPONSIBILITIES OF PERMITTEE**

7.1 NO ADVERSE IMPACT TO COUNTY AND GENERAL PUBLIC. The Permittee shall conduct all operations on the Property in a manner that does not adversely impact the County, the general public, adjacent property owners, or the host communities. As such, the Permittee shall be charged with the following duties and responsibilities which shall include, but not be limited to the following:

- i. Avoiding excessive idling of motorized vehicles and equipment;
- ii. Reducing or avoiding emission of pollutants where possible;
- iii. Prohibiting operation of loud equipment or activities prior to 7 a.m. or after 9 p.m., containing any amplified music and/or other sounds so that it does not impact adjacent properties; Removing in a timely manner all litter and waste whether or not produced by the Permittee or any other party;
- iv. Removing all evidence of vandalism, including but not limited to any form of graffiti on the Property;
- v. Reporting any complaints concerning its operations to the County in a timely manner.

7.2 USE OF OWN EQUIPMENT. The Permittee shall perform the Permitted Uses with its own equipment and facilities wherever and whenever possible.

7.3 USE OF QUALIFIED PERSONNEL. In undertaking the Permitted Uses, the Permittee shall assign only qualified personnel who shall perform all operations in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a tourist rail bike excursion operator.

7.4 COMPLIANCE WITH ALL LAWS. The Permittee shall at all times comply with all applicable local, county, state, federal laws, ordinances, statutes, rules and regulations. This shall include, but is not limited to: the Americans with Disabilities Act ("ADA"), Occupational Safety

and Health Administration (“OSHA”), and any and all environmental laws, regulations, and statutes. Permittee shall operate all food and drink concessions in accordance with all applicable state and local regulations and laws.

7.5 FEDERAL RAILROAD ADMINISTRATION AND NEW YORK STATE DEPARTMENT OF TRANSPORTATION COMPLIANCE. The Permittee understands and agrees that the tourist rail bike excursions are to operate and be maintained and inspected under all applicable Federal Railroad Administration (“FRA”) Rules and Regulations and all applicable New York State Department of Transportation (“NYSDOT”) rules and regulations, if any such rules and regulations are now applicable or become applicable in the future. Permittee shall be responsible for any required FRA inspections and reports required of the County as owner of the Property. Rail bikes and all other vehicles and equipment used on the Property must be inspected by a qualified, competent, certified inspector and in accordance with industry standards, or any FRA or NYSDOT standards, if applicable.

ARTICLE 8 **COUNTY’S OBLIGATIONS**

8.1 DISASTER REPAIRS. The County shall only be responsible for the repair of significant damages to the Property caused by federal or State declared disaster events such as named storm or hurricane events or other catastrophic incidents and such repairs shall be made at County’s convenience. The County shall make its best effort to repair, by the opening of the June 2017 Permittee’s season, three areas of the Property that have been damaged by past storm events, which are at or near Milepost 23.3 and Milepost 22.6 in the Town of Shandaken and Milepost 21.9 in the Town of Olive.

8.2 NO DUTY TO REPAIR BY COUNTY. The County does not owe a duty to the Permittee to repair the Property, and the only recourse available to the Permittee if the County does not repair the Property in a timely manner is a reasonable recalculation of the Annual Use Fee at a per diem basis.

8.3 INSPECTION BY COUNTY. The County shall have the right for its employees, consultants, contractors and agents to enter the Property at any time necessary for the purpose of inspection, assessment of compliance, remedy of sustained performance failure, survey, or any other purpose deemed necessary by the County to protect the Property, the County, and the public.

