

EXHIBIT D

INDEMNIFICATION AGREEMENT And REQUIRED INSURANCE COVERAGE¹

SECTION 1. - INDEMNIFICATION

In accordance with **Bi-State Development/Metro's "Right-of-Entry"** requirements and in exchange for the authorization to perform work on or near the MetroLink right-of-way, **contractor** agrees, to the fullest extent permitted by applicable law, to indemnify, defend and hold harmless **Bi-State Development/Metro** and its commissioners, officers, officials, agents, and employees from and against any and all claims, suits, actions, judgments, fines, penalties, loss, damage, costs, or expense (including but not limited to attorneys' fees), whether direct or indirect, due to bodily or personal injury, death, sickness or property damage (including loss of use thereof) arising out **contractor's** activities.

In the event a third party makes a claim or files a lawsuit against **Bi-State Development/Metro** for injury or death to persons, for damage to property, or for costs associated with loss of business, caused in any way by the **contractor's activities**, the **contractor** shall defend such claims or suits, on behalf of **Bi-State Development/Metro** at **contractor's** sole cost and expense.

Contractor further agrees to repair any damage or disturbance to **Bi-State Development/Metro** property caused by the **contractor's** activities or caused, in whole or in part, by subcontractors, employees or agents. Such repairs must be completed in a manner approved by and within a time frame defined by **Bi-State Development/Metro**.

SECTION 2. - INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of its work on, under, or over the MetroLink right-of-way, a policy or policies of insurance for the protection of both the **contractor** and **Bi-State Development/Metro** and its commissioners, officers, officials, agents, and employees. **Bi-State Development/Metro** requires certification of insurance coverage from all contractors and subcontractors prior to commencing work on, under, or over the MetroLink right-of-way. Please carefully review the requirements outlined below.

IT IS RECOMMENDED THAT THE CONTRACTOR CONFER WITH ITS INSURANCE BROKER OR AGENT PRIOR TO SUBMITTING THE "METROLINK RIGHT-OF-WAY WORK REQUEST" TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

SECTION 3 - MINIMUM SCOPE AND EXTENT OF COVERAGE

A. COMMERCIAL GENERAL LIABILITY

Commercial General Liability, ISO coverage form number CG 00 01 ("occurrence" basis or ISO equivalent If ISO equivalent or manuscript general liability coverage forms are used, minimum coverage will be as follows: Premises/Operations; Independent Contractors; Products/Completed Operations; Personal Injury; Broad From Property Damage including Completed Operations; Broad Form Contractual Liability Coverage to include **Contractor's** obligations under

¹ These insurance specifications are applicable only to contractors or others not engaged by or under contract to Metro. For specifications applicable to Metro construction or maintenance contracts that require access to the track or ML ROW, please consult the Department of Risk Management.

INDEMNIFICATION above.

B. **AUTOMOBILE LIABILITY**

Business Automobile Liability Insurance, ISO Coverage form number **CA 00 01** covering automobile liability, code 1 "ANY AUTO".

C. **WORKERS' COMPENSATION and EMPLOYER'S LIABILITY**

Statutory Workers' Compensation Insurance for all states and jurisdictions where **Contractor** has work locations, a Broad form All States Endorsement for incidental contact, standard Employer's Liability Insurance, and coverage for U.S. Longshoremens and Harbor Workers Act and FELA, where applicable.

D. **RAILROAD PROTECTIVE LIABILITY**

Railroad Protective Liability Insurance covering the work to be performed under this contract if such work is to be performed on or adjacent to the Metro Link right-of-way. The policy form should be ISO CG 00 35 (06/90) or other equivalent RIMA/AASFITO approved form including coverage for "Physical Damage to Property" and coverage for pollution arising out of fuels or lubricants brought to the job site (i.e., ISO Form CG 28 31). If a Lloyd's or other similar "Claims Made" policy form is used, the Extended Claims Made Date shall be a minimum of two years past the expiration date of the policy.

Alternative: In many instances, it is possible for an organization to address this exposure by an endorsement to its commercial general liability policy *if it is not in the construction business per se or if it does not customarily work in proximity of a railroad right-of-way*. The applicable endorsement is CG 24 17 – Contractual Liability – Railroads. A copy of the endorsement must be attached to the required Certificate of Insurance.

SECTION 4. - **MINIMUM LIMITS OF INSURANCE**

A. **COMMERCIAL GENERAL LIABILITY**

\$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; **\$2,000,000** annual aggregate

B. **AUTOMOBILE LIABILITY²**

\$2,000,000 combined single limit per accident for bodily injury and property damage.

General Liability and Automobile Liability insurance may be arranged under individual policies for the full limits required or by a combination of underlying policies with the balance provided by a form following Excess or Umbrella Liability policy.

