

H-H Permits

4/2020

## METRO-NORTH COMMUTER RAILROAD COMPANY

## PERMIT TO ENTER UPON PROPERTY

PERMISSION is hereby granted to **L.M. Sessler Excavating & Wrecking, Inc.**, (hereinafter called "Permittee") to enter property owned by Metropolitan Transportation Authority (hereinafter called "MTA") and managed by Metro-North Commuter Railroad Company (hereinafter called "Railroad" or "Metro-North"), a public benefit corporation and subsidiary of MTA. The purpose of this Entry Permit shall be solely for the purposes outlined in Section 1 below and under the following terms and conditions:

1. LOCATION AND ACCESS. Permission is hereby granted to Permittee and its contractor(s), if any, **to enter and to work adjacent to the east side of the Hudson Line Right-of-Way, north of the Beekman Avenue Bridge overpass (MP 25.68), to do an engineering assessment of and subsequently remove the retired General Motors access ramp, in the Village of Sleepy Hollow, in the Town of Mount Pleasant, in the County of Westchester, in the State of New York (hereinafter called "Property").**

2. LIABILITY. Permittee covenants and agrees to at all times indemnify, protect and save harmless MTA and Metro-North Commuter Railroad, Midtown Trackage Ventures, LLC (known as "Midtown"), the State of Connecticut and the Connecticut Department of Transportation, National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. and New York Central Lines LLC, Delaware & Hudson Railway Company, Inc., (collectively, the "Indemnitees") from and against any and all losses, damages, detriments, suits, claims, demands, costs and charges, including but not limited to reasonable attorneys' fees and disbursements, which any or all of the Indemnitees may directly or indirectly suffer, sustain or be subjected to by or on account of Permittee's entry upon, occupancy or use of the Property, or the conduct thereon of Permittee, its contractors, subcontractors, officers, employees, agents, or invitees, whether such loss or damage be suffered or sustained by any or all of the Indemnitees directly or by other persons (including employees of any or all of the Indemnitees or corporations who may seek to hold any or all of the Indemnitees liable therefor),

and whether attributable to the fault, failure or negligence of any or all of the Indemnitees.

3. CONSIDERATION. Permittee will pay to the Railroad the non-refundable sum **of TWO THOUSAND DOLLARS AND NO/100 (\$2,000.00)** as compensation for the application and preparation of this Entry Permit and right of entry upon the Property. Upon execution and delivery of this Entry Permit, Permittee also will pay to the Railroad the sum **to be determined**, which is Railroad's cost estimate for performing the services enumerated in Paragraph 7 of this Entry Permit. It is understood and agreed that this payment is an advance deposit based upon the estimated costs and does not constitute a lump sum price for the performance of this work. Railroad may request an additional deposit in the event that the value of the services performed pursuant to Paragraph 7 are projected to exceed the amount of the original deposit and Railroad may discontinue its performance hereunder in the event of Permittee's failure to deposit the additional amount requested. If the costs of the actual services provided by Railroad are less than the estimated amount paid, Railroad will promptly refund the overpayment.

4. NOTIFICATION TO RAILROAD. After completion of the entry permit process, Permittee or its contractor(s) shall notify the Railroad or its designee, **Mr. Richard Ramkeesoon, Assistant Director of Capital Engineering (212)499-4444; [Ramkeesoon@mnr.org](mailto:Ramkeesoon@mnr.org)**, at least ten (10) business days in advance before entering upon or commencing any work upon the Property and keep said designee fully advised of all activities. No entry or use of the Property will be permitted until this Entry Permit is executed by both parties, any charges thereunder are paid, any required insurance is obtained and evidence of such insurance in a form satisfactory to the Railroad is provided and until Railroad has advised that it is in a position to handle the request.

5. RAILROAD OPERATIONS. All activities of Permittee shall be carried on in such a manner so as not to interfere with the safe operation or use of any Railroad facilities.

6. HAZARDOUS SUBSTANCES. (a) Permittee shall not cause or permit any Hazardous Substance (as hereinafter defined) to be used, stored, generated, or disposed of on or in the Property by Permittee, Permittee's agents, employees, contractors or invitees, without first obtaining Railroad's written consent,

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which may be withheld at Railroad's sole and absolute discretion. If Hazardous Substances are used, stored, generated or disposed of on or in the Property, or if the Property becomes contaminated in any manner for which Permittee is legally liable, Permittee shall indemnify, defend (with counsel approved by Railroad), and hold harmless the Indemnitees from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Property or surrounding property of MTA or Railroad, damages because of adverse impact on marketing of any space, and any and all sums paid for settlement of claims and for attorneys', consultant, and expert fees) arising during or after the term of this Permit and arising as a result of such contamination by Permittee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration required or requested by a federal, state or local agency or political subdivision or by any organized labor group, including, without limitation, any such costs associated with the contamination of adjacent property or ground water as a result of Permittee's activities at the Property. In addition, if Permittee causes or permits the presence of any Hazardous Substance on the Property and this results in contamination, Permittee shall promptly, at its sole expense, take any and all necessary actions to return the Property to the condition existing before the presence of any such Hazardous Substances on the Property, provided, however, that Permittee shall first obtain Railroad's approval for any such remedial action.