ARTICLE 9 **SAFETY OBLIGATIONS OF PERMITTEE**

9.1 CREATION OF SAFETY MANUAL/WORK RULES. The Permittee agrees to establish, document and enforce rules and protocols to protect the safety of its employees and volunteers and the public in all activities related to this Permit (“Safety Manual/ Work Rules”), which shall be provided to the County as detailed below. The Safety Manual/Work Rules shall be in compliance with all federal, State, and local rules and regulations, including those pursuant

to the Occupational Safety and Health Administration (“OSHA”). The Safety Manual/ Work Rules shall include mandatory training requirements for all officers, employees and volunteers (if any) as well as prohibitions on the use of alcohol and drugs by employees, contractors, and volunteers during any operation or maintenance activities, including on breaks. The Permittee agrees to establish policies to require that no persons performing maintenance or allowed on the Property for operational or maintenance activities are under the influence the alcohol or drugs. **A copy of the Permittee’s Safety Manual/ Work Rules shall be provided to the County within thirty (30) days of execution of this Permit, and the Permittee shall notify the County of any revisions or additions during the remainder of the Term of this Permit.**

9.2 STOP AND FLAG OPERATIONS. The Permittee shall operate all rail bikes and equipment in a safe manner at all times. The Permittee shall operate under “Stop and Flag” procedures in which the rail bike excursions will stop in advance of all road crossings lacking protected crossing gates and signage until a flag person has flagged the traffic to a stop in both directions, in compliance with all applicable state and federal regulations. Flag persons shall wear high visibility vests and be supplied with and trained in using flags and other hand equipment, such as lights or flares. Flag persons shall be stationed at the crossing and remain in position until the train has cleared the crossing.

ARTICLE 10
TAXES, LICENSES AND FEES

10.1 PERMITTEE RESPONSIBLE FOR TAXES, LICENSES AND FEES. The Permittee shall be responsible for reporting and paying all taxes, licenses and fees, including:

- i. All required local, county, state, and federal taxes, including but not limited to any local property taxes, federal and state income taxes, Social Security and Medicare taxes, and sales taxes. If the County is required to pay any local property taxes on the Property and the County pays such taxes, then the Permittee shall fully reimburse the County for such tax payments within thirty (30) days after notice has been given to the Permittee by the County.
- ii. Any and all fees for required local or state permits; inspections by federal or State officials; or other governmental fees necessary to the safe and legal operation of a tourism railroad;
- iii. Any other fees or assessments associated with all licenses and/or certifications, governmental or otherwise, which may apply and be required for the Permitted Uses or related activities.

ARTICLE 11
TYPE OF AGREEMENT

11.1 NO LEASE OR LICENSE CREATED. The Permittee acknowledge that this instrument is not a lease or a license but is merely a non-exclusive, non-assignable limited Permit to occupy and use the Property for the Permitted Uses only. The Permittee further acknowledges and understands that:

- i. NO LANDLORD-TENANT RELATIONSHIP. A landlord-tenant relationship has not been hereby created; and further, that since this is a Permit and not a lease, Section 5-321 of the General Obligations Law does not apply to this Permit to the extent permitted by law;
- ii. NO RELOCATION BENEFITS; NO PRE-EMPTIVE RIGHTS. The Permittee shall not be entitled to any relocation benefits provided under State and federal law. The Permittee agrees and understands that the County is under no obligation to sell the Property to the Permittee and that no commitment, express or implied, is made by the County to give the Permittee any preemptive right of purchase;
- iii. COUNTY RETAINED RIGHTS. Notwithstanding the Reservation of Rights retained by the County and as set forth in Article 3 of this Permit, the County retains the right to confer common carrier status along the Property to another entity during the Term of this Permit. The County also retains the right to assess, plan, survey and/or construct a public recreational trail on the Property if deemed feasible and desired by the County;
- iv. NO INTERFERENCE. This Permit does not interfere with, supersede, or revoke any other easements, permits or crossings that the County has or may grant in the future with other parties in relation to the Property.