C. **WORKERS' COMPENSATION/EMPLOYER'S LIABILITY**

Workers' Compensation limits as required by applicable State Statutes (generally unlimited) and minimum of **\$500,000** limit per accident for Employer's Liability.

D. **RAILROAD PROTECTIVE LIABILITY**

\$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

² Where applicable – This applies to work that requires the contractor or its employees to operate motor vehicles (licensed for road use) on BI-State Development/Metro property or within 25 feet of the operating ROW.

\$6,000,000 annual aggregate (or \$2,000,000 if the aggregate applies only to claims and legal expenses which arise out of the activities under this contract)

SECTION 5. - DEDUCTIBLES AND SELF-INSURED RETENTIONS

All deductibles, co-payment clauses, and self-insured retentions must be declared to and approved by **Bi-State Development/Metro**. **Bi-State Development/Metro** reserves the right to request the reduction or elimination of unacceptable deductibles or self-insured retentions *as they would apply to Bi-State Development/Metro, its commissioners, officers, officials, agents, and employees*. Alternatively, **Bi-State Development/Metro** may request **contractor** to procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

SECTION 6. - OTHER INSURANCE PROVISIONS & REQUIREMENTS

The respective insurance policies and coverage as outlined below must contain, or be endorsed to contain, the following conditions or provisions:

A. COMMERCIAL GENERAL LIABILITY

Bi-State Development/Metro and its commissioners, officers, officials, agents, and employees shall be endorsed as additional **insureds** by ISO form **CG 20 26 – ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION**. As additional insureds, they shall be covered as to work performed by or on behalf of the **contractor** or as to liability that arises out of **contractor's** activities on, over, or under the MetroLink right-of-way.

B. COMMERCIAL GENERAL LIABILITY & AUTOMOBILE LIABILITY

St. Louis City or its contractor's insurance coverage shall be primary with respect to **Bi-State Development/Metro**, its commissioners, officers, officials, agents, and employees. Insurance or self-insurance programs maintained by Metro shall be excess of the **contractor's** insurance and shall not contribute with it.

Contractor's failure to comply with the terms and conditions of these insurance policies shall not affect or abridge coverage for **Bi-State Development/Metro** or for any of its commissioners, officers, officials, agents, or employees.

C. WORKERS' COMPENSATION and EMPLOYER'S LIABILITY

The **contractor** and **contractor's** workers' compensation insurer shall agree to waive all rights of subrogation against **Bi-State Development/Metro**, its commissioners, officers, officials, agents, or employees for claims, losses, or expenses which arise out of **contractor's** activities on, over, or under the MetroLink right-of-way. Contractor's and subcontractor's Workers' Compensation/Employer's Liability insurance shall be endorsed with ISO form WC 00 03 01 – Alternate Employer Endorsement. The Alternate Employer endorsement shall designate Metro as "alternate employer."

D. RAILROAD PROTECTIVE LIABILITY

Bi-State Development/Metro, its commissioners, officers, officials, agents, and employees are to be covered as named insureds or as additional named insureds with respect to work performed by or on behalf of the **contractor** or as to liability which arises out of **contractor's** activities on, over, or under the MetroLink right-of-way.

Contractor's failure to comply with the terms and conditions of these insurance policies shall not affect or abridge coverage for **Bi-State Development/Metro**, its commissioners, officers, officials, agents, or employees.

E. ALL COVERAGES

Each insurance policy required by the MetroLink right-of-way license shall contain a stipulation, endorsed if necessary, that **Bi-State Development/Metro's** Director of Risk Management will receive a 30-day advance notice of any policy cancellation other than cancellation for non-payment of premium. Ten (10) days advance notice is required for policy cancellation due to non-payment of premium.

SECTION 7. - INSURER QUALIFICATIONS/ACCEPTABILITY

Insurance required hereunder shall be issued by an A.M. Best "A" rated, Class VII insurance company approved to conduct insurance business in the state(s) of Missouri and/or Illinois.

SECTION 8. - VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work on, over, or under the MetroLink right-of-way, the **contractor** shall furnish **Bi-State Development/Metro** with CERTIFICATE(S) OF INSURANCE and with any applicable original endorsements evidencing the required insurance coverage. The insurance certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements received by **Bi-State Development/Metro** are subject to review and approval by **Bi-State Development/Metro's** Director of Risk Management. **Bi-State Development/Metro** reserves the rights to require complete, certified copies of all required policies at any time.

If the work on, over or under the MetroLink right-of-way will exceed one (1) year -- or, if any of **contractor's** applicable insurance coverage expire prior to completion of the work -- the **contractor** will provide a renewal or replacement certificate before continuing work on, over, or under the MetroLink right-of-way.