(b) As used herein, "Hazardous Substance" means (i) any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of New York or the United States government, (ii) any "hazardous waste", "extremely hazardous waste," "hazardous substance," "toxic substance," "hazardous material," "pollutant" or "contaminant," as defined in state, federal or local governmental law or (iii) any substance whose presence could be detrimental to the Property or hazardous to health or the environment, including but not limited to radioactive materials, including radon, natural gas, natural gas liquids (all of the foregoing gas called "Natural Gas Products"), liquefied natural gas, synthetic gas or mixtures of Natural Gas Products and synthetic gas, lead, asbestos containing materials, polychlorinated biphenyls ("PCBs"), and petroleum products.

7. RAILROAD SUPPORT PERSONNEL AND PAYMENT. In addition

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to, but not in limitation of any other provisions of this Permit, if at any time the Railroad should deem inspectors, flagmen, watchmen, or maintenance of way personnel desirable or necessary to protect its operations or property, or its employees, patrons or licensees during the term of this Permit, the Railroad shall have the right to place such inspectors, flagmen, watchmen or maintenance of way personnel at the sole expense of Permittee. Metro-North will provide protective forces to the extent possible considering operational and maintenance priorities. Metro-North makes no guarantee that protective personnel will be available to meet the Permittee's preferred schedule. Further, no such work may actually commence until the assigned Metro-North representative affirmatively advises the Permittee that the necessary protective forces are stationed and that the Permittee may proceed. The instructions from Metro-North flagmen or other representatives on the job site must be strictly and promptly obeyed by the Permittee, its contractor and their employees. A failure to follow instructions from railroad personnel on the site will lead to withdrawal of this Entry Permit, thus closing the Property to Permittee and its contractor(s). The costs for such inspectors, flagmen, watchmen or maintenance of way personnel shall include, but not necessarily be limited to wages, applicable fringe benefits, payroll taxes and overhead rates and shall be calculated in accordance with currently applicable rules in effect pursuant to the collective bargaining agreements with the respective crafts at the time the work is performed.

Examples of currently effective work rules and fringe/overhead rates are set forth on Attachment A to this Entry Permit. These examples are given as information only to enable Permittee to calculate the approximate costs which will be incurred pursuant to this permit agreement. The full cost and expense of any flagmen, inspectors, watchmen or maintenance of way personnel shall be billed by Railroad and Permittee agrees to pay the full cost less the amount on deposit within fifteen (15) days after final billing. Any questions regarding invoicing or payment under this Entry Permit should be addressed to **Collections Analyst, Metro-North Railroad, 420 Lexington Avenue, 2<sup>nd</sup> Floor, New York, New York 10170, telephone (212)340-2326.**

The furnishing or failure to furnish inspectors, flagmen, watchmen or maintenance of way personnel by the Railroad, shall not release Permittee from any and all other liabilities assumed by the Permittee under the terms of this Entry Permit. No entry or work commenced by Permittee shall take place without inspectors, flagmen or watchmen when Railroad deems such

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inspectors, flagmen or watchmen necessary. There shall be no entry upon Railroad property without specific authorization from a Railroad representative on the site. Moreover, no equipment or material shall be transported across the tracks without special permission from Railroad.

8. PERMITTEE PERSONNEL. At each job location, Permittee must furnish an English-speaking supervisor who is capable of communicating (including translating as necessary) instructions from the flagmen or other Metro-North representative to the contractor's personnel on the job. Such supervisor must remain on the scene at all times while work is being performed or any contractor employees are on or about the railroad right-of-way.

9. CLEARANCES. All equipment working on or material in use upon the Property shall be kept at all times not less than fifteen (15) feet from the nearest rail of any track, or as subsequently modified in writing by Railroad or its designee. The Permittee and/or its contractor(s) shall conduct its operations so that no part of any equipment shall foul any track, transmission, signal or communication lines, or any other structure of the Railroad.