ARTICLE 12

REVOCATION; FAILURE TO PERFORM; REMEDIES

12.1 REVOCATION BY THE COUNTY/ TERMINATION BY THE PERMITTEE. This Permit may be revoked by the County as follows:

- i. The County may, upon sixty (60) days written notice to the Permittee, revoke this Permit in whole or in part at any time for the County's convenience. If the County revokes this Permit for convenience, it will reimburse Permittee for any capital improvements made to the property, less depreciation. Permittee shall provide the County on a quarterly basis, an itemized list together with supporting financial documentation, of any and all capital improvements made to the Property.;
- ii. The County may suspend and/or revoke this Permit immediately without notice if the Permittee becomes unable to pay its debts when due, or makes any assignment for the benefit of creditors, or files any petition under the bankruptcy or insolvency laws of any jurisdiction, or has a receiver or trustee appointed for its business or be adjudicated a bankrupt or insolvent.
- iii. The County may suspend and/or revoke this Permit immediately without notice if the Permittee violates the Permit in any manner that endangers or threatens the safety and security of the Property, the County or the general public.
- iv. The County may suspend and/or revoke this Permit immediately without notice if the Permittee conducts any operation or activity whatsoever, including but not limited to passenger and maintenance operations, on County railroad property outside of the Property without the express prior written consent of the County.
- v. The County may suspend and/or revoke this Permit immediately without notice if the Permittee fails to carry insurance as required in Schedule "B" to this Permit.
- vi. The County may also, upon reasonable notice given to the Permittee, revoke this Permit for other just cause as determined by the County to be in the best interest of the County.

vii. The Permittee may terminate this Permit upon sixty (60) days' notice to the County.

12.2 FAILURE TO PERFORM BY PERMITTEE. The occurrence of any one or more of the following acts, events or occurrence shall constitute a "Failure to Perform" under this Permit which may result in corrective action taken by the County and/or suspension or revocation of the Permit:

- i. Failure to pay any amounts when due, if the failure continues for ten (10) days after notice has been given to the Permittee by the County;
- ii. Abandonment and vacation of the Property for which the Permittee has received a Permit hereunder;
- iii. With the exception of Article 12.1 (ii) to (v) which shall result in immediate suspension or revocation, the failure by the Permittee to perform any of its obligations or maintain compliance under this Permit may constitute an event whereby the County may suspend or revoke the Permit, at which time the County shall notify the Permittee, in writing, of such Failure to Perform. With the exception of Section 12.2 (i) of this Article, which requires ten (10) days to cure, the Permittee shall have ten (10) days to respond to the notice of a Failure to Perform and up to thirty (30) days after notice has been given to take action to fully remedy the subject of the notice and document said remedy. If the Permittee does not address the notice or remedy the subject of the notice within thirty (30) days, the County may suspend or revoke the permit without further notice;

12.3 NO LIABILITY OF COUNTY. The County shall not be liable or have any responsibility whatsoever for the cancellation or postponement of any of Permittee's scheduled or non- scheduled tourist rail bike excursions, nor shall the County assume any liability or responsibility whatsoever for refunding any pre-paid tickets or other expenses in the event that the Permit is suspended or revoked for Permittee's failure to perform or comply with the terms and conditions of this Permit.

ARTICLE 13

EFFECT OF REVOCATION OR EXPIRATION OF PERMIT; RIGHTS AND REMEDIES OF COUNTY UPON REVOCATION

13.1 CLOSEOUT PROCEDURES. Upon revocation by the County, termination by the Permittee, or the natural expiration of this Permit, the Permittee shall comply with any and all County closeout procedures, including but not limited to:

- i. Removal of all Permittee's property and equipment no later than thirty (30) days following the revocation, termination or expiration of the Permit; and
- ii. In the event that this Permit is revoked for convenience or just cause of the County, the Permittee shall pay a partial, pro-rated Annual Use Fee calculated by the amount of days that have lapsed during the year subtracting any installments payment to date of revocation.

13.2 RIGHTS AND REMEDIES OF COUNTY. Upon the Permittee's failure to perform as set forth above in Article 12.2 of this Permit, or any other act or failure to act by Permittee as required elsewhere in this Permit and which results in the County suspending and/or revoking the

Permit, then the County may take any action available to it in law or in equity to pursue damages against the Permittee and/or obtain other relief. By electing a particular remedy, the County shall not be deemed to have excluded any other remedy or be limited to the remedy selected.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES OF PERMITTEE

14.1 GENERAL REPRESENTATIONS AND WARRANTIES. The Permittee represents, warrants, and covenants that, as of the date of execution of this Permit:

- i. **DULY ORGANIZED.** Permittee is a corporation, duly organized, validly existing and in good standing under the laws of the State of New York;
- ii. **DULY AUTHORIZED.** The execution, delivery and performance of this Permit have been authorized by the necessary corporate action on the part of the Permittee;
- iii. **NO PENDING ACTION.** There is no pending action, or to its knowledge, threatened claim, action or demand against Permittee.

14.2 CONFLICT OF INTEREST. The Permittee represents and warrants that:

- i. The acceptance by Permittee of this Permit will not conflict with any agreement to which Permittee is a party or by which it is bound;
- ii. Neither it, nor any of its directors, officers, members, partners or employees, have any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of this Permit;
- iii. In the performance of the Permitted Uses, no person having a conflicting interest shall be employed by it, and that no elected official or other officer or employee of the County, nor any person whose salary is payable, in whole or in part, by the County, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested, shall have any such interest, direct or indirect, in this Permit, or in the proceeds thereof, unless such person:
 - (a) is required by the Ulster County Ethics Law, as amended from time to time, to submit a disclosure form to the County's Board of Ethics, and amends such disclosure form to include their interest in this Permit; or
 - (b) if not required to complete and submit such a disclosure form, either voluntarily completes and submits said disclosure form, disclosing their interest in this Permit, or seeks a formal opinion from the County's Board of Ethics, as to whether or not a conflict of interest exists.

14.3 DEBARRMENT. Permittee represents, warrants and attest that neither it nor any of its employees, agents, representatives, officers, subcontractors, or any other entity or individual performing the uses pursuant to this Permit has been sanctioned, excluded, or in any other manner barred from doing business with any federal, state, county, or local agency, municipality, or department. If Permittee or any of its officers, employees, subcontractors, or agents become excluded or barred in any manner from doing business with any federal, state, county, or local agency, municipality, or department during the Term of this Permit, the Permittee agrees to provide immediate and detailed notice to the Ulster County Attorney regarding such status. Any

misrepresentation or false statement related to Permittee's status in this regard, or any failure by Permittee to immediately notify the Ulster County Attorney of any change in such status shall result in the suspension and/or revocation of this Permit, in addition to such other remedies as may be provided by law, in equity, or pursuant to this Permit.

14.4 SUBMITTAL OF FALSE INFORMATION. The County from time to time may be required to submit to governmental agencies and/or authorities, or to a court of law, part or all of the data, analyses and/or conclusions developed as a result of the Permittee's performance of the Permitted Uses. As such, the Permittee represents that it is aware that there may be significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. The Permittee shall be responsible for such penalties arising from false information submitted to the County by the Permittee.

ARTICLE 15 **INDEPENDENT CONTRACTOR**

15.1 The Permittee shall operate as and have the status of an independent contractor, and shall not act as or be an agent of the County. As an independent contractor, the Permittee shall be solely responsible for determining the means and methods of performing the Permitted Uses and shall have complete charge and responsibility for the Permittee's personnel engaged in the performance of the same. In accordance with such status as independent contractor, the Permittee covenants and agrees that neither it, nor its employees or agents, shall hold themselves out as, nor claim to be, officers or employees of the County, or of any department, agency or unit thereof, by reason hereof, and that the Permittee's employees or agents shall not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

ARTICLE 16 **SUBCONTRACTING; NON-ASSIGNMENT**

16.1 NO SUBCONTRACT. The obligations of the Permittee hereunder this Permit are not delegable without the express written consent of the County. The Permittee shall not subcontract for the performance of the Permitted Uses or any service, task, term or obligation hereunder except as authorized herein or where expressly agreed to in writing by the County.