10. RESTORATION OF PREMISES. Upon completion of Permittee's activities, the Property shall be restored to a condition satisfactory to the Railroad and this instrument shall become null and void, save and except only as to any liability accrued prior thereto. This includes, without limitation, the restoration immediately of any fences removed. If, at the sole discretion of the Railroad, the Property has not been satisfactorily cleared of all of Permittee's property (including but not limited to materials and equipment) and restored to an acceptable condition, then MTA or Railroad shall have the right, but not the obligation, to restore the Property, including the removal of any materials, equipment and/or fencing, to a satisfactory condition at Permittee's sole cost and expense.

11. TERM OF PERMIT. Railroad reserves the right to revoke this Entry Permit at any time. Unless subsequently modified, this Entry Permit shall begin **February 1, 2022**, and shall end **upon completion of the project**, at which time it shall expire automatically. Under no circumstances shall this temporary Entry Permit be construed as granting the Permittee any rights, title or interest of any kind or character in, on, or about the land or premises of MTA or Railroad thereafter. The Permittee agrees to notify Railroad when use of the Property or work is

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completed.

12. INSURANCE. Permittee, or its contractor, shall for the entire term of this permit, maintain, at its sole expense the insurances set forth in Section C of Metro-North's Construction Management Specifications for Individuals and Companies (I & C) Working on or Adjacent Railroad Property ("Specifications"), which Specifications are incorporated herein and made a part hereof.

Railroad may, at its discretion, procure, provide and thereafter maintain in effect during the life of this Permit for and on behalf of Railroad any and all force account insurance deemed necessary by Railroad. The provision of such insurance shall not be deemed a limitation on any liability of Permittee arising under the terms of this Permit. The premium paid by Railroad for such force account insurance coverage shall be reimbursed by Permittee in accordance with the provisions of Paragraph 7 of this Agreement.

13. NOTICES. Any notice to be served pursuant to this Entry Permit shall be delivered by hand against a receipt or by U.S. Certified Mail, Return Receipt Requested, postage pre-paid, addressed as follows:

If to Railroad:

Metro-North Railroad  
 420 Lexington Avenue, 11th Floor  
 New York, New York 10170  
 Attention: Vice President & General Counsel

If to Permittee:

**L.M. Sessler Excavating & Wrecking, Inc.**  
**1257 State Route 96**  
**Waterloo, New York 13165**  
**Attn.: Mike Karsten**

14. ADDITIONAL PERMISSION(S). Permittee shall be responsible for obtaining any additional permission which may be required including, but not limited to, those which are or may

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be necessary to photograph a person, or the name, trademark or logo of a business while on the Property. Otherwise, Permittee shall not use the name, trademark or logos of any of the Indemnitees for any purpose, nor shall any such name, trademark or logo appear in any of the photographs taken by Permittee.

15. APPLICABLE LAWS. Permittee, at its sole expense, shall comply with all Federal, State and local Laws, regulations and ordinances applicable to the Property.

16. ROADBED SETTLEMENT. Permittee shall be obligated to remedy any settlement caused to the roadbed, right of way and/or tracks, facilities, and appurtenances of the Railroad as a result of his entry on the Property; and should Permittee fail to do so, Railroad may so remedy at the sole expense of the Permittee.

17. INDUCTIVE INTERFERENCE. Permittee shall be obligated to remedy any inductive interference resulting from its presence on the Property; and should Permittee fail to do so, Railroad may so remedy at the sole expense of the Permittee.

18. ASSIGNMENT. Permittee shall make no assignment of this Entry Permit without prior written consent of the Railroad. Any such assignment, or attempt to assign, without written consent of the Railroad, is void.

19. FORCE MAJEURE. Any obligations of Railroad hereunder shall be subject to "Force Majeure", which shall include, but not be limited to, labor disruptions such as strikes.

20. OTHER TERMS AND CONDITIONS.

21. ACCEPTANCE. Permittee will indicate acceptance of the above conditions by signing two counterparts of this Entry Permit and returning them to: **R. Webster, Assistant Director of Standards and Specifications, Metro-North Railroad, 420 Lexington Avenue, 10th Floor, New York, New York 10170; (212) 499-4533; [rwebster@mnr.org](mailto:rwebster@mnr.org)** .

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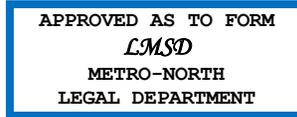
IN WITNESS WHEREOF, the parties hereto have caused this Entry Permit to be duly executed as of the day and year indicated below.

**METRO-NORTH COMMUTER RAILROAD COMPANY**

WITNESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
David Melillo  
TITLE: VICE-PRESIDENT ENGINEERING

DATE: \_\_\_\_\_



**L.M. SESSLER EXCAVATING & WRECKING, INC.**

WITNESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
(Permittee)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_