16.2 NO ASSIGNMENT. The Permittee shall not assign or transfer this Permit, nor shall the Permittee sell, lease, or convey any of its rights, duties, responsibilities or obligations under this Permit. The assignment, or attempted assignment of this Permit, in whole or in part, shall be null and void and such action shall result in the immediate revocation of the Permit.

ARTICLE 17
REPORTS; RECORDS; AUDITS

17.1 RETENTION OF RECORDS. The Permittee agrees to retain all books, records, and other documents relevant to this Permit for six (6) years after the termination or expiration of this Permit, whichever later occurs. The County, any New York State and/or federal auditors, and any other persons duly authorized by the County, shall have full access and the right to examine any of said materials during said period. The Permittee agrees to document and keep accurate records of ridership on its tourist rail bike excursions, which shall be provided to the County on an annual basis or as requested.

17.2 AUDITING AND REPORTS. The Permittee shall provide the County with the following documents at the specified times or intervals:

- i. Safety Manual/ Work Rules to be provided within thirty (30) days from acceptance of the Permit and thereafter when revisions or additions are proposed by the Permittee or required due to changes in regulatory oversight.
- ii. Property inspection reports to be provided upon the request of the Commissioner of Public Works.
- iii. Notifications on all accidents, injuries, and damages on the Property shall be provided within one business day of occurrence.
- iv. Notifications of any regulatory actions taken against the Permittee or legal proceedings commenced against the Permittee related to the Permit, Permitted Uses or Property shall be provided within three (3) business days of notification of filing to Permittee.

17.3 The Permittee shall also provide the County with copies of any such other reports, filings and documents as the County may request from time to time within ten (10) business days from the date of request by the County.

ARTICLE 18
INSURANCE

18.1 GENERAL INSURANCE REQUIREMENTS. The Permittee shall maintain or cause to be maintained, in full force and effect during the term of this Permit, at its expense, insurance with stated minimum coverage as set forth in Schedule "B," which is attached hereto and is hereby made a part of this Permit. The Permittee shall also adhere to the following insurance requirements:

- i. All policies are to be in the broadest form available on usual commercial terms and shall be written by insurers who have been fully informed as to the nature of Services to be performed by the Permittee pursuant to this Permit.
- ii. All insurers shall be of recognized financial standing, satisfactory to the County.
- iii. The County shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) shall be the sole obligation of the Permittee and not those of the County.

18.2 WAIVER OF CLAIMS. Notwithstanding anything to the contrary in this Permit, the Permittee irrevocably waives all claims against the County for all losses, damages, claims or expenses resulting from risks commercially insurable under the insurance described in Schedule B and this Article 18. The provision of insurance by the Permittee shall not in any way limit the Permittee's liability under this Permit.

18.3 INSURANCE CERTIFICATES. At the time that Permittee executes this Permit, Permittee shall provide the County with certificates of insurance evidencing its compliance with these requirements and those set forth in Schedule "B".

18.4 POLICY REQUIREMENTS. Each policy of insurance shall contain clauses to the effect that:

- i. Such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the County, with respect to its interests;
- ii. It shall not be cancelled or materially amended without thirty (30) days prior written notice to the County (except in the case of cancellation for non-payment of premium, which requires fifteen (15) days prior written notice), directed to the County's Insurance Department and the County's Commissioner of Public Works; and
- iii. The County shall have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Permittee.

18.5 OCCURRENCE OR CLAIMS BASED POLICY. To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

- i. Policy retroactive dates coincide with or precede the start date of the Permit (including subsequent policies purchased as renewals or replacements); and
- ii. The Permittee shall maintain similar insurance for the entire duration of this Permit and while any equipment, rolling stock or other Permittee property remains on the Property; and
- iii. If the insurance is terminated for any reason, the Permittee agrees to purchase for the County, an unlimited, extended reporting provision to report claims arising from the Permittee's use of the Property under this Permit; and
- iv. Immediate notice shall be given to the County's Commissioner of Public Works, the Ulster County Attorney's Office, and the County's Insurance Department, of circumstances or incidents that might give rise to future claims with respect to the Permittee's use of the Property.

ARTICLE 19 **INDEMNIFICATION AND DEFENSE**

19.1 INDEMNIFICATION BY PERMITTEE. The Permittee agrees to defend, indemnify and hold harmless the County, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney

fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the use or misuse by the Permittee, its employees, representatives, subcontractors, assignees, or agents under this Permit, which the County, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Permittee, its employees, representatives, subcontractors, assignees, or agents. The Permittee agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent. In the event that any claim is made or any action is brought against the County arising out of the negligence, fault, act or omission of the Permittee or a director, officer, employee, volunteer, agent, or subcontractor of the Permittee, either within or without the scope of the respective employment, representation, subcontract, assignment or agency, or arising out of the Permittee's negligence, fault, act, or omission, then the County shall have the right to withhold the Security Deposit for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the County provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Permit.

ARTICLE 20
NO DISCRIMINATION

20.1 As required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Permittee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

ARTICLE 21
WAIVER AND SEVERABILITY

21.1 NO WAIVER BY COUNTY. Failure on the part of the County to enforce at any time, any provision of this Permit, does not constitute a waiver of such provision in any way or waive the right of the County at any time to suspend or revoke this Permit, or avail itself of such remedies available. None of the terms and conditions of this Permit shall be considered waived by the County unless such waiver is explicitly given in writing by the County's Commissioner of Public Works or his/her designee(s). No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Permit, unless expressly stipulated in such waiver as executed by the County's Commissioner of Public Works or his/her designee(s).

21.2 SEVERABILITY. The invalidity or invalid application of any provision of this Permit shall not affect the validity of any other provision, or the application of any other provision of this Permit.

ARTICLE 22
NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES OF COUNTY

22.1 No claim whatsoever shall be made by the Permittee against any officer, agent, or employee of the County, for or on account of any act or omission in connection with this Permit.

ARTICLE 23
NOTICES

23.1 **GENERAL NOTICES.** Except as expressly provided otherwise in this Permit, all notices to be given pursuant to or in connection with this Permit shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Permit, notices shall be effective when received. Notice addresses are as follows:

If to Permittee:

Rail Explorers Corporation
Attention: Mary Joy Lu, CEO and Alex Catchpoole, Managing Director
42 Depot Street
Saranac Lake, NY 12983

If to County:

Ulster County Department of Public Works
Attention: Commissioner
313-317 Shamrock Lane
Kingston, New York 12401-2810

Ulster County Insurance Department
Attention: Insurance Officer
P.O. Box 1800 Kingston, New York 12402

With a copy to the Ulster County Attorney at the following address:

MAILING ADDRESS:

County of Ulster
Attn: County Attorney
P.O. Box 1800
Kingston, New York 12402

PHYSICAL ADDRESS:

County of Ulster
Attn: County Attorney
244 Fair Street, 5th Floor

Kingston, New York 12401

Either Permittee or the County may, by written notice to the other given in accordance with the foregoing, change its address for notices.

ARTICLE 24
CLARIFICATIONS

24.1 In the event that any condition or circumstance is not fully clear to the Permittee, the Permittee agrees to seek written clarification from the County's Commissioner of Public Works.

ARTICLE 25
OVERSIGHT BY COMMISSIONER OF PUBLIC WORKS

25.1 WHENEVER OR WHERE EVER ANY ACTION IS TO BE TAKEN, OR A DETERMINATION TO BE MADE BY THE COUNTY UNDER THIS PERMIT, ALL SUCH ACTION AND/OR DETERMINATION SHALL BE BY THE COUNTY'S COMMISSIONER OF PUBLIC WORKS OR HIS/HER DESIGNEE(S).

ACCEPTANCE:

In Consideration of the granting of the Permit, the undersigned Permittee accepts all of the above terms, conditions and provisions.

RAIL EXPLORERS CORPORATION

By: 

NAME: Mary Jo Lu

TITLE: Chief Executive Officer

DATE: 10/19/2016

APPROVED:

COUNTY OF ULSTER

By: 

NAME: Susan Plonski

TITLE: Commissioner, Department of Public Works

DATE: 10/19/16

SCHEDULE A
DESCRIPTION OF PROPERTY AND MAP

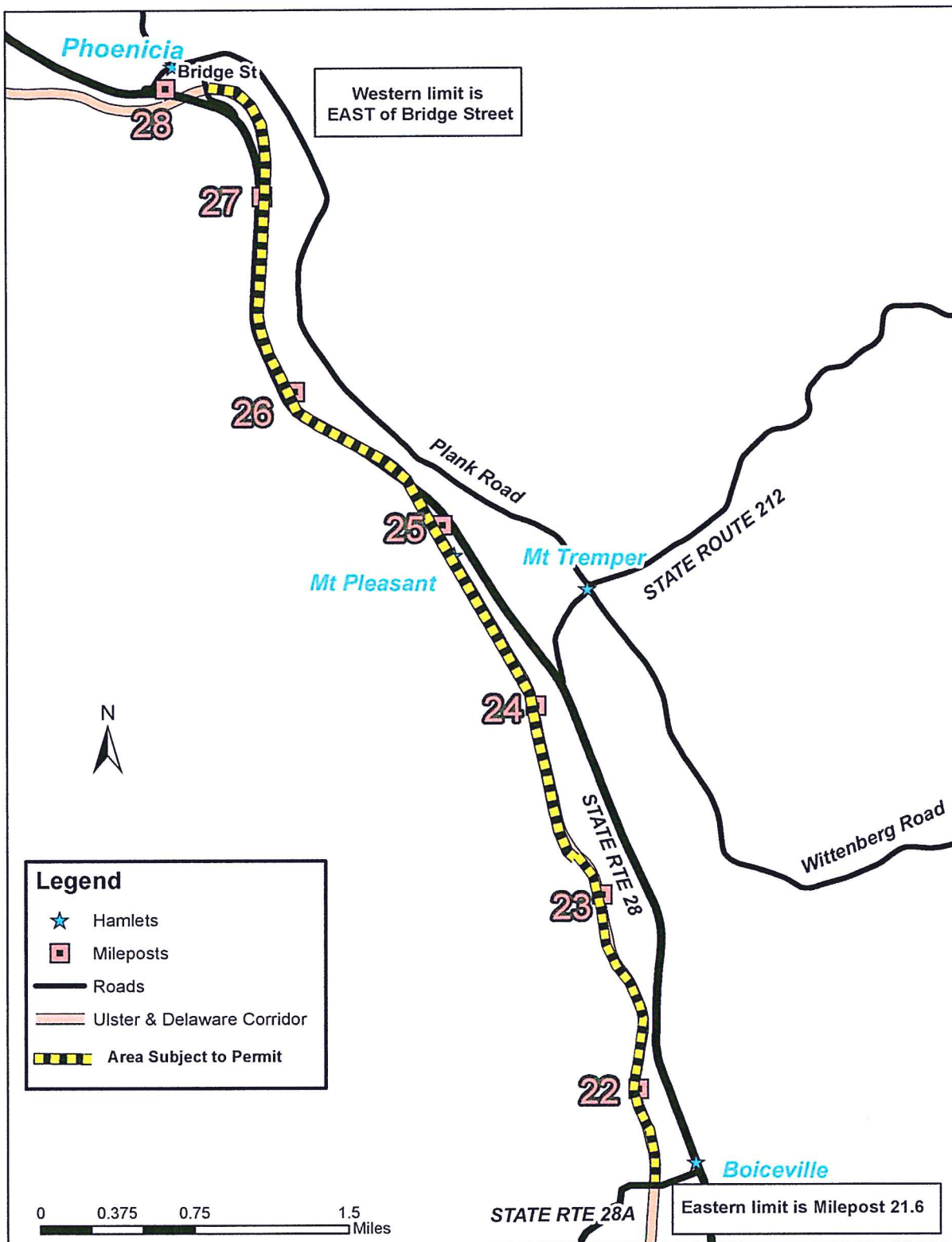
Description of Property:

The eastern boundary of the Property subject to this Permit is located on the existing Ulster & Delaware (U&D) Railroad Corridor at Milepost 21.6 in the hamlet of Boiceville in the Town of Olive. The Property follows the U&D Corridor approximately 6.2 miles to the western boundary, which is located at the east side of Bridge Street in the hamlet of Phoenicia in the Town of Ulster.

The Property subject to the permit extends ten (10) feet in width on both sides of the centerline of the existing U&D railroad track and shall **not** extend any further beyond ten (10) feet in width on both sides of the centerline without the express written and prior consent of the County. The Property includes rails, ties, other track materials (“OTM”), sidings, switches, ballast materials, supporting embankment/substructure, drainage ditches and swales, culverts, railroad grade crossings, mile markers, signage, passenger loading platforms, ticket booths, and other structures necessary for or related to tourism railroad operations and maintenance.

SEE MAP ON FOLLOWING PAGE

MAP



SCHEDULE B
COUNTY OF ULSTER INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

Unless otherwise authorized by the Ulster County Insurance Officer, strict adherence to this schedule is required. Any deviation without prior authorization from the County's Insurance Department will result in a delay in the finalization of this Permit.

The PERMITTEE shall submit copies of any or all required insurance policies as and when requested by the County.

CERTIFICATES OF INSURANCE

The PERMITTEE shall file with the County's Insurance Department, prior to commencing work under this Permit, all proper Certificates of Insurance.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. "Certificate Holder" shall be the County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.

If the PERMITTEE'S insurance policies should be non-renewed or canceled, or should expire during the life of this Permit, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

The PERMITTEE shall take out and maintain during the life of this Permit, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed, including any volunteers, at the site of the Property or in relation to the Permitted Uses, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the PERMITTEE is not required to carry such insurance, the PERMITTEE must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees and volunteers.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

WORKERS' COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the PERMITTEE) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The PERMITTEE should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” **or**
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund **or**
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the PERMITTEE is self-insured **or**
- Form GSI-105.2 – “Certificate of Participation in Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance administrator of the group **or**
- Form GSI-12 – “Certificate of Group Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance Office of the Workers’ Compensation Board if the PERMITTEE is self-insured.

If the PERMITTEE is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the PERMITTEE) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The PERMITTEE should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the PERMITTEE is self-insured.

If the Permittee is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <https://www.wcb.ny.gov/icexempt/index.jsp>

COMMERCIAL GENERAL LIABILITY INSURANCE:

The PERMITTEE shall take out and maintain during the life of this Permit, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Permit, whether such operations be by the

PERMITTEE, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the PERMITTEE to maintain such insurance in amounts sufficient to fully protect itself and the County, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

- Bodily Injury Liability and Property Damage Insurance in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

UMBRELLA LIABILITY OR EXCESS LIABILITY:

The PERMITTEE shall, if available, provide proof of coverage in the in an amount not less than **THREE MILLION AND 00/100 (\$3,000,000.00) DOLLARS**.

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. "Additional Insured" status shall be granted to "County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800", shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the PERMITTEE, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage