

## I. IMPORTANT NOTICE TO BIDDERS

The attention of all Bidders is directed to the following:

### **DAMAGES FOR DELAY**

This Contract contains new damages for delay provisions which are set forth in **ARTICLE 2.07, CONTRACTOR'S DAMAGES FOR DELAY** of the **CONTRACT TERMS AND CONDITIONS**.

### **DISPUTE RESOLUTION PROCEDURES**

This Contract contains new dispute resolution procedures which are set forth in **ARTICLE 8, AUTHORITY OF PROJECT CEO: DISPUTES AND CLAIMS** of the **CONTRACT TERMS AND CONDITIONS**. Based on the Contract value, disputes will be resolved either by a neutral arbitrator or a court having jurisdiction.

### **PAL 1279-h AND DEBARMENT**

This Contract is subject to Public Authorities Law 1279-h. Part 10004 of Title 21 NYCRR contains revised debarment regulations which were approved by the MTA Board on July 22, 2020.

### **DIGITAL DOCUMENT REPOSITORY**

MTA Construction & Development Company has created a new digital Document Repository that will reduce the “mountain” of paper previously required with bids/proposals. Many submissions and certifications that were previously required with every bid/proposal can now be uploaded to the Document Repository once each year. Your firm will be able to manage its documents on file in the Document Repository and will receive reminders about documents that will soon expire. When submitting a new Bid/Proposal, your firm will need to review its documents on file, make any necessary updates, and certify, with a Certification of No Change, that the documents in the Document Repository are accurate.

Please note that all Schedules were revised as of September 2020. Copies of the updated schedules are available on the Document Repository or are included with the IFB. Please ensure that you are using the current form.

You can access the Document Repository via a link on My MTA Portal at [www.mymta.info](http://www.mymta.info). The Certification of No Change is available at

<https://www.mymta.info/cs/groups/public/sg/000/732/d/mtabscdmprd7327305.pdf>.

In addition, you can access a Job Aid that provides step-by-step instructions for using the Document Repository at

<https://www.mymta.info/cs/groups/public/sg/000/732/d/mtabscdmprd7327304.pdf>.

## **INFORMATION FOR BIDDERS**

The Information for Bidders document has been revised. Changes include additional forms and Contract Schedules, revisions to reflect the new digital Document Repository and electronic submittal of bids.

## **NEW FEDERAL REGULATION AFFECTING TELECOMMUNICATIONS EQUIPMENT**

This Contract is federally funded and subject to the terms of 2 CFR 200.216 and Public Law 115-232, Section 889, which prohibits the use of certain covered telecommunications equipment on this Project. That requirement is contained in new **ARTICLE 11.23, RESTRICTIONS ON TELECOMMUNICATIONS EQUIPMENT AND SERVICES.**

STANDARD FORM OF CONTRACT

CONSTRUCTION CONTRACT - BID

**FEDERAL FUNDED**  
**(WORK IN NEW YORK STATE)**

THE TABLE OF CONTENTS MUST BE REGENERATED.

The following items can be performed by search and replace:

Contract No.	142486
Title	STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT (PACKAGE NO. 2)
Procurement Officer	RAMZI BASHJAWISH
Procurement Officer's Phone and Fax Numbers	(212) 340-3125 (OFFICE) : (917) 658-2394 (CELL)
Procurement Officer's Email Address	BASHJAWISH@MNR.ORG
Percentage of Work to be Completed by Prime	40%
DBE Goal	22.5
Liquidated Damages	\$4,000.00
Bid Opening Date	AUGUST 12, 2021
Bid Opening Time	2:00 PM
Site Tour Date	JULY 8, 2021
Site Tour Time	10:00 AM
Site Tour Convening Location	12 CROTON FALLS ROAD, SOMERS, NY 10589
Prebid Conference Date	JULY 8, 2021
Prebid Conference Time	10:00 AM
Solicitation Date	JUNE 17, 2021
Contract Term	12 MONTHS

**All application notes (Hidden Text) can be seen on the computer screen only if "Print, Options, Hidden Text" and "Tools, Options, Hidden Text" are turned on.**

All application notes contained in the Contract should be removed. See Note below.  
All occurrences of "XX", shall be filled in by the Procurement Officer as appropriate.

Secretary should search for occurrences of "XX" and inform the Procurement Officer if any remain.

Font: Times New Roman, Point=12 for text (some forms are Times New Roman, Point=10).

NOTE: To print this document with "Hidden Text" (XX Notes), select "File", "Print", "Options" and click "Hidden Text".

To print this document without “Hidden Text” (XX Notes), select “File”, “Print”, “Options” and unclick “Hidden Text”.

Procurement Officer may define specific time periods for items of work (design, inspection, shopdrawing review, etc.)

JUNE 17, 2021

Contractor's Name

Subject: Bid for Contract No. [142486](#)  
[STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT](#)  
[\(PACKAGE NO. 2\)](#)

Dear Contractor:

MTA Construction & Development Company ("MTA C&D"), acting on behalf of the Metropolitan Transportation Authority ("MTA") and Metro-North Commuter Railroad Company ("Metro-North"), each a New York State public benefit corporation, hereby solicits a bid from your firm in connection with [STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT \(PACKAGE NO. 2\)](#).

Bids submitted in response to this Invitation for Bids ("IFB") must be provided in accordance with the Information For Bidders, Contractor's Proposal, Schedules, Forms and Certifications, Contract Terms and Conditions, Technical Provisions, Drawings and Attachments, (if any).  
The primary point of contact for this IFB is:

PROCUREMENT OFFICER: [RAMZI BASHJAWISH](#)

OR

TELEPHONE: [\(212\) 340-3125 \(OFFICE\)](#) : [\(917\) 658-2394 \(CELL\)](#)

MAIL: **MTA CONSTRUCTION & DEVELOPMENT COMPANY**  
**METRO-NORTH COMMUTER RAILROAD**  
**PROCUREMENT & MATERIAL MANAGEMENT**  
**420 LEXINGTON AVENUE 12<sup>TH</sup> FLOOR**  
**NEW YORK, NY 10170**

OR

EMAIL: [BASHJAWISH@MNR.ORG](mailto:BASHJAWISH@MNR.ORG)

If you are not interested responding to this IFB, please furnish the information requested on the attached "NO BID RESPONSE FORM" and return to the above address

Failure to submit a "NO BID RESPONSE FORM" may result in the removal of your firm from Metro-North's solicitation list for future solicitations.

Sincerely,

[RAMZI BASHJAWISH](#)

MTA CONSTRUCTION & DEVELOPMENT COMPANY  
Attachment

## NO BID RESPONSE FORM

<b>CONTRACTOR NAME:</b>
<b>ADDRESS:</b>
<b>CITY, STATE AND ZIP CODE:</b>
<b>FEDERAL ID NO. (IF AVAILABLE):   PHONE:   FAX:</b>
<b>PROCUREMENT OFFICER:   RAMZI BASHJAWISH</b> <b>PHONE AND EMAIL.   BASHJAWISH@MNR.ORG</b>
<b>CONTRACT NO:       142486</b> <b>CONTRACT TITLE:   STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT</b> <b>(PACKAGE NO. 2)</b>

### REASONS FOR NOT BIDDING ON THE REFERENCED CONTRACT

(Check all that apply):

- ☐ Contractor acquired plans as a potential Subcontractor only.
- ☐ Size of this Contract is not within the interest of Contractor.
- ☐ Contractor had an insufficient amount of time to prepare Bid. (Please provide the date that the Contractor acquired plans and specifications and any other pertinent information.)
- ☐ Contract Work not within the specialty of the Contractor. (Please state Contractor's area of specialty).
- ☐ Other. (Please explain in comment section below).

COMMENTS – PLEASE USE ADDITIONAL SHEETS IF NECESSARY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

FAILURE TO COMPLETE AND RETURN THIS FORM TO METRO-NORTH IN A TIMELY MANNER MAY RESULT IN THE REMOVAL OF THE CONTRACTOR'S NAME FROM METRO-NORTH'S SOLICITATION LIST.

**MTA CONSTRUCTION & DEVELOPMENT COMPANY, acting on behalf  
of the Metropolitan Transportation Authority and Metro-North Commuter  
Railroad Company**

Public Benefit Corporations of  
**THE STATE OF NEW YORK**

**CONTRACT DOCUMENTS  
FOR  
CONTRACT NO. 142486**

**FOR  
STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT  
(PACKAGE NO. 2)**

INFORMATION FOR BIDDERS  
CONTRACTOR'S PROPOSAL  
SCHEDULES, FORMS, CERTIFICATIONS & EXHIBITS  
CONTRACT TERMS AND CONDITIONS  
TECHNICAL PROVISIONS  
DRAWINGS

MTA CONSTRUCTION & DEVELOPMENT COMPANY

**CONTRACT NO. 142486**

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## ATTACHMENT: H – HOW TO SUBMIT AN ELECTRONIC BID

**MTA CONSTRUCTION & DEVELOPMENT COMPANY  
METRO-NORTH COMMUTER RAILROAD COMPANY  
PROCUREMENT AND MATERIAL MANAGEMENT  
420 LEXINGTON AVENUE  
NEW YORK, NY 10170**

**CONTRACT NO. 142486**

**JUNE 17, 2021 INFORMATION**

**FOR BIDDERS**

**1. INTRODUCTION**

This Contract is being solicited by MTA Construction & Development Company (“MTA C&D”), acting on behalf of the Metropolitan Transportation Authority (“MTA”) and Metro-North Commuter Railroad Company (“Metro-North”), each a public benefit corporation organized under the Public Authorities Law of the State of New York. References herein to “Metro-North” shall mean MTA C&D, MTA, Metro-North or any combination of them, as the context requires. MTA C&D is inviting proposals for the **STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT (PACKAGE NO. 2)**

**2. RECEIPT OF BIDS**

METRO-NORTH, MTA AND MTA C&D ARE NOT LIABLE FOR ANY COST INCURRED BY A VENDOR IN THE PROCESS OF RESPONDING TO A METRO-NORTH SOLICITATION. IT IS THE VENDOR'S RESPONSIBILITY TO ENSURE THAT BIDS ARE RECEIVED BEFORE THE BID OPENING BELOW:

The Bid Opening for this Contract will be at 2:00 p.m. on AUGUST 12, 2021. Bids will be electronically posted for public viewing to the MTA website on May 13, 2021 at <https://new.mta.info/doing-business-with-us/procurement/construction-and-development/bid-results> (hereinafter referred to as the “Bid Opening”).

**3. SUBMISSION OF THE CONTRACTOR'S PROPOSAL**

Bidders must be registered with the My MTA Portal as a Bidder to submit a Bid. Potential Bidders are strongly encouraged to register well in advance of the Bid Opening.

Bids for this Contract will only be accepted electronically via the My MTA Portal at [www.mta.info](http://www.mta.info). Attachment H contains detailed instructions on how to submit a Bid. It is the Bidder's responsibility to ensure that its completed Bid is successfully uploaded to the My MTA Portal prior to the date and time set forth in Article 2 above and in accordance with the instructions set forth in Attachment H.

**All Bids will remain sealed until the Bid Opening. Late Bids will not be accepted.**

**4. CONTRACT DOCUMENTS**

This Information for Bidders, the Contractor's Proposal, the Forms of Bonds, the Schedules, Forms and Certifications, the Contract Terms and Conditions, the Technical Provisions, the Contract Drawings, all Addenda, if any, hereafter issued, and the Notice of Award are the Contract Documents which collectively will constitute the Contract. Terms in the Contract that are capitalized are defined in the Contract Terms and Conditions.

Metro-North, in its sole discretion, will make some or all of the Contract documents available to potential Bidders in one or more electronic formats (e.g. PDF, Word, flash drive, CDs etc.). Such electronic distribution is solely for the purpose of assisting Bidders in preparing its bid, and electronic copies shall not be used for any other purpose. In the event the Contract documents include any additional restrictions against copying or further dissemination of the documents, recipients of the documents shall strictly adhere to such additional restrictions.

Bidders are not authorized to make any changes, alterations or amendments to the Procurement documents without the express consent of Metro-North, except that bidders may complete and submit forms included in the Contract document (such as bid price sheets or certification), where it is practicable to do so. The Procurement Officer shall maintain an original version of the Contract documents. In the event of any discrepancy between Metro-North's distributed documents and the original documents contained in Metro-North's file, the original documents contained in Metro-North's file shall prevail.

Persons wishing to bid may obtain copies of the Contract from the Procurement Officer. Requests for the Contract may be made by email to [BASHJAWISH@MNR.ORG](mailto:BASHJAWISH@MNR.ORG).

**5. TAX EXEMPTION**

Each prospective Bidder is advised that the provisions of the New York State Tax Law provide an exemption from sales and compensating use taxes on all tangible personal property (materials, equipment and components) sold to Contractors or Subcontractors in connection with the Work required by the Contract AND WHICH WILL BECOME AN INTEGRAL COMPONENT PART OF THAT WORK. No amount shall be included in a Contractor's Proposal for any possible sales or compensating use taxes on such personal property.

**6. PROJECT DESCRIPTION**

A. The Work to be performed under this Contract may briefly be described as:

[STRATEGIC FACILITIES PROGRAM:CROTON FALLS PARKING LOT](#)

B. The details of the Work to be performed, apparatus, if any, to be furnished, the locations, dimensions and other characteristics of the Work are set forth in the Contract.

**7. INSPECTION OF PROJECT SITE**

A site visit will be held on [JULY 8, 2021](#). It is highly recommended that prospective Bidders attend this tour of inspection. The tour will convene at [10:00 AM](#) at [12 CROTONFALLS ROAD, SOMERS, NY 10589](#). All attendees must bring and wear hard hats, safety shoes, glasses and reflective vests and comply with Covid-19 Protocols. No one will be allowed

on the tour without this safety equipment. Bidders are advised that no questions will be entertained; all questions generated by the site visit, or otherwise, shall be submitted in writing in accordance with Paragraph 8. of the Information For Bidders.

All contractor employees including sub-contractors and consultants intending to participate in a Metro-North pre-bid Site Tour, will be required to complete Metro-North's Online Contractor Safety Training prior to the tour. To register for Metro-North Railroad Contractor Safety Training, go to the website [ContractorOrientation.com](http://ContractorOrientation.com). All contractor employees must bring a printout of their online temporary certificate of completion or a valid Contractor Roadway Worker Card to the site tour in order to walk the site(s).

If you have any questions regarding this training, you can contact [ContractorOrientation.com](http://ContractorOrientation.com) by using the On Line Chat, calling (866) 599-2482, or emailing [Support@contractororientation.com](mailto:Support@contractororientation.com).

## **8. ADDENDA AND REQUESTS FOR CLARIFICATION**

- A. Prior to submission of bids, prospective Bidders should examine the Contract carefully and submit in writing any requests for:
  - (1) an interpretation or correction of any ambiguity, inconsistency, or error therein.
  - (2) any substantive amendments to the Contract.
- B. To be given consideration any such request must be in writing and addressed to the Procurement Officer [RAMZI BASHJAWISH](#) , [BASHJAWISH@MNR.ORG](mailto:BASHJAWISH@MNR.ORG).

Such requests must be received by Metro-North at least ten working days prior to the date designated for the opening of Bids. Any such interpretation, correction or amendment, as well as additional provisions Metro-North may decide to include in the Contract, will be issued in writing by Metro-North prior to the opening of Bids as an addendum to the Contract. A Bidder's failure to request a clarification, interpretation, correction or amendment will preclude such Bidder from thereafter claiming any ambiguity, inconsistency, or error which should have been discovered by a reasonably prudent Bidder.

- C. All Addenda will be sent by email or mail to each firm recorded as having obtained a copy of the Contract from Metro-North. All Addenda will become part of the Contract upon being issued by Metro-North. Only a written interpretation or correction issued as an Addendum by Metro-North shall be binding. All Addenda shall be binding upon issuance.

## **9. ENVIRONMENTAL MATTERS AND COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

- A. Attention is called to provisions in the Contract regarding environmental matters that must be observed by the Contractor in the performance of the Work, consisting, among others, of safety of operations, noise control, prevention and/or control of air pollution, removal of waste materials, storage of construction materials, protection against fire, minimum disturbance to pedestrian and vehicular traffic, maintaining use of public facilities, and protection against dust hazards. These matters are specifically enumerated merely as a guide. The enumeration is not a complete list of environmental matters to be observed and does not exclude matters contained in this Contract or matters applicable by virtue of City, State or Federal law, rule or



regulation which are not specifically designated in this paragraph or in this Contract. All environmental provisions will be strictly enforced.

The Contractor, Subcontractors and all Suppliers must submit evidence that all standards, orders and regulations issued pursuant to the Clean Air Act of 1970 will be met. If either the State or City air pollution control agency has more restrictive standards, compliance therewith is mandated. The evidence and related documents will be retained by Metro-North for on-site examination by appropriate enforcement agencies.

In accordance with State Finance Law Section 165, Metro-North is prohibited from purchasing any tropical hardwood or tropical wood products ("Tropical Hardwood") as defined in Section 165(1)(b). A list of Tropical Hardwood as well as a list of non-tropical hardwoods is contained in the Contract Article entitled "TROPICAL HARDWOODS." In accordance with Section 165, Tropical Hardwood may be purchased by Metro-North if:

- (1) it is purchased from a sustained, managed forest;
- (2) there are no acceptable non-tropical hardwoods available;
- (3) there are no contractors doing business in New York State that are capable of providing acceptable non-tropical hardwoods sufficient to meet the requirements of this Contract;
- (4) the restriction would violate the terms of a grant to Metro-North from the Federal Government;
- (5) the use of non-tropical hardwood would result in a substantial cost increase to Metro-North; or
- (6) the Work involves historic restorations where there is no available and acceptable non-tropical hardwood species.

Any Bid submitted in response to this solicitation which proposes or requires the use of any Tropical Hardwood in the performance of this Contract shall be deemed non-responsive, unless it is determined by Metro-North that the supply or furnishing of Tropical Hardwood is permitted as an exception to Section 165.

If a Bidder believes that it may furnish or supply Tropical Hardwood under an exception to the provisions of Section 165, a request for a determination should be made in writing at least ten days prior to the scheduled Bid opening.

## **10. BID WITHDRAWAL**

- A. By submitting a Proposal, a Bidder irrevocably offers for a 60-day period commencing with the opening of Bids to enter into the Contract, if awarded, as hereinafter provided.
- B. After the expiration of the aforesaid 60-day period, a Proposal may be withdrawn by a Bidder who has otherwise complied with all of the requirements of the Contract by serving Metro-North with a written notice of withdrawal. An award made by Metro-North prior to its receipt of the notice of withdrawal will be valid notwithstanding

that such award is made after expiration of the said 60-day period. For such written notice of withdrawal to be effective, it must be clear, unequivocal and without conditions.

## **11. BID SECURITY**

- A. No Proposal will be considered unless accompanied by a certified or cashier's check or a Bid Bond in an amount equal to five percent (5%) of the Gross Sum Bid.
- B. A certified or cashier's check shall be made payable to the order of Metro-North and shall be drawn upon a national or State bank or trust company having its principal office in New York State.
- C. A Bid Bond shall be submitted in the form prescribed by Metro-North, a copy of which is included in the Contract, and shall be issued by a corporate surety in good standing and licensed to do business in the State of New York. Attorneys-in-fact who sign bonds required by the Contract must file with each bond a certified copy of their power of attorney to sign said bonds.
- D. Within fourteen (14) working days after the opening of the Proposals, Metro-North will return all certified checks deposited by Bidders, except those deposited by three Bidders to be selected by Metro-North. The return of a Bidder's check shall not, however, be deemed to be a rejection of his Proposal.

The certified checks of the remaining unsuccessful Bidders will be returned by certified mail within fourteen (14) days after the Award of the Contract is made by Metro-North or within fourteen (14) days after rejection of all Bids. The certified check of the successful Bidder shall be returned as provided in Paragraph 1.E. of the enclosed Contractor's Proposal form included in this IFB.

## **12. DEFAULT REGARDING A PROPOSAL**

- A. A Bidder's Default Regarding a Proposal is a failure to (1) make good faith efforts to establish that it is a responsible Bidder, including a failure to submit accurate data, or respond to questions regarding qualifications for an award of the Contract or (2) submit information, data or documentation required by the Contract to establish its eligibility for the Contract Award, including a failure of such Bidder to submit timely all applicable Disadvantaged Business Enterprise and Affirmative Action required Submissions, and any other submission required by the Contract to be submitted prior to Award. A Bidder shall not be deemed in Default Regarding a Proposal if the Bidder would not have otherwise received the Contract Award (e.g., its Bid was non-responsive).
- B. A Bidder may, in the discretion of Metro-North, be granted an extension of time, upon good cause shown, to make a submission required by Paragraph A. or to correct a defect in such submission. In determining whether an extension should be granted, Metro-North will consider: whether the Bidder has exercised reasonable diligence, both before and after Bid opening, to meet the submission deadlines; the degree to which the lateness or defect was due to causes beyond the Bidder's control; and, in the case of submissions rejected as defective, the degree to which the Bidder could reasonably have anticipated Metro-North's objection to the adequacy of the submission.
- C. In the event of a Default Regarding a Proposal, Metro-North may proceed to award the Contract to any of the original Bidders as, in its opinion, will advance the interest

of Metro-North or Metro-North may invite further Proposals. The defaulting Bidder shall thereupon in either case be liable to Metro-North for any loss and damage sustained by Metro-North by reason of such default, but in no event shall the amount of damages exceed the amount of the Bid security.

- D. The submission of the Contractor's Proposal shall constitute a Contract binding the Bidder to pay Metro-North the loss and damages sustained by reason of Bidder's default up to the amount of the Bid security. Such loss and damages shall be: (i) the excess (if any) of the amount of the Gross Sum Bid in the Proposal accepted by Metro-North over the corresponding amount bid in the defaulting Contractor's Proposal; (ii) the expense of re-advertising the Contract; and (iii) damages for delay in completion of the Contract by virtue of the Default Regarding a Proposal.
- E. In the event a Bidder shall Default Regarding a Proposal, Metro-North shall have the right to apply its Bid security, or so much thereof as may be necessary, towards the damages sustained as provided in Paragraph D. of this Article, and shall return the balance, if any, to the defaulting Bidder. If the Bid security is in the form of a Bid Bond, then in the event of a default, the defaulting Bidder and the sureties on said Bid Bond shall pay to Metro-North the damages determined by Metro-North to have been sustained in accordance with Paragraph D. of this Article.

### **13. RESPONSIVE BID**

- A. Bidders are advised that "qualified", conditional or unbalanced Bids, or Bids which are at variance with any provision of the Contract, or Bids that fail to meet any requirement of the Contract, may be rejected as non-responsive. Any provisions contained in materials attached to the Contractor's Proposal which have not been specifically requested by Metro-North and which modify, supplement or are inconsistent with the provisions of the Contract, shall not be deemed to constitute part of the Contractor's Proposal.
- B. If no responsive Bids are received, Metro-North reserves the right to negotiate with all responsible Bidders for the award of the Contract.
- C. In the event a single Bid is received, a price and/or cost analysis may be made before the award of the Contract. A price analysis is the process of examining the Bid and evaluating the price without evaluating separate cost elements. A price analysis, by comparing the Bid to other similar procurements, will be based on an established or competitive price of the elements used in the comparison. This comparison will be made to a purchase of similar quantity and involving similar specifications and where a difference exists, a detailed analysis will be made of this difference and the costs thereof.

Where it is impossible to conduct a valid price analysis, it may be necessary to conduct a cost analysis of the Bid price. The single Bidder will then be requested to provide sufficient information and data so that this analysis can be made.

### **14. AWARD PROCEDURE**

- A. Metro-North desires to expedite the Contract Work to minimize the inconvenience to the traveling public, to reduce the time of construction, and to sooner obtain the benefits of the Project. In order to achieve this, Metro-North will utilize A+B Bidding for this Contract.

A+B Bidding requires Bidders to competitively bid the construction cost (the "A") and the time

required to achieve the milestone identified below (the “B”). For purposes of this Contract, the Bidder will bid on the number of calendar days to achieve the following required milestone (the “Milestone Duration”):

B - Complete all work of the Contract, including the work associated with the Contract Specifications and Drawings C-100 THROUGH S-101

- B . The basis of the comparison of Bids is the sum of the A Value and the B Value, where:

A Value + B Value = Combined Bid Amount for the Evaluation of the Apparent Low Bidder

The Contract will be awarded to the responsive and responsible Bidder with the lowest Combined Bid Amount. The above formula will be used solely to determine the Apparent Low Bidder and will not be used as a basis for payment to the Contractor. The Total Contract Price will be based on the Price Schedule of the Bid as set forth in Article 3.01 of the Contract Terms and Conditions.

- C. Bids will be evaluated based on the following calculation for the A Value and the B Value, where:

A - Total dollar amount bid for the items set forth in the Price Schedule of the Bid

B - Total dollar amount bid by the Bidder to complete all work to achieve Substantial Completion = Substantial Completion Milestone Duration Bid x Daily Dollar Multiplier

- D. The Milestone Duration Bid by a Bidder for Substantial Completion shall be less than or equal to the maximum number of calendar days set forth below:

**B - Within 300 calendar days of Notice of Award**

- E. Bids showing a duration for the milestone in excess of the maximum number of calendar days set forth above in Paragraph (D) will be considered non-responsive and will be rejected. When partial days are bid, they will be rounded up to the nearest whole day for award consideration. Any decision by a Bidder to bid less than the maximum number of calendar days for the milestone is at its own risk; Metro-North does not warrant that the Work for the required milestone can be completed in less than the maximum number of calendar days set forth above.

- F. Upon Contract Award, the Milestone Duration bid by the successful Bidder will be the contractual milestone duration within which the milestone must be achieved and will be utilized for the assessment of Liquidated Damages, or the payment of any Incentive, as may be applicable.

- G. For the purpose of the calculation of the Bids for this Contract, the Daily Dollar Multiplier set by Metro-North for the milestone is set forth below:

B - Complete all work of the Contract associated with Substantial Completion, including the work associated with the Contract Specifications and Drawings C-100 through S-101: **\$4,000.00**

- H. Each Bid shall contain the following components: (1) a Price Schedule filled out

completely by the Bidder, and (2) the Milestone Duration for the milestone. Bidders are advised that a Bid which does not contain both components will be deemed nonresponsive and will be rejected by Metro-North.

- I. The sample calculations below are provided as an example only. In this example, the maximum number of calendar days set by Metro-North to achieve Milestone B1 is 35 days and 28 days to achieve Milestone B2. Based on a comparison of the example bids, Bidder 2 is the Apparent Low Bidder with an Apparent Low Bid amount of \$1,245,000. The Total Contract Price will be \$600,000. The Contractor will have a maximum of twenty-nine (29) days to achieve Substantial Completion Milestone B1 and a maximum of twenty-one (21) days to achieve Interim Milestone B2 based on the Milestone Durations set forth in its Bid.

Bidder 1

A Value: \$500,000

Total B Value: \$755,000 (based on chart below)

Required Milestones	Daily Dollar Multiplier	Milestone Duration Bid in Calendar Days	Maximum Duration of Calendar Days	B Value of Each Required Milestone
B1 (Substantial Completion)	\$15,000	33	35	\$495,000
B2 (Interim Milestone)	\$10,000	26	28	\$260,000

Bidder 2

A Value: \$600,000

Total B Value: \$645,000 (based on chart below)

Required Milestones	Daily Dollar Multiplier	Milestone Duration Bid in Calendar Days	Maximum Duration of Calendar Days	B Value of Each Required Milestone
B1 (Substantial Completion)	\$15,000	29	35	\$435,000
B2 (Interim Milestone)	\$10,000	21	28	\$210,000

The A Value for each Bidder is added to the Total B Values to equal their Combined Bid Amounts for Metro-North's evaluation of the Apparent Low Bidder.

	A Value	Total B Value	Combined Bid Amount for Evaluation
Bidder 1	\$500,000	\$755,000	\$1,255,000
Bidder 2	\$600,000	\$645,000	\$1,245,000

- J. Notwithstanding the foregoing, Metro-North reserves the right, when it deems it to be in the interest of the public, to bypass the lowest responsive and responsible Bidder and to accept another bid, to the extent permitted by law. Metro-North also reserves

the right to waive informalities in or to reject any or all Bids, as it may determine in its sole and absolute discretion.

- K. Metro-North will issue a Notice of Award informing the successful Bidder that its Proposal has been accepted and that it has been awarded the Contract. The Notice of Award will be effective upon mailing by Metro-North or, if delivered personally, upon delivery.
- L. The successful Bidder will be required to evidence its receipt of the Award by endorsing and returning to Metro-North a copy of that Notice of Award within ten (10) days of receipt thereof. The failure of the successful Bidder to so endorse and return the Notice of Award does not affect the validity of the Proposal or the Award, unless Metro-North in its discretion elects to treat such failure as a Default Regarding a Proposal. Notwithstanding the fact that a Bidder's execution of its Bid binds it to the Contract without having to subsequently execute the Contract, a Bidder may be required by Metro-North to execute one or more counterparts of the Contract.

## **15. PERFORMANCE AND PAYMENT BONDS**

As a condition to Award, the successful Bidder must furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Gross Sum Bid as security for the faithful performance of the Contract and also a Payment Bond for labor and material in an amount equal to one hundred percent (100%) of the Gross Sum Bid as security for the payment of all persons performing labor or furnishing materials in connection with the Contract. Each bond executed by the Contractor and by a surety or sureties approved by Metro-North shall be effective from the date of the Notice of Award to the date of final completion of the Contract. Prior to award the apparent low Bidder must provide satisfactory evidence to Metro-North that the Bidder will be able to provide the required Bonds and Insurance.

## **16. INSURANCE REQUIREMENTS**

As a condition to Award and prior to commencement of any Work, the successful Bidder shall submit proof of the insurance coverage required in accordance with the provisions of Chapter 6 entitled " CONTRACTOR'S LIABILITY AND INSURANCE" and Attachment F.

## **17. DISADVANTAGED BUSINESS ENTERPRISE**

It is the policy of Metro-North that Disadvantaged Business Enterprises (as defined in the U.S. Department of Transportation Regulations 49 CFR Part 26) are provided the opportunity to participate in the performance of this Contract. Bidders agree to ensure and to take all necessary and reasonable steps (as hereinafter defined) to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 are provided the opportunity to participate in the performance of this Contract. Metro-North and its Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.

This provision is included to ensure that all persons who enter into any form of contractual agreement with Metro-North are aware of their responsibility and the commitment of Metro-North to see that its attendant DBE Policy is carried out in all instances. Pursuant to these regulations, a DBE pre-bid conference will be held on [JULY 8, 2021 at 10:00 AM](#), at [12 CROTON FALLS ROAD, SOMERS, NY 10589](#).

The DBE goals for this project are:

22.5 % for DBE

## **18. BID MISTAKE**

A Bidder who seeks to rescind its Bid due to a mistake or error in preparation of the Bid shall, within two business days of public Bid opening, notify Metro-North in writing or orally with a written confirmation of its intent to rescind its Bid. The notice shall specify the details of the error or mistake.

Thereafter, Metro-North shall evaluate the matter and determine if the Bidder will be permitted to rescind its Bid.

To assist in its determination, Metro-North may conduct a hearing on the matter, wherein the Bidder shall if requested by Metro-North present testimony and documentation, including the Bidder's original Bid sheets and calculations.

## **19. BID PROTEST**

A vendor whose offer is not accepted by MTA C&D may protest a proposed award to another party. MTA C&D shall in all instances disclose information regarding the protest to the Federal Transit Administration (FTA). A protestor must exhaust all administrative remedies with MTA C&D before pursuing a protest with the FTA. Protests may be filed with MTA C&D in accordance with MTA C&D's proposal protest procedures. A copy of the proposal protest procedures is available for inspection through the Procurement Officer.

Reviews of protests by the FTA are limited to MTA C&D's failure to have or follow its protest procedures, its failure to review a complaint or protest, or violations of Federal Law or Regulation. An appeal to the FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) business days of the date the protestor knew or should have known of MTA C&D's failure(s) or violation(s).

## **20. FEDERAL REQUIREMENTS**

### **A. FEDERAL REQUIREMENTS**

This Contract is subject to a financial assistance contract between Metro-North and the United States of America, Department of Transportation, Federal Transit Administration (FTA). By reason of such an arrangement with FTA, certain Federal Provisions have been included in the Contract. Wherever an inconsistency exists between the Federal Provisions and any other provision of the Contract, the more stringent requirement shall apply.

### **B. BUY AMERICA**

This Contract is subject to the Buy America requirements of 49 U.S.C. 5323(j) and the Federal Transit Administration's implementing regulations which can be found at 49 C.F.R. Part 661. These provisions affect the manner in which a Bidder prepares its Bid, the manner in which Bids are evaluated, and the manner in which the Bidder will perform the Work if it is awarded the Contract. Each Bidder must submit with its Bid the completed Buy America certificate included in the Bidder's Proposal Section. A Bidder who seeks an exception to the Buy America requirements on the

grounds that its application would be inconsistent with the public interest must seek the exception from Metro-North not less than 10 working days before the date set for the opening of Bids.

## **21. NEW YORK STATE OMNIBUS PROCUREMENT ACT OF 1992**

- A. It is the policy of New York State to maximize opportunities for the participation of New York State Business Enterprises, including minority and women-owned business enterprises, as bidders/proposers, subcontractors, and suppliers on its procurement contracts.
- B. New York State Business Enterprises that participate as contractors, subcontractors and suppliers in the contracts of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies strongly contribute to the economies of the State and the nation. In recognition of this contribution, bidders/proposers for this contract are strongly encouraged and expected to consider New York State Business Enterprises in the fulfillment of the requirements of this contract. Such participation may be as subcontractors, suppliers, or other supporting roles. MNR, to the maximum extent practicable and consistent with legal requirements, desires to achieve participation of qualified and responsible New York State Business Enterprises in purchasing commodities and services including technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law. Utilizing New York State Business Enterprises in MNR contracts will help create more private sector jobs, rebuild New York's infrastructure and maximize economic activity to the mutual benefit of contractors, participating New York State Business Enterprises, the public sector and the people of the State of New York. Public procurements can drive and improve the State's economic engine through promotion of the participation of New York State Business Enterprises by MNR contractors. MNR, therefore, strongly encourages bidders/proposers to use New York State Business Enterprises in MNR contracts. The potential participation by all kinds of New York State Business Enterprises in MNR contracts will deliver great value to MNR, the State and its taxpayers.
- C. "New York State Business Enterprise" means a business enterprise consisting of a person acting as a sole proprietorship, or a legal entity such as but not limited to a corporation, limited liability company, or partnership, which offers for sale or lease or other form of exchange, goods which are sought by a New York State public authority or public benefit corporation, which are substantially manufactured, produced or assembled in New York state, or services which are sought by the public authority or public benefit corporation and which are substantially performed within New York State.
- D. The bidder/proposer that is awarded and enters into the contract (the "Contract") that is the subject of this solicitation ("Contractor") agrees by so entering into such contract to the following, which is incorporated into and made a part of the Contract:
  - 1. Contractor agrees to furnish to MNR information regarding its use of New York State Business Enterprises in the performance of this Contract, including by reporting to MNR, in response to MNR's request, whether New York State Business Enterprises are being, have been or are



anticipated to be, used in the performance of the Contract, and, if so, by providing identifying information about each such New York State Business Enterprise.

2. If the Contract is in an amount of \$1 million or more, the following additional provision is incorporated into and are made a part of this Contract:
  - a. Contractor shall (i) upon entering into Contract provide to MNR documentation of its effort to encourage use of New York State Business Enterprises and (ii) thereafter also report the extent of such use for each such New York State Business Enterprise (a) in response to a request of the MNR project manager and (b) at the time of Contract close-out.
3. Contractor is required to make reasonable efforts to encourage the participation of New York State Business Enterprises and suppliers and subcontractors on such Contract. Contractor will be required to document its efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors by showing it has (i) solicited bids/proposals, in a timely and adequate manner from New York State Business Enterprises including certified minority-owned business, (ii) contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in bidder/proposer outreach conferences. Documentation of such efforts of the Contractor must be produced to MNR upon MNR's request. If the Contractor determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement to MNR indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement to MNR verifying such.

- E. Contractor must comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.
- F. Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this contract through listing any such positions with the Division of Employment and Workforce Solutions of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to MNR or the State, upon request.
- G. Contractor acknowledges that New York State may seek to obtain offset credits from foreign counties as a result of this contract and agrees to cooperate with the State in these efforts.
- H. Information on the availability of New York State subcontractors and suppliers is available from the following:

1. <https://www.nyscr.ny.gov/nysBusinessReg.cfm> (Free account registration is required)
  2. New York State Department of Economic Development, Division of Small Business at 518-292-5266.
- I. A directory of New York State certified minority and women-owned business enterprises is available from the following:
1. <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>
  2. Empire State Development's Division of Minority and Women's Business Development  

Albany, NY 12245  
(518) 292-5250  
or  
633 Third Avenue, 33rd Floor  
New York, NY 10017  
(212) 803-2414
  3. Contact MTA Department of Diversity and Civil Rights at 646-252-1385 for an appointment to inspect the directory at 2 Broadway, 16th floor, New York, NY 10004. At your request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

## **22. CONTRACTOR PERFORMANCE EVALUATION**

Contractor performance will be evaluated by Metro-North until completion or termination of the Contract. The quality of Contractor performance in a number of areas will be rated, at a minimum, as satisfactory, needs improvement, unsatisfactory, or not applicable. When evaluations are rated less than satisfactory, Contractors will be notified. These notifications shall identify deficient areas in Contract performance and afford the Contractor the opportunity to correct or present its position concerning items that were reported to be deficient. Each Contractor Performance Evaluation, with correspondence documenting deficient performance, will be made available to the MTA and affiliated agencies for use in the Determination of Contractor Responsibility on future contracts. Contractors that are determined to be not responsible will not be eligible for contract award.

## **23. AFFIRMATIVE ACTION/EEO SUBMISSION REQUIREMENTS**

Bidders shall submit with their Bid a copy of their current EEO-1 form, detailing the Bidder's workforce composition. The EEO-1 form shall list the Bidder's total number of employees, the number of minority and female employees, including management employees.

## **24. NEW YORK STATE LOBBYING LAW OF 2005**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the "Lobbying Law"), was signed into law by Governor George Pataki in August 2005. The Lobbying Law makes major changes to the Legislative Law and State Finance Law, which regulate lobbying on government procurement initiatives. In particular, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j to address restrictions on "contacts" during the procurement process; and Section 139-k to

address the disclosure of contacts and the responsibility of bidders and proposers during procurements. These sections are effective as of January 1, 2006.

A section entitled “NEW YORK STATE’S STATE FINANCE LAW SECTIONS 139-j AND 139-k, “LOBBYING LAW”” is attached and made part of this solicitation package in compliance with the Lobbying Law. For additional information, all Bidders/Proposers are urged to contact the New York State Office of General Services at (518) 474-5607, or access their website:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

**25. NEW YORK STATE PUBLIC AUTHORITIES LAW §2879**

In accordance with Public Authorities Law §2879-a, the contract resulting from this solicitation may be subject to the approval of the New York State Comptroller. In the event such approval is required, the contract shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller.

**26. IRAN ENERGY SECTOR DIVESTMENT - CERTIFICATION**

Pursuant to New York State Finance Law § 165–a, Iran Divestment Act of 2012 (the “Act”), the Office of General Services is required to post on its web site a list of persons who have been determined to engage in investment activities in Iran (the “List”), as defined in the Act. The List is posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

**27. NEW YORK STATE PUBLIC AUTHORITIES LAW §1279-H (DEBARMENT OF CONTRACTORS)**

In accordance with Public Authorities Law §1279-h, the bidder/proposer awarded the contract resulting from this solicitation will be debarred and will not be permitted to bid on future MTA contracts for a period of five years if, pursuant to regulation established by the MTA for the debarment of contractors, a final determination is made by the MTA that such bidder/proposer failed to substantially complete all work within the time frame set forth in this Contract, including any subsequently executed change order, by more than ten percent of the Contract term, or that the bidder's/proposer's claimed costs exceeds ten percent or more of the total Contract cost, including costs associated with any subsequently executed change orders, and where such claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process.

**28. GIS SUBMISSION REQUIREMENTS FOR CAPITAL WORK**

**BIDDERS ARE ADVISED THAT THE SUBMITTALS SECTION OF THIS CONTRACT OUTLINES THE REQUIREMENTS FOR CAD DRAWINGS TO ALLOW SEAMLESS IMPORT FROM POPULAR CAD PROGRAMS (E.G., AUTOCAD) INTO GIS.**

# CONTRACTOR'S PROPOSAL

TO

**MTA CONSTRUCTION & DEVELOPMENT COMPANY, acting on behalf  
of the METROPOLITAN TRANSPORTATION COMPANY and METRO-  
NORTH COMMUTER RAILROAD COMPANY**

FOR

**STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT  
(PACKAGE NO. 2)**

**CONTRACT NO. 142486**

Bids will be opened and read at 2:00 PM Eastern Time, on AUGUST 12, 2021.

## 1. PROPOSAL ACKNOWLEDGEMENT

NOTICE: Bids must be made on this form. To be deemed responsive, there must remain annexed hereto upon submission of the Bid all of the Contract Documents (excluding drawings) which were included with this form when the same was issued to the Contractor for bidding purposes, including but not limited to the Information for Bidders, all attachments to this Proposal, the Contract Terms and Conditions, and the Technical Provisions. Addenda which change any part of the Bidder's Proposal must be attached hereto, or the changes otherwise clearly incorporated herein. Receipt of all addenda must be acknowledged herein. Metro-North in its sole and absolute discretion may excuse any failure by a Bidder to return all of the Contract Documents specified above.

A. The undersigned,

<sup>1</sup>

---

(Insert full legal name)

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(Insert address and state and country if incorporation, if any)

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<sup>1</sup> The Contractor's name must be inserted here. If the Bid is submitted by a corporation, Metro-North may require the Bidder to submit an affidavit with the Proposal showing the names and addresses of the directors and principal officers. If the Bidder is a foreign corporation, it must agree to accept legal service of process as provided in this Proposal. If the Bid is submitted by a firm, the above blank must be completed in the following manner: "the firm of A., B. & C., composed of A., B., C., etc." (providing the names of all the partners).

acknowledges that it has carefully examined the entire Contract, including the Addenda hereinafter identified, Contractor has visited the site or has elected not to do so but is nevertheless familiar with any factors which may affect the Work of this Contract, and offers to perform, in strict conformity with each and every provision of the Contract and as shown on the drawings, all of the Work as defined in Contract No. 142486 at the prices set forth in this Proposal and within the period of time specified for completion in the Contract. This offer shall be irrevocable for a period of 60 days after the opening thereof by Metro-North and may thereafter be withdrawn only as provided in the Information For Bidders.

- B. To induce the acceptance of this Proposal, the undersigned hereby makes each and every representation required by the Contract. Moreover, as a condition to receipt and consideration by Metro-North of this Proposal, whether or not it is accepted, the undersigned agrees that all information of any nature whatsoever, regardless of the form of the communication, received from the undersigned (including its directors, officers, agents or employees) by Metro-North, its officers, agents or employees, whether before or after receipt of acceptance of this Proposal, and notwithstanding any statement therein to the contrary, has not been given in confidence and may be used or disclosed by or on behalf of Metro-North without liability of any kind except as may arise under U. S. Patent Law.
  
- C. The undersigned hereby designates the following office in the State of New York as its office for the purpose of receiving any written notice permitted or required to be served upon the Contractor by any provision of the Contract, including, without limitation, Notice of Award of the Contract:

2

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned acknowledges that such address may be changed only upon written notice executed and acknowledged by the undersigned and delivered to Metro-North, and then only to the address of another office located in the State of New York.

- D. The undersigned further agrees that solely for the purpose of comparing Bids offered for the Work, the total Bid price shall be computed as the sum of the prices of items bid upon in the Proposal. Hereinafter this sum will be referred to as the Gross Sum Bid. In case of a discrepancy between the words and the figures giving the Bid prices, the words shall govern, unless it is apparent from the schedule of Bid prices (as determined by Metro-North) that the price expressed in figures is the actual price bid.

\_\_\_\_\_

<sup>2</sup> This information must be supplied by all Bidders, corporate and otherwise.

- E. Upon acceptance of this Proposal and the issuance of a Notice of Award, the undersigned does hereby bind itself to accept this Contract and to deliver to Metro-North (i) an endorsed copy of the Notice of Award as evidence of such acceptance, (ii) the required Performance and Payment Bonds, are to be delivered to Metro-North within ten (10) days of the date of receipt of a Notice of Award by the undersigned and (iii) evidence of required insurance. shall be submitted on the appropriate Certificate of Insurance upon notification of apparent low bid status, subject only to delays attributable to legal process of whatever nature. Accompanying this Proposal is a certified check or Bid Bond meeting all of the requirements of the Information for Bidders. This check or bond (hereinafter alternatively referred to as the "deposit") may be forfeited in whole or in part as damages, as hereinafter provided, in case the undersigned shall default in this commitment. In the absence of a default, the deposit is to be returned to the undersigned. Upon the happening of such default and without further notice to the undersigned, Metro-North may proceed to contract with any one or more of the original Bidders as, in its opinion, will further the best interests of Metro-North, or Metro-North may invite further Proposals. The undersigned shall in either case be liable to Metro-North for all loss and damage sustained by it by reason of such failure of the undersigned. Such loss and damage shall include the excess, if any, of the amount of the Gross Sum Bid for the Work in the Proposal ultimately accepted by Metro-North over the Gross Sum Bid for the Work in this Proposal, the expense of readvertising the Contract (including Metro-North's administrative costs in connection therewith), and any other loss or damage sustained by Metro-North by reason of such default. The mere submission of this Proposal shall be binding upon the undersigned and obligate the undersigned to pay Metro-North the loss and damage sustained by reason of such default as aforesaid. The proposed sureties must be corporate sureties licensed to do business in the State of New York and must be in good standing under the laws of the State of New York. A Certificate of Qualification pursuant to Section 1111 of the Insurance Laws must be submitted for each surety.
- F. (Note: This Paragraph F. shall bind only those corporate Bidders which are not organized and existing under the laws of the State of New York).

The undersigned, a foreign corporation, agrees as follows: Personal service or process in any action, suit or proceeding instituted by Metro-North against the undersigned on or in connection with this Proposal or the Contract may be made by Certified Mail (Return Receipt Requested) addressed to the undersigned at the address referred to in Paragraph 1.C. of this Proposal, above, unless a different address within the State of New York be specified below, in which event service may be made only at the address specified below or at such other mailing address within the State of New York as is substituted therefor by the undersigned by notice in writing to Metro-North and acknowledged by Metro-North.

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G. The prices Bid by the undersigned for each item of the Work and for the Work as a whole are as shown in the Contractor's Proposal which is attached hereto and made a part hereof. The undersigned acknowledges that such Bid prices, as increased or decreased pursuant to any specific provision of the Contract, shall be its full and sole compensation for the Work, as that term is defined in the Contract. The undersigned acknowledges that if it fails to quote a price on any item as to which a Bid is required, or if it fails to provide all Technical Data required with respect thereto, this Bid may be rejected as unresponsive.

H. Acknowledgement is hereby made of the receipt of the following addenda<sup>3</sup> to the Contract:

Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____

I. By submission of this Bid, the undersigned and each person signing on behalf of the undersigned certifies, as required by Section 2878 of the Public Authorities Law of the State of New York, under penalty of perjury, that: (a) the prices in this Bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; (b) unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed either directly or indirectly by the undersigned and will not knowingly be disclosed by the undersigned prior to opening of this bid, to any other Bidder or to any competitor; (c) no attempt has been or will be made by the undersigned to induce any other person, partnership or corporation to submit or not to submit a Bid for the purpose of restricting competition.

A Bid shall not be considered for award nor shall any award be made where (a), (b), and (c) above have not been complied with provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reasons therefor. Where (a), (b), and (c) above have not been complied with, the Bid shall not be considered for award nor shall any award be made unless the Contracting Officer determines that such disclosure was harmless and was not made for the purpose of restricting competition.

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<sup>3</sup> Insert Number and Date of each Addendum issued by Metro-North.

The fact that a Bidder (1) has published price lists, rates, or tariffs covering items being procured; (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (3) has sold the same items to other customers at the same prices being Bid, does not constitute, without more, a disclosure within the meaning of (a), (b), and (c) above.

- J. The undersigned understands that Metro-North reserves the right to require the undersigned, prior to the award of the Contract, to submit financial information in form satisfactory to Metro-North, as well as such other information as Metro-North may require, and to be examined thereon, and on the Bidder's experience submissions, to assist Metro-North in determining whether the undersigned appears to have the financial and technical capability of performing the Contract; and that failure to comply with these requirements may preclude the award of the Contract to the undersigned.

THE FOREGOING PROPOSAL SHALL BE IRREVOCABLE FOR SIXTY (60) DAYS AFTER THE DATE ON WHICH METRO-NORTH OPENS THE PROPOSAL.

**IN WITNESS WHEREOF**, the undersigned has caused this Proposal to be signed and delivered as of the date Proposals are opened by Metro-North.

Attest:

Company Name (print or type Name of Firm, Corporation or name of individual)		Federal Employee Tax I.D. Number or exact Social Security Number <sup>4</sup>
By:		By:
Authorized Officer (Print Name)		Authorized Signature of Officer or Representative
Title		Telephone Number
Date		Fax Number

NOTE: Please indicate below if the bidder / proposer to this solicitation has any of the following designations and include a copy of the certification with your response.

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<sup>4</sup> If the Bidder is an individual, the Bidder shall furnish the bidder's Social Security Number.



NOTE: Please indicate below if the bidder / proposer to this solicitation has any of the following designations and include a copy of the certification with your response.

- ☐ Small Business Concern (SBC)
- ☐ Certified Minority or Women Owned Business (MWBE)
- ☐ Disadvantage Business Enterprise (DBE)
- ☐ Service Disabled Veteran Owned Business (SDVOB)

CERTIFICATE  
(TO BE COMPLETED BY CORPORATE BIDDER)

I, the undersigned, as Secretary to the corporation submitting the foregoing Proposal, hereby certify that under and pursuant to the by-laws and resolutions of said corporation, each officer who has signed such Proposal on behalf of the corporation, including the foregoing assurance of irrevocability, is authorized so to do.

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

## **2. PROPOSAL DATA ( SEE ATTACHMENT G)**

All prices shall be given in both words and figures. In case of a discrepancy the prices stated in words shall govern, unless it is apparent from the Proposal Data (as determined by Metro-North) that the price expressed in figures is the actual price bid. The Maximum Allowable Period of Performance that may be proposed by the Bidder is:

300 Calendar Days

### **A. SUPPLEMENTAL BID ITEMS (UNIT PRICES)**

Unit combined labor and material prices for any increase or decrease (up to 15% in quantities from those indicated in the Contract) arising from Extra Work orders or reductions in Work requested by Metro-North. The unit prices shall be applied to both increases and decreases at any time during the course of the Work between Contract award and final acceptance of the Work by Metro-North.

Where the change affects Work not yet performed, additions and decreases will be netted out. Where it affects Work already started, it will be treated separately. Where an increase or decrease in quantities exceed 15% of those indicated in the Contract or where in the opinion of Metro-North, the particular circumstances of the situation render the application of unit prices meaningless, the price change shall be determined by negotiation pursuant to the Contract Terms and Conditions. Except where otherwise specified, quantities will be based upon in place measurements.

## **SCHEDULES, FORMS AND CERTIFICATIONS**

### **SCHEDULES TO BE FILED IN DIGITAL DOCUMENT REPOSITORY:**

- Schedule A:** Federal Certification of Restrictions on Lobbying
- Schedule B:** Contractor Responsibility Form
- Schedule C:** Compliance with NYS Finance Law Sections 139-j and 139-k (Lobbying Law)
- Schedule F:** Potential Subcontractor Questionnaire
- Schedule S:** Iran Energy Sector Divestment Certification
- Schedule X:** Drug and Alcohol Certifications
- Schedule Z:** EEO-1 Form

#### **Instructions for submitting financial documents:**

- To satisfy the financial documentation requirement, 3 years of certified financials should be uploaded to the **MTA eSupplier Document Repository**.
- If the company does not have certified financial statements, provide 3 years of financial statements sworn to by Contractor's Chief Financial Officer.
- All necessary documents should be combined into 1 attachment, with each year clearly designated.
- The attachment must meet the file size/type requirements for the MTA eSupplier Document Repository
- It is not necessary to include this instruction page in the file

### **FORMS TO BE INCLUDED WITH BID:**

1. CONTRACT SPECIFIC RESPONSIBILITY FORM
2. TECHNICAL AND CONSTRUCTION CAPABILITY
3. PROSPECTIVE SUBCONTRACTORS
4. BUY AMERICA CERTIFICATION
5. CERTIFICATE OF FLOW DOWN OF FEDERAL PROVISIONS TO SUB-CONTRACTORS
6. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROPOSAL
7. SCHEDULE OF DBE PARTICIPATION (Form A)
8. INTENT TO PERFORM AS SUBCONTRACTOR/SUBCONSULTANT JOINT VENTURER
9. BIDDERS/OFFERORS QUESTIONNAIRE
10. CONTRACTOR CERTIFICATION (DEBARMENT OR SUSPENSION FROM FEDERALLY ASSISTED CONTRACTS)
11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTION
12. CERTIFICATE OF NONSEGREGATED FACILITIES
13. INTENTIONALLY OMITTED
14. CONTRACTOR QUALITY CONTROL PROGRAM REQUIREMENTS

15. STAFFING PLAN
  16. MTA VENDOR CODE OF ETHICS
  17. CERTIFICATION OF COMPLIANCE WITH RAIL SAFETY IMPROVEMENT ACT (RSIA) OF 2008 MINIMUM TRAINING AND QUALIFICATION REQUIREMENTS
  18. CERTIFICATION OF COMPLIANCE WITH RAIL SAFETY IMPROVEMENT ACT (RSIA) OF 2008 RANDOM DRUG AND ALCOHOL USE TESTING REGULATIONS
  19. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH DISCLOSURE REQUIREMENTS OF PUBLIC AUTHORITIES LAW SECTION 1269-g (REPORTING OF FRAUD AND PROTECTIONS FOR REPORTING FRAUD)
  20. FORM OF BID BOND
  21. FORM OF PERFORMANCE BOND
  22. FORM OF PAYMENT BOND
  23. INTENTIONALLY OMITTED
  24. INTENTIONALLY OMITTED
  25. CERTIFICATION OF COMPLIANCE WITH FTA DRUG AND ALCOHOL PROGRAM REQUIREMENTS
  26. PRIME CONTRACTOR CERTIFICATION OF NO CHANGE IN DOCUMENT REPOSITORY (SCHEDULE R)
  27. SUBCONTRACTOR CERTIFICATION OF NO CHANGE – DOCUMENT REPOSITORY (SCHEDULE R1)
  28. VENDOR ASSURANCE OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT & STATEMENT OF NON-COLLUSION (SCHEDULE M)
  29. CONTRACT-SPECIFIC SUBCONTRACTOR QUESTIONNAIRE (SCHEDULE F1)
- INSURANCE SCHEDULE (*ATTACHMENT*)
  - SAMPLE NOTICE OF AWARD

## 1. CONTRACT SPECIFIC RESPONSIBILITY FORM (SCHEDULE B1)

This form is to be submitted after Contractor is notified that it is the low bidder, or has otherwise been selected for a contract award, or as directed by MTA. Significant Subcontractors that are proposed to work on the contract referenced below are also required to complete this form. A Significant Subcontractor is defined as: subcontracts in which the subcontractor is proposed to perform work (i) valued at \$1 million or more and more than 10% of the prime contract value; or (ii) valued at \$5 million or more; or (iii) in Special Circumstances subcontracts of \$100,000 or more.

Contract #: \_\_\_\_\_ (the "Contract").

Contractor/Subcontractor name: \_\_\_\_\_

If Subcontractor, provide prime Contractor name: \_\_\_\_\_

### 1. TECHNICAL RESOURCES

Attach an explanation that will assist the MTA in determining whether Contractor or Significant Subcontractor have the necessary technical resources to perform the Contract work. Please include information relating to staffing, facilities, equipment, and tools that Contractor or Significant Subcontractor will commit to the performance of this Contract. If this information has already been provided elsewhere, please note the section of the bid/proposal that is responsive.

See Section: \_\_\_\_\_

Please check this box if a separate sheet providing an explanation is attached.

☐

### 2. LICENSES

Please list any licenses, permits, or certifications that Contractor or Significant Subcontractor or your employees hold that may be relevant to this Contract. If the license, permit or certification has been revoked or suspended, please state so and explain the details.

License/Permit/Certification	Name of Holder	Issuing State or Entity

3. Have any of Contractor or Significant Subcontractor officers, partners, owners, managers, or employees had any (irrespective of whether they are contract specific) licenses, permits, or certifications revoked or suspended in the past three years? If "Yes", explain details below (or attach a separate sheet).

#### 4. PERFORMANCE BOND INFORMATION

*(This section is only applicable to solicitations in which the Contractor is required to provide a performance bond. This section is not applicable to Significant Subcontractors.)*

Provide the names and addresses of the surety or sureties that will provide the performance bond required by this Contract.

Name	Address	Amount

#### 5. SUBCONTRACTS

*(This section is not applicable to Significant Subcontractors.)*

Which portions of this Contract, if any, does Contractor expect to subcontract? Attach an additional sheet if necessary. If subcontractors are not currently identified, you may insert TBD in the cell titled, Name and Address of Proposed Subcontractor(s).

Name and Address of Proposed Subcontractor(s)	Portion of Work	Estimated \$ Value of Work

#### 6. PRIOR MTA EMPLOYEES

List all employees of the Contractor who are or have been MTA or any MTA subsidiary or affiliate employees who were involved on behalf of Contractor or any subcontractor (including but not limited to Significant Subcontractors) with the preparation of the bid/proposal for the Contract or would be involved in the performance of the Contract if it is awarded to Contractor.

Name: \_\_\_\_\_

Previously or currently employed by: (check as appropriate)

MTA ☐ NYCT ☐ MaBSTOA ☐ SIRTOA ☐ MNR ☐ LIRR ☐  
TBTA ☐ MTAC&D ☐ MTA BC ☐

Name: \_\_\_\_\_

Previously or currently employed by: (check as appropriate)

MTA ☐ NYCT ☐ MaBSTOA ☐ SIRTOA ☐ MNR ☐ LIRR ☐  
TBTA ☐ MTAC&D ☐ MTA BC ☐

Contractors and subcontractors are reminded that Section 73 of the Public Officers Law and the MTA Vendor Code of Ethics place strict limitations on former MTA employees being employed by or receiving compensation from MTA Contractors, Subcontractors, bidders or proposers.

#### 7. FINANCIAL INFORMATION

*(This section is not applicable to Significant Subcontractors.)*

Contractor confirms that it has submitted certified copies of its financial statements for the past three (3) fiscal years and the Financial Responsibility Data Workbook to the Document Repository. If Contractor does not have certified financial statements, it should provide financial statements sworn to by Contractor's Chief Financial Officer, along with any other relevant information that will assist the MTA in evaluating and determining whether the contractor has sufficient financial resources to perform the Contract.

\_\_\_\_\_



**CERTIFICATION**

I am duly authorized to sign this Schedule B1 on behalf of the Contractor or Significant Subcontractor and affirm that the information contained in this document is true, accurate and complete. I authorize the MTA to verify the information contained in this schedule and to conduct any background checks or other investigations it deems appropriate.

I understand and agree that typing my name or attaching a digital signature in the space below will have the same force and legally binding effect as my original handwritten signature.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

## **2. TECHNICAL AND CONSTRUCTION CAPABILITY**

As part of the Proposal, the Bidder shall submit any additional evidence in addition to that specified above that it has the technical, financial, and construction capability to perform the Work in a timely manner as required by the Contract.

## **3. PROSPECTIVE SUBCONTRACTORS**

Upon the request of Metro-North and within 24 hours of such request, a Bidder shall submit the names of any proposed Subcontractors who would be awarded a subcontract. The submission shall include a description of the Work and the approximate value of each Subcontract and information equivalent to that required under Paragraphs D. and E. above.

At the option of the Bidder, alternate Subcontractors may be included in the list.

The above requirements are in addition to those contained within the DBE/WBE/MBE Requirements of the Contract.

## **4. BUY AMERICA CERTIFICATION**

As a condition of responsiveness, if the Bidder's Work pursuant to this Contract involves the delivery of [Rolling Stock] [Steel, Iron, or Manufactured Products] valued at \$150,000 or greater to Metro-North, then the Bidder shall complete and execute the following Buy America Certificate. Bidders are referred to Section 20(B) hereinabove and Article 11.22 hereinbelow. The Buy America Certification – [Rolling Stock] [Steel, Iron, Manufactured Products] applies to this Contract.

### **(1) BUY AMERICA CERTIFICATION – STEEL AND MANUFACTURED PRODUCTS**

In accordance with 49 U.S.C. 5323(j), as amended, and the implementing regulations published at 49 CFR Part 661, if steel, iron, or manufactured products (as defined in 49 CFR §§661.3 and 661.5) are being purchased or leased to fulfill the requirements of this Contract the Bidder must complete one certificate below (and one certificate only) to state the basis on which its Bid is submitted.

#### **a. Certificate of Compliance with Buy America Requirements**

The Bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Bid No. 142486	
Date:	
Signature:	
Title:	
Company Name:	

b. Certificate for Non-Compliance with Buy America Requirements

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Bid No. 142486	
Date:	
Signature:	
Title:	
Company Name:	

If the Bidder is purchasing or leasing steel or manufactured products to fulfill the requirements of this Contract and fails to sign either certification above, the Bidder, by signing the Bid Proposal Acknowledgement, will be deemed to be providing his certification that the Company will comply with the applicable provision of 49 U.S.C. 5323(j) and its implementing regulations, in which event, the Bidder by signing the Bid Proposal Acknowledgement, will be deemed to be providing his certification in accordance with Paragraph (1), above.

(2) BUY AMERICA CERTIFICATION – ROLLING STOCK

In accordance with 49 U.S.C. 5323(j), as amended, and the implementing regulations published at 49 CFR Part 661, if buses or other rolling stock (including train control, communication, and traction power equipment) are being purchase or leased to fulfill the requirements of this Contract, the Bidder must complete one certificate below (and one certificate only) to state the basis on which its Bid is submitted.

a. Certificate of Compliance with Buy America Rolling Stock

## Procurement

The Bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), including the applicable regulations in 49 CFR Part 661.11.

Bid No. 142486	
Date:	
Signature:	
Title:	
Company Name:	

b. Certificate for Non-Compliance with Buy America Rolling Stock Procurement

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Bid No. 142486	
Date:	
Signature:	
Title:	
Company Name:	

If the Bidder is purchasing or leasing rolling stock equipment to be used to fulfill the requirements of this Contract and fails to sign either certification above, the Bidder, by signing the Bid Proposal Acknowledgement, will be deemed to be providing his certification that the Company will comply with the applicable provision of 49 U.S.C. 5323(j) and its implementing regulations, in which event, the Bidder by signing the Bid Proposal Acknowledgement, will be deemed to be providing his certification in accordance with Paragraph (1), above.

## 5. CERTIFICATION OF FLOW DOWN OF FEDERAL PROVISIONS TO SUB-CONTRACTORS

The Contractor shall ensure that all federally required provisions under this Contract are included in all sub-contract agreements executed in connection with this Contract. The Contractor shall certify such compliance by executing the certification below and returning it to Metro-North together with a listing of each subcontractor included in the certification. The Contractor has a continuing obligation to keep the listing updated. Accordingly, the Contractor may submit more than one certification if necessary to demonstrate that all subcontract agreements executed in connection with this Contract are in compliance with this requirement.

### **Certification – Flow down of Federal Requirements to Subcontractors**

Contract No. [142486](#)

In accordance with the terms and conditions required by the United States Department of Transportation and the Federal Transit Administration (the “FTA”), the undersigned and each person signing on behalf of the undersigned certifies, under penalty of perjury, that it has included the federal requirements and provisions of Metro-North Contract No. [142486](#) (the “Contract”) that require flow-down for each sub-contractor identified in the listing attached hereto in each subcontract financed in whole or in part with Federal assistance provided by FTA in connection with the Contract.

The Contractor, or any of its subcontractors, shall not perform any act, fail to perform any act, or refuse to comply with any Metro-North requests which would cause Metro-North or the Metropolitan Transportation Authority to be in violation of the FTA terms and conditions.

Firm: [{Contractor / Subcontractor}](#)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## 6. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROPOSAL

Metro-North has established specific goals of awarding 22.5 percent of the Gross Sum Bid to Disadvantaged Business Enterprises (DBEs). Prior to award the Bidder must submit the following:

- (1) M/N - DBE Form A: Bidder Schedule of DBE Participation. List all disadvantaged businesses scheduled to participate in the Contract including scope of Work and dollar value to be performed by each.
- (2) M/N - DBE Form B: Intent to Perform as Subcontractor/Subconsultant/Joint Venturer. Each Subcontractor/Subconsultant/Joint Venturer listed on Form A must complete this form and submit to Metro-North prior to Contract Award.
- (3) The name and qualifications of the Contractor's DBE Liaison Officer.

**CONTRACT NO. and  
TITLE**

**CONTRACT VALUE \$** \_\_\_\_\_

**7. SCHEDULE OF DBE PARTICIPATION  
(Form A)**

Name, Address, Telephone Number of DBE (including name of contact person) Federal ID # or Social Security Number	Description of Work, Products and/or Services to be provided	Agreed Dollar Amount of DBE Subcontract	DBE % of Total Contract Price	DBE Projected Start and Completion Date

The undersigned bidder/proposer agrees that if it is eligible to be awarded the above contract, as a condition for being awarded the contract, it will enter into a formal agreement with each of the DBE firms listed in this schedule which are certifiable as such by the MTA. If any firm on the schedule is not certifiable, as a condition for being awarded the contract, the undersigned will enter into a subcontract with a substitute firm which must be certified by the MTA. The undersigned acknowledges that the information it has provided in this schedule will be verified by the MTA with the designated DBE firm(s).

BIDDER/  
PROPOSER \_\_\_\_\_ AUTHORIZED  
REPRESENTATIVE \_\_\_\_\_ AUTHORIZED  
SIGNATURE \_\_\_\_\_  
(Print or type)

ADDRESS: \_\_\_\_\_ TELEPHONE NO. \_\_\_\_\_ DATE \_\_\_\_\_

**8. INTENT TO PERFORM AS SUBCONTRACTOR/SUBCONSULTANT  
JOINT VENTURER  
(Form B)**

CONTRACT NUMBER \_\_\_\_\_ CONTRACT TITLE \_\_\_\_\_

NAME OF PRIME BIDDER/PROPOSER \_\_\_\_\_

The undersigned intends to perform work in connection with the above project as (check one):

- ☐ A Subcontractor
- ☐ A Subconsultant
- ☐ A second tier Subcontractor
- ☐ A Joint Venturer

Note: Pursuant to US DOT regulations codified at 49 C.F.R., Part 26, Disadvantaged Business Enterprise (DBE) firms projected to participate in the MTA's DBE Program must be certified as a DBE by the MTA in order for the firm's participation to be credited toward the DBE goal. If not certified as a DBE by the MTA, prospective firms must immediately submit a completed and signed DBE Certification Affidavit to the MTA Office of Civil Rights, Division of Business Programs, 2 Broadway, 16th Floor, New York, New York 10004. MTA will endeavor to expedite its determination on DBE status.

**SUBCONTRACT AMOUNT \$** \_\_\_\_\_

The undersigned is prepared to perform the following work and/or supply the following material for the above project.

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Note: If applicable, please state the amount and percentage of work you intend to subcontract out to other Subcontractors/Vendors (both DBE and non-DBE Firms).

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The undersigned intends to enter into a formal agreement for the above work with the named Bidder/Proposer conditioned upon the named Bidder/Proposer's being awarded this contract by the MTA or any of its affiliated agencies.

\_\_\_\_\_  
Name of DBE Firm (Please Type or Print) \_\_\_\_\_  
Date

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name & Title of Authorized Signatory Signature of Authorized Representative



## 9. BIDDERS/OFFERORS QUESTIONNAIRE

The USDOT DBE Program promulgated at 49 CFR Part 26, requires MTA to develop and maintain a “bidders” list. The bidders list is intended to be a count of all firms that are participating or attempting to participate on USDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts USDOT-assisted projects, including both DBEs and non-DBEs. Please complete the information listed below and return with your bid/proposal.

<b>Bidder/Offendor</b>	<input type="checkbox"/> <b>DBE</b>	<input type="checkbox"/> <b>Non-DBE</b>
<hr/>		
Name <hr/>	Phone # <hr/>	
	Fax # <hr/>	
Address <hr/>	E-Mail Address <hr/>	

	Gross Receipts
Fed. ID <hr/>	<input type="checkbox"/> Less than \$100 K <input type="checkbox"/> \$1M - \$5M <input type="checkbox"/> \$10M - Over
Year Business Started <hr/>	<input type="checkbox"/> \$100K - \$500K <input type="checkbox"/> \$5M - \$10M <input type="checkbox"/>

SIC Codes	Services Performed
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

### Information on Potential Subcontractors

Please identify potential areas of this project likely to be subcontracted out and to whom. Please identify for each potential subcontractor the name, address, DBE/Non – DBE status, gross receipts and year the business started.

SIC Codes	Potential Subcontractor	<input type="checkbox"/> <b>DBE</b>	<input type="checkbox"/> <b>Non-DBE</b>
<hr/>	Name <hr/>	Phone # <hr/>	
<hr/>		Fax # <hr/>	
<hr/>	Address <hr/>	E-Mail Address <hr/>	
<hr/>	<hr/>		
<hr/>			
		Gross Receipts	
<hr/>	Fed. ID <hr/>	<input type="checkbox"/> Less than \$100 K <input type="checkbox"/> \$1M - \$5M <input type="checkbox"/> \$10M - Over	
<hr/>	Year Business Started <hr/>	<input type="checkbox"/> \$100K - \$500K <input type="checkbox"/> \$5M - \$10M <input type="checkbox"/>	

Attach additional pages if necessary.



## Bidders/Offerors Questionnaire (Continued)

<b>SIC Codes</b>	<b>Potential Subcontractor</b>	<input type="checkbox"/> <b>DBE</b>	<input type="checkbox"/> <b>Non-DBE</b>
_____	Name _____	Phone # _____	_____
_____		Fax # _____	_____
_____	Address _____	E-Mail Address _____	_____
_____	_____		
_____		Gross Receipts	
_____	Fed. ID _____	<input type="checkbox"/> Less than \$100 K	<input type="checkbox"/> \$1M - \$5M <input type="checkbox"/> \$10M – Over
_____	Year Business Started _____	<input type="checkbox"/> \$100K - \$500K	<input type="checkbox"/> \$5M - \$10M <input type="checkbox"/>

<b>SIC Codes</b>	<b>Potential Subcontractor</b>	<input type="checkbox"/> <b>DBE</b>	<input type="checkbox"/> <b>Non-DBE</b>
_____	Name _____	Phone # _____	_____
_____		Fax # _____	_____
_____	Address _____	E-Mail Address _____	_____
_____	_____		
_____		Gross Receipts	
_____	Fed. ID _____	<input type="checkbox"/> Less than \$100 K	<input type="checkbox"/> \$1M - \$5M <input type="checkbox"/> \$10M - Over
_____	Year Business Started _____	<input type="checkbox"/> \$100K - \$500K	<input type="checkbox"/> \$5M - \$10M <input type="checkbox"/>

<b>SIC Codes</b>	<b>Potential Subcontractor</b>	<input type="checkbox"/> <b>DBE</b>	<input type="checkbox"/> <b>Non-DBE</b>
_____	Name _____	Phone # _____	_____
_____		Fax # _____	_____
_____	Address _____	E-Mail Address _____	_____
_____	_____		
_____		Gross Receipts	
_____	Fed. ID _____	<input type="checkbox"/> Less than \$100 K	<input type="checkbox"/> \$1M - \$5M <input type="checkbox"/> \$10M - Over
_____	Year Business Started _____	<input type="checkbox"/> \$100K - \$500K	<input type="checkbox"/> \$5M - \$10M <input type="checkbox"/>

We understand that your submission of the above information does not imply that you have a current contractual relationship with any firm listed herein.

Print Name \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

## **10. CONTRACTOR CERTIFICATION (DEBARMENT OR SUSPENSION FROM FEDERALLY ASSISTED CONTRACTS)**

- (1) Under applicable Federal law, and unless otherwise permitted by the FTA, Contractors and Subcontractors may not receive award of this Contract, or any Subcontracts under this Contract, where that Contractor or Subcontractor is included in the "U.S. General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs" (the "GSA List"). The GSA List includes parties debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise excluded from award of federal contracts.
- (2) Contracts and Subcontracts not exceeding \$25,000.00:
  - a. No certification with respect to inclusion on the GSA List is required for Contracts and Subcontracts which do not exceed \$25,000.00. However, as no contract may be awarded by Metro-North to a Contractor included on the GSA List (hereinafter referenced as "Excluded Contractors"), Excluded Contractors may not submit a bid or receive award of this Contract without first seeking permission from Metro-North. Excluded Contractors may notify Metro-North of such status in writing, and Metro-North, at its sole discretion may seek permission from the FTA to consider an award to such Contractor.
  - b. Excluded Contractors which fail to adhere to this provision, and which submit a bid and/or receive award of this Contract shall be subject to default, termination and/or any other remedies available to Metro-North and/or the Federal Government.
  - c. All Contractors shall include this provision without modification in all Subcontracts, and shall refrain from knowingly awarding any Subcontract of any amount (at any tier) to any Excluded Contractor. A Subcontract awarded in violation of this provision shall be terminated upon instruction from Metro-North, and any Contractor found to have knowingly entered into such Subcontract may be subject to default, termination and/or any other remedies available to Metro-North and/or the Federal Government.
- (3) Contracts and Subcontracts exceeding \$25,000.00:

Contractors and Subcontractors seeking award of Contracts or Subcontracts exceeding \$25,000.00 are required to submit the attached Certification, and to abide by the terms set forth in the instructions thereto. Contractors are advised that the Certification for each Subcontractor and Supplier with a Contract in excess of \$25,000.00 must be submitted to Metro-North, and acknowledged, prior to entering into a Subcontract or the issuance of a Purchase Order.

### **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available

to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTION**

Contract/Proposal/Bid No. [142486](#)

**Certification Regarding Debarment, Suspension, Ineligibility and  
Voluntary Exclusion--Lower Tier Covered Transaction**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Signature and Title of Authorized Officer

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Date

## 12. CERTIFICATE OF NONSEGREGATED FACILITIES

The undersigned certifies to Metro-North as follows:

By the submission of this Proposal the Bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. Seller agrees that a breach of this certification is a violation of the Equal Opportunity clause in this certificate.

As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, religion, color, or national origin, because of habit, local custom or otherwise.

He further agrees that (except where he has obtained identical certifications from proposed Subcontractors for specific time periods) he will obtain identical certifications from proposed Subcontractors prior to the award of Subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward a notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods).

Bid No. [142486](#)

Date

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Signature

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Title

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Company  
Name

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### L. ANTI-LOBBYING

All Contractors and Subcontractors shall execute and submit the attached forms regarding anti-lobbying.

Contract No. [142486](#)

**13. INTENTIONALLY OMITTED**

#### 14. CONTRACTOR QUALITY CONTROL PROGRAM REQUIREMENTS

Metro-North requires that Work under this Contract be performed in conformance with a Quality Control (QC) Plan which complies with the Quality Control requirements defined in the Technical Provisions.

The Bidder is advised that the QC Plan conditions shown below must be satisfied before a Bidder can be deemed responsible and eligible for award of a Contract.

- (1) Metro-North encourages all Bidders to submit a QC Plan with its Bid. However, not later than five (5) days following notice to the apparent low Bidder a QC Plan must be submitted for Metro-North's review. Metro-North reserves the right to seek QC Plans from parties other than the apparent low Bidder. Metro-North may reject the low Bidder for failure to furnish the QC Plan within the specified time.
- (2) The submitted QC Plan will be evaluated by Metro-North as a part of a responsibility determination of the low Bidder.
- (3) If Metro-North, at its sole discretion, determines that the submitted QC Plan does not satisfy the Contract requirements, then the Bidder's Chief Executive Officer or such other officer as may be acceptable to Metro-North will be required to attend a meeting within 5 days of notification by Metro-North for the purpose of discussing the QC Plan and reaching agreement on changes to be made.

Failure to attend this meeting as required, or to reach agreement with Metro-North at this meeting, will result in rejection of the Bid, at which time Metro-North may, in its sole discretion, commence evaluation of the next lowest Bidder.

- (4) The revised QC Plan must be resubmitted within 15 days.
- (5) If the revised QC Plan is not acceptable, Metro-North may, at its sole discretion, reject the low Bidder and commence evaluation of the next lowest Bidder based on the same requirements defined above.



15. STAFFING PLAN

Project Title:

Location of Contract:

County

Zip

Contractor/Firm Name:

Address:

City

State

Zip

Check applicable categories:

(1) Staff Estimates include:

☐ Contract/Project Staff

☐ Total Work Force

☐ Subcontractors

(2) Type of Contract:

☐ Construction/Consultants

☐ Commodities

☐ Services/Consultants

Total Anticipated Work Force													Total Percent Minority Employees	Total Percent Female Employees			
Federal OccupationalCategory					Total Number ofEmployees			Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female							
Officials/Admin																	
Professionals																	
Technicians																	
Sales Workers																	
Office & Clerical																	
Craft Workers																	
Operatives																	
Laborers																	
Service Workers																	
TOTALS																	
Company Official’s Name: _____ Title: _____																	
Company Official’s Signature: _____ Date: _____																	
Telephone Number: (        )																	

## 16. METROPOLITAN TRANSPORTATION AUTHORITY – VENDOR CODE OF ETHICS

Bid/Proposal No.: [142486](#)

Project Description: [STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT \(PACKAGE NO. 2\)](#)

The Metropolitan Transportation Authority (MTA) has adopted a MTA Vendor Code of Ethics (the "Code"), which is applicable to all Vendors, as defined by the Code, involved in the procurement process for the award and performance of this Contract. Additional information concerning the Code is contained in the contract documents, and is subject to any future modification, amendment or revision issued by MTA. All Vendors involved in this procurement and during the performance of any resultant contract are subject to the Code, which is available for Bidder's/Proposer's immediate review on the MTA website at [www.mta.info/mta/procurement/vendor-code.htm](http://www.mta.info/mta/procurement/vendor-code.htm). Accordingly, all Bidders / Proposers must certify compliance with the Code.

### **CERTIFICATION REGARDING THE MTA VENDOR CODE OF ETHICS**

\_\_\_\_\_ (Vendor name) hereby certifies, by submission of this bid or proposal, to the best of its knowledge and belief, that:

1. It has been provided with a copy of the MTA Vendor Code of Ethics (the "Code") and will comply with all of the provisions of the Code;
2. All of its Participating Employees (as defined in the Code) during the course of the procurement or contract have been or will be provided with a copy of the Code prior to each of those employee's participation in the procurement;
3. All Participating Employees have completed the acknowledgment required by Section 8.02 of the Code ("Participating Employee Acknowledgements") to the effect that they have received, read, understand, and will comply with the Code;
4. It will retain all of the signed Participating Employee Acknowledgements through the completion of performance of the contract;
5. It will continue to distribute the Code, obtain signed Participating Employee Acknowledgements, and retain all of the signed acknowledgements through the completion of performance of the contract; and
6. It will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the Bidder engaged or are being solicited for work under any contract resulting from this procurement whose employees have communicated or may communicate with Metro-North employees during the course of the procurement and through the completion of performance of the contract. Receipt and retention of these lower tier certifications shall be subject to audit by Metro-North.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a condition of being considered for the award of any contract above Metro-North's small purchase threshold.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official

**CERTIFICATION REGARDING DISTRIBUTION OF MTA VENDOR CODE OF ETHICS**

Bid/Proposal No.: [142486](#)

Project Description: [STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT \(PACKAGE NO. 2\)](#)

The prospective lower tier participant \_\_\_\_\_ (subcontractor, subconsultant, or supplier name) hereby certifies, by submission of this bid or proposal to \_\_\_\_\_ [prime contractor] in connection with the Metro-North bid or proposal number referenced above, to the best of its knowledge and belief, that all officers and personnel who have communicated or may communicate with Metro-North employees during the course of the procurement and through the completion of performance of the contract have been provided with a copy of the MTA Vendor Code of Ethics prior to each of these employee's participating in the procurement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official

**PARTICIPATING EMPLOYEE ACKNOWLEDGEMENT REGARDING**  
**MTA VENDOR CODE OF ETHICS**

Company: \_\_\_\_\_  
Bid/Proposal No.: \_\_\_\_\_

I, \_\_\_\_\_, acknowledge that I have received and read the Metropolitan Transportation Authority's Vendor Code of Ethics on \_\_\_\_\_ and that I understand it and will comply with this Code in my participation in procurements between \_\_\_\_\_ (Vendor name) and Metro-North.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_ Signature of Employee

\_\_\_\_\_ Name and Title of Employee

**17. CERTIFICATION OF COMPLIANCE WITH RAIL SAFETY IMPROVEMENT ACT  
(RSIA) OF 2008 MINIMUM TRAINING AND QUALIFICATION REQUIREMENTS**

Pursuant to Part 243 of Title 49 of the Code of Federal Regulations, Metro-North contractors (and their subcontractors) who employ one or more safety-related railroad employees (as defined by 49 C.F.R. §243.5) are required to develop and submit a training program to the Federal Railroad Administration (“FRA”) for approval and to adopt and implement the training program no later than **May 1, 2021**.

By checking the boxes below, the Contractor, \_\_\_\_\_,  
(Name of Contractor)

certifies as follows:

- ☐ The Contractor has read and understands, and shall comply with, the requirements of 49 C.F.R. Part 243 and shall ensure that any person employed by Contractor as a safety-related railroad employee is trained and qualified in accordance with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

By: \_\_\_\_\_  
(Signature of Person Certifying) (Date Signed)

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

Business Phone No.: \_\_\_\_\_

**18. CERTIFICATION OF COMPLIANCE WITH RAIL SAFETY IMPROVEMENT  
ACT (RSIA) OF 2008 RANDOM DRUG AND ALCOHOL USE TESTING  
REGULATIONS**

Pursuant to Part 219 of Title 49 of the Code of Federal Regulations, Metro-North contractors are required to implement and be in compliance with a Random Drug and Alcohol Testing Program to ensure that all maintenance of way employees, as defined by Part 219, are subject to random testing whenever such employees perform certain maintenance of way work for Metro-North.

For purposes of this certification, a maintenance of way employee is defined as a contractor, its employees, subcontractors, agents and any individual performing work on behalf of the Contractor whose duties include the inspection, construction, maintenance or repair of roadway track, bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen, watchmen and lookouts.

By checking the boxes below, the Contractor,

\_\_\_\_\_,  
(Name of Contractor)

certifies as follows: (check *all* that apply)

- ☐ The Contractor is in compliance with its obligations under 49 CFR Part 219 including its obligation to randomly test its maintenance of way employees for drugs and alcohol.
- ☐ The Contractor has established random testing pools for drug and alcohol testing<sup>6</sup>.
- ☐ The Contractor has tested its maintenance of way employees during the period \_\_\_\_\_ (date) through and including \_\_\_\_\_ (date) as required by 49 CFR Part 219.

**This certification shall be submitted no later than thirty (30) days after Notice of Award and on a semi-annual basis following award.** Failure of the Contractor to submit this certification as required by Metro-North may result in termination of the contract for cause.

By: \_\_\_\_\_  
(Signature of Person Certifying) (Date Signed)

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

Business \_\_\_\_\_

Phone No.: \_\_\_\_\_

\_\_\_\_\_

<sup>6</sup> The Federal Railroad Administration (FRA) Administrator has established an initial minimum annual random testing rate of 50% for drugs and 25% for alcohol. The Contractor should adhere to the minimum annual random testing rates set by the FRA until such time that the testing rates are amended/modified by the FRA.

**19. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH DISCLOSURE  
REQUIREMENTS OF PUBLIC AUTHORITIES LAW SECTION 1269-g  
(REPORTING OF FRAUD AND PROTECTIONS FOR REPORTING FRAUD)**

The undersigned, a duly authorized official of \_\_\_\_\_, certify  
(Contractor's Name)

the following under penalty of perjury in compliance with the requirements of Public Authorities Law Section 1269-g and the terms and conditions of Metro-North Commuter Railroad Company Contract Number \_\_\_\_\_:

1. The Contractor has conspicuously posted the notice required by Public Authorities Law Section 1269-g (2) (the "Notice") in one or more places at each major workplace site.
2. The Contractor has also posted the Notice on its internet or intranet site, if it has one, or has provided a conspicuous hyperlink on its internet or intranet site, if it has one, to the MTA's web site labeled "Protections for Reporting Fraud in New York".
3. The Contractor has also distributed the Notice by including it in Contractor's employee handbook or by sending it in an email to its employees.
4. The Contractor has inserted into every first-tier subcontract with its Subcontractors provisions requiring the Subcontractor to comply with the requirements of Public Authorities Law Section 1269-g and to require compliance by its lower-tier subcontractors and to file with the Contractor a certification of compliance, under penalty of perjury, within ninety days of the effective date of each such subcontract.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_,

By \_\_\_\_\_  
(Signature of Authorized Official of Contractor)

\_\_\_\_\_  
(Printed Name and Title of Authorized Official of Contractor)

\*The **Contractor and Subcontractor Disclosure Obligations Under Public Authorities Law 1269-G** can be found [HERE](#)

**20. FORM OF BID BOND**

Know all men by these presents, that

of \_\_\_\_\_

(hereinafter called the "Principal")

and \_\_\_\_\_

(hereinafter called the "Surety")

and held firmly bound to Metro-North Commuter Railroad Company (hereinafter called "Metro-North"), in the just sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its successors or assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has submitted its Proposal, herein referred to as the Bid, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to Metro-North for Contract No. [142486](#).

Now, therefore, the condition of this obligation is such that, if the Principal shall make good faith efforts to fulfill the DBE requirements of its Proposal, and shall not withdraw the Bid within the period specified therein after the opening of the same, or if no period be specified, within sixty (60) days after the opening, and shall within the period specified therefor, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, execute such further documents, if any, as may be required by the terms of the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of the resulting Contract, or in the event of the withdrawal of the Bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay to Metro-North the damages payable in such event by the terms of the Bid, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligations of such Surety and its bond shall in no way be impaired or affected by any extension of the times within which Metro-North may receive or accept each Bid or within which the Principal may furnish a Performance Bond or Payment Bond or by any waiver by Metro-North of any of the



requirements of such Bid; and the Surety does hereby waive notice of any such extension or waivers.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20

**Signed and delivered by the Principal:**

\_\_\_\_\_  
By (Full legal name of the Principal)

\_\_\_\_\_  
Title of Principal

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate Seal of the Principal if a Corporation):**

--	--

**Signed by the Surety:**

\_\_\_\_\_  
(Full legal name of the Surety)

\_\_\_\_\_  
By (Full legal name of Representative)

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate seal of Surety):**

--

**FORM  
OF  
ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_

that he is the \_\_\_\_\_  
of \_\_\_\_\_

one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be one of the members of the firm of

\_\_\_\_\_

described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be the person described in and who executed the foregoing instrument and  
acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

\* \* \* \* \*

Affix Acknowledgement and Justification of Sureties  
together with Certificate of Qualification pursuant  
to Section 1111 of Insurance Law.

21. FORM OF PERFORMANCE BOND

Know all men by these presents, that,

of \_\_\_\_\_  
(hereinafter called the "Principal")

and \_\_\_\_\_ a corporation created

and existing under the laws of the State of \_\_\_\_\_,

having its principal office in \_\_\_\_\_ and authorized to do business  
in the State of New York, (hereinafter called the "Surety") are held and firmly bound to Metro-  
North Commuter Railroad Company (hereinafter called "Metro-North") and its successors and  
assigned in the full and just sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

good and lawful money of the United States of America, for the payment of which sum of  
money, well and truly to be made and done, the Principal binds itself, its successors and assigns,  
and the Surety binds itself, its successors or assigns, jointly and severally, firmly by these  
presents.

Whereas, the Principal has entered into a Contract in writing with Metro-North, which is  
incorporated herein by reference as though herein set forth in full and which is designated  
Contract No. 142486 (hereinafter called the "Contract") for **STRATEGIC FACILITIES  
PROGRAM: CROTON FALLS PARKING LOT (PACKAGE NO. 2)**.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal well,  
truly and faithfully complies with and performs all of the terms, covenants and conditions of the  
Contract on its part to be kept or performed and all changes, alterations, modifications,  
amendments and additions to the Contract that may be made, according to the true intent and  
meaning of the Contract, then this obligation shall be null and void, otherwise to remain in full  
force and effect.

And the Surety, for value received, hereby stipulates and agrees that, if requested to do so  
by Metro-North, it shall fully perform and complete all of the Work mentioned and described in  
the Contract pursuant to all of the terms, conditions and covenants of the Contract if for any  
cause or reason the Principal fails to or does not so fully perform and complete said Work. The  
Surety, for value received, hereby further stipulates and agrees to commence the completion of

all of said Work within ten (10) days after notice to do so from Metro-North, and to perform and complete all of said Work with all due diligence.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or any other rearrangement of the Principal for the benefit of creditors.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall be in no way impaired or affected by any extension of time or forbearance, modification, omission, addition or change in or to the Contract or the Work to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the Work thereunder, or by any payment thereunder prior to the time provided for therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by settlement or compromise of any claim or dispute relating thereto, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any monies due or to become due thereunder; and the Surety does hereby expressly waive notice of any and all of such extensions, forbearances, modifications, omissions, additions, changes, payments, waivers, settlement, compromises, assignments, subcontracts and transfers.

And the Surety, for value received, hereby stipulates and agrees that any and all things done or omitted to be done by or in relation to any and all assignees, Subcontractors or other transferees shall have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.

And the Surety, for value received, hereby stipulates and agrees that no demand made under this bond shall constitute a waiver of the right of Metro-North to make a subsequent demand under this bond, subject to the limitation of the amount obligated.

Words in this bond used in the singular number shall be deemed to include the plural number and words in this bond used in the plural number shall be deemed to include the singular number.

Words of the neuter gender used in this bond shall be deemed to include words of the masculine or feminine gender and words of the masculine gender shall be deemed to include words of the neuter or feminine gender.

This bond shall be construed and enforced in accordance with the laws of the State of New York. The venue of any lawsuit commenced under this bond shall be in the City, State and County of New York.

IT IS FURTHER EXPRESSLY AGREED that the acceptance of this bond by Metro-North shall in no way, for any purpose, limit or be claimed to limit the liability of the Principal under the Contract, but such liability shall remain in all respects to the same extent as is provided for in the Contract.

IN TESTIMONY WHEREOF, the Principal has hereunto set its hand and, if a corporation, its seal, and the Surety has caused this instrument to be signed by its duly authorized officer or Attorney-In-Fact, and its corporate seal to be hereunto affixed.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20

**Signed and delivered by the Principal:**

\_\_\_\_\_  
By (Full legal name of the Principal)

\_\_\_\_\_  
Title of Principal

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate Seal of the Principal if a Corporation):**

--	--

**Signed by the Surety:**

\_\_\_\_\_  
(Full legal name of the Surety)

\_\_\_\_\_  
By (Full legal name of Representative)

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate seal of Surety):**

--

**FORM  
OF  
ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_

that he is the \_\_\_\_\_  
of \_\_\_\_\_

one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be one of the members of the firm of

\_\_\_\_\_

described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be the person described in and who executed the foregoing instrument and  
acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

\* \* \* \* \*

Affix Acknowledgement and Justification of Sureties  
together with Certificate of Qualification pursuant  
to Section 1111 of Insurance Law.



**22. FORM OF PAYMENT BOND**

Know all men by these presents, that

of \_\_\_\_\_  
(hereinafter called the "Principal")

and \_\_\_\_\_  
(hereinafter called the "Surety")

and held firmly bound to Metro-North Commuter Railroad Company (hereinafter called "Metro-North"), in the just sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has, by written agreement, dated \_\_\_\_\_, 20\_\_\_\_ entered into Contract with Metro-North for Contract No. [142486](#) which Contract is by reference made a part hereof and is hereinafter referred to as the "Contract."

Now, therefore, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons furnishing labor or materials to him or his Subcontractors in the performance of the Work provided for in said Contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of Section 137 of the State Finance Law to the same extent as if they were copied at length herein;

and further, provided, the place of trial of any action on this bond shall be in the county which the said Contract was to be performed, of if said Contract was to be performed in more than one county, then in any such county, and not elsewhere.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20

**Signed and delivered by the Principal:**

\_\_\_\_\_  
By (Full legal name of the Principal)

\_\_\_\_\_  
Title of Principal

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate Seal of the Principal if a Corporation):**

--	--

**Signed by the Surety:**

\_\_\_\_\_  
(Full legal name of the Surety)

\_\_\_\_\_  
By (Full legal name of Representative)

**Witnessed in the presence of:**

\_\_\_\_\_  
By (Full legal name of the Witness)

\_\_\_\_\_  
Title of Witness

**(Corporate seal of Surety):**

--

**FORM  
OF  
ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_

that he is the \_\_\_\_\_  
of \_\_\_\_\_

one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be one of the members of the firm of

\_\_\_\_\_

described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY PRINCIPAL, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) s.s

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_

to me known and known to me to be the person described in and who executed the foregoing instrument and  
acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

\* \* \* \* \*

Affix Acknowledgement and Justification of Sureties  
together with Certificate of Qualification pursuant  
to Section 1111 of Insurance Law.

## **23. INTENTIONALLY OMITTED**

## **24. INTENTIONALLY OMITTED**

## 25. CERTIFICATION OF COMPLIANCE WITH FTA DRUG AND ALCOHOL PROGRAM REQUIREMENTS

(Applicable to third-party contractors providing public transportation services or services involving the performance of safety-sensitive functions<sup>7</sup>)

Pursuant to Parts 40 and 655 of Title 49 of the Code of Federal Regulations, Metro-North contractors providing public transportation services or services involving the performance of safety-sensitive functions must have a drug and alcohol testing program in place.

By checking the boxes below, the Contractor,

\_\_\_\_\_  
(Name of Contractor)

certifies as follows:

- ☐ The Contractor is in compliance with its obligations under the FTA's regulations for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations set forth at 49 C.F.R. Part 655 and 49 C.F.R. Part 40, including the requirement to implement a written drug and alcohol education and training program.

By: \_\_\_\_\_  
(Signature of Person Certifying) (Date Signed)

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

Business Phone No.: \_\_\_\_\_

\_\_\_\_\_  
<sup>7</sup> See 49 C.F.R. § 655.4 for the definition of "safety-sensitive function."

**26. PRIME CONTRACTOR CERTIFICATION OF NO CHANGE FOR DOCUMENT REPOSITORY (SCHEDULE R1)**

1. I am (Print Name and Title) \_\_\_\_\_ of (Print Name of Company)  
\_\_\_\_\_  
\_\_\_\_\_ (the "Company").
2. The Company is (check one) the Bidder \_\_\_\_\_, Proposer \_\_\_\_\_ for Solicitation/Contract # \_\_\_\_\_.  
I am duly authorized to sign this Certification of No Change on behalf of the Company and to legally bind the Company to the terms hereof.
3. The Company understands that the statements made herein will be relied on by the MTA in connection with any award of the Contract. The Company certifies that the schedules and other submittals with ☒s marked in the columns below: (i) have been uploaded into the Document Repository within the past twelve (12) months; and (ii) that the information contained in these schedules and submittals remains complete and accurate as of the date of this Certification.

	<b>SCHEDULES</b>	<b>Uploaded to Document Repository Within Past 12 Months</b>	<b>Document Remains Accurate</b>
1	Federal Certification of Lobbying Restriction (Schedule A)		
2	C&D Responsibility Form (Schedule B)		
3	Lobbying Law (Schedule C)		
4	Executive Order 177 Certification Regarding Harassment and Discrimination (Schedule Q)		
5	Iran Divestment Certification (Schedule S)		
6	Diversity Practices Questionnaire (Schedule T) If selected as the successful respondent, does your company plan to enter into partnering or subcontracting agreements with: <ul style="list-style-type: none"> <li>• NY State certified minority- and women-owned business enterprises? Yes No</li> <li>• NY State certified service-disabled veteran owned businesses? Yes No</li> </ul>		
7	Drug and Alcohol Policies (Schedule X)		
8	EEO-1 Form (Schedule Z)		
9	Financial Statements		
10	Financial Responsibility Data Workbook		



Company: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
\_\_\_\_\_


Title: \_\_\_\_\_  
\_\_\_\_\_

Dated:

Signature:

EIN#:

**27. SUBCONTRACTOR CERTIFICATION OF NO CHANGE – DOCUMENT REPOSITORY (SCHEDULE R1)**

4. I am (Print Name and Title) \_\_\_\_\_ of (Print Name of Company) \_\_\_\_\_ (the “Company”).
5. The Company is proposed as a subcontractor by prime contractor \_\_\_\_\_ for Contract # \_\_\_\_\_. I am duly authorized to sign this Certification of No Change on behalf of the Company and to legally bind the Company to the terms hereof.
6. The Company certifies that the schedules with s marked in the columns below: (i) have been uploaded into the Document Repository within the past twelve (12) months; and (ii) that the information contained in these schedules remains complete and accurate as of the date of this Certification.

SCHEDULES		UPLOADED TO DOCUMENT REPOSITORY WITHIN PAST 12 MONTHS	DOCUMENT REMAINS ACCURATE
1	Schedule B – Contractor Responsibility Form	<input type="checkbox"/>	<input type="checkbox"/>
2	Schedule F – Potential Subcontractor Questionnaire	<input type="checkbox"/>	<input type="checkbox"/>
3	Schedule X - Drug and Alcohol Certifications	<input type="checkbox"/>	<input type="checkbox"/>

Company: \_\_\_\_\_  
\_\_\_\_\_

Dated:

Name: \_\_\_\_\_  
\_\_\_\_\_

Signature:

Title: \_\_\_\_\_  
\_\_\_\_\_

EIN

#:

## **SCHEDULE M**

### **VENDOR ASSURANCE OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT & STATEMENT OF NON-COLLUSION**

#### **A. Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this Contract No. 135229\_ as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this solicitation does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the MTA or the State of New York. In this document, the term "State" shall mean the MTA and the state of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this solicitation;
5. During this solicitation, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this solicitation, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.
9. No appointed or elected official, member or other officer or employee of the city of New York, or of the State, or MTA or its subsidiaries or affiliates: i) is interested, directly or indirectly, in any manner whatsoever in or in the performance of the contract or in the supplies, work, or business to which it relates or in any portion of the profits thereof; or ii) has been or will be offered or given any tangible or intangible consideration in connection with this bid/proposal/contract.
10. Contractor covenants that neither Contractor nor, to the best of Contractor's knowledge after diligent inquiry, any director, officer, owner or employee of Contractor or any person or entity with a 10% or more interest in Contractor has any interest nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Contract hereunder.
11. In the event Contractor has no prior knowledge of a conflict of interest as set forth in paragraphs 9 or 10 above and

hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Authority's Chief Procurement Officer, the Procurement Point of Contact for the contract and the MTA project manager. Contractor shall thereafter cooperate with the Authority's review and investigation of such information, and comply with any instructions it receives from the Chief Procurement Officer or the MTA project manager in regard to remedying the situation.

Firms responding to this solicitation should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This Form must be signed by an authorized executive or legal representative.

**B. Statement of Non-Collusion as Required by Section 2878 of the Public Authorities Law**

If for any reason the following statement is not accurate and complete as of the time this form is signed, the bidder or proposer must identify the provision and explain the reason in detail on a separate sheet.

Please check this box if a separate sheet is attached: ☐

Absent such an attached explanation, the bidder or proposer certifies that the following statements are complete and accurate. If at any time the bidder or proposer becomes aware that a representation in this Schedule is no longer complete and accurate, the bidder or proposer shall promptly inform the Chief Procurement Officer, the Procurement Point of Contact for the contract identified above, and the MTA project manager for the contract.

In the following statement, the term bidder includes both bidders and proposers and the term bid includes both bids and proposals.

- (1) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
  - i. The prices in this bid have been arrived at independently without collusion, consultation, communications, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

- (2) A bid shall not be considered for award nor shall any award be made where (1)(a), (b), and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (1) (a), (b), and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the Chief Procurement Officer of the Authority, or designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1(a) herein.

The bidder or proposer affirms and certifies under penalty of perjury that the statement above is true.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This Form must be signed by an authorized executive or legal representative.

## **SCHEDULE F1**

### **Contract-Specific Subcontractor Questionnaire**

All proposed subcontractors must complete Schedule F1 for subcontracts for \$15,000 or more that do not require the submission of Schedule B and B1. Schedules B and B1 must be submitted for subcontracts in which the subcontractor is proposed to perform work (i) valued at \$1 million or more and more than 10% of the prime contract value; or (ii) valued at \$5 million or more; or (iii) in Special Circumstances subcontracts of \$100,000 or more. Schedule F (Potential Subcontractor Questionnaire) should have been submitted previously to MTA's Document Repository at [www.mymta.info](http://www.mymta.info).

MTA Prime Contract Number:

Prime Contractor's Address	City	State	Zip Code
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I am \_\_\_\_\_ of \_\_\_\_\_.  
(Print title) (Print name of subcontractor company)

1. Name of subcontractor:

2. Address of subcontractor (principal office):

3. Subcontractor's Federal EIN Number:

4. Description of work to be done under proposed subcontract. Indicate clearly whether work involves labor only or labor and material. List principal items of materials, if any, to be furnished. Attach additional sheet if necessary.



5. Total amount of proposed subcontract \$ \_\_\_\_\_

6. List active contracts that are running concurrently with this contract:

Location	Contract Price	Class of Work	Percent Completed	Name & Address of Awarding Party

I am duly authorized to sign this Schedule F1 on behalf of the subcontractor and affirm that the information contained in this document is true, accurate and complete. I authorize the MTA to verify the information contained in this schedule and to conduct any background checks or other investigations it deems appropriate.

I understand and agree that typing my name or attaching a digital signature in the space below will have the same force and legally binding effect as my original handwritten signature.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

# **CONTRACT TERMS AND CONDITIONS**

## **CHAPTER 1 - GENERAL PROVISIONS AND DEFINITIONS**

### **ARTICLE 1.01 - WORK TO BE DONE**

- A. The Contractor shall furnish all labor, equipment, materials, plant, tools, supplies and other means of construction necessary for completion of the Work in accordance with the Contract.
- B. **MISCELLANEOUS AND INCIDENTAL WORK.** The Contractor will protect, support and maintain all structures, including but not limited to all Metro-North facilities and any other real property whether owned by Metro-North or any other person or entity, with their appurtenances and connections as the same may be affected by the Contractor's performance of the Work; and promptly reconstruct and restore all structures which are damaged thereby to at least as good a condition as existed before the Work was begun. All such Work shall be known as "Miscellaneous and Incidental Work." If the Contractor fails to perform this Work, the Project CEO may, after having given notice in writing or otherwise as is reasonable under the circumstances, either perform this Work or have this Work performed by others and in either case deduct the cost, including management and inspection costs, from the monies due to the Contractor. Prior notice will not be required where, in the discretion of the Project CEO, there is imminent danger to person, property or the safe and efficient operation of the Railroad.

### **ARTICLE 1.02 - DEFINITIONS**

- 1. **ADDENDUM or ADDENDA** - any additional Contract provisions issued in writing by Metro-North prior to the opening of Bids.
- 2. **AMTRAK** – National Railroad Passenger Corporation.
- 3. **APPARATUS** - As the context dictates, the equipment to be furnished by the Contractor as part of the Work, or Metro-North supplied equipment, the erection and installation of which is a part of the Work.
- 4. **APPARENT LOW BIDDER** - the Bidder determined to have the numerically lowest combined bid based on the sum of the A Value and the Total B Value as a result of the calculation of Bids by Metro-North using A+B bidding.
- 5. **AWARD DATE** - the date the Notice of Award is issued.
- 6. **BID** - A Proposal.
- 7. **BIDDER** - The individual or organization which submits a Proposal.
- 8. **CDOT** – State of Connecticut and the Connecticut Department of Transportation.
- 9. **CONSULTANT** - the consulting engineer or other person or firm hired by Metro-North to act on behalf of Metro-North to perform certain services, including, but not limited to, design or inspection relating to the Work.

10. **CONTRACT** - the Information for Bidders, the Contractor's Proposal, the Contract Terms and Conditions, the Technical Provisions, all Addenda issued, the Forms of Bonds, the Contract Drawings, the Notice of Award, and any and all Change Orders as applicable.
11. **CONTRACTOR** - the individual, firm or corporation, its successors and assigns, that enters into the Contract to perform the Work.
12. **CRC** - Consolidated Rail Corporation.
13. **CSX** - CSX Transportation, Inc. and New York Central Lines, LLC.
14. **D&H** - Delaware and Hudson Railway Company Inc.
15. **DAILY DOLLAR MULTIPLIER** - the daily amount set by Metro-North as the multiplier to determine the B Value for each Required Milestone.
16. **DAYS** - all references to "days" shall mean calendar days unless otherwise noted.
17. **DRAWINGS** - the drawings listed in the Technical Provisions of the Contract.
18. **ENGINEER** - the word "Engineer" shall refer to the Project CEO.
19. **FTA** - The Federal Transit Administration.
20. **HOUSATONIC** - Housatonic Railroad Company.
21. **IMPACT COSTS** - the equitable adjustment to which Contractor may be entitled in accordance with ARTICLE 2.07, CONTRACTOR'S DAMAGES FOR DELAY.
22. **METRO-NORTH** or **MNR**- Metro-North Commuter Railroad Company, a Public Benefit Corporation of the State of New York. References herein to "Metro-North" shall mean MTA C&D, MTA, Metro-North or any combination of them, as the context requires.
23. **MIDTOWN** – Midtown Trackage Ventures, LLC, Midtown TDR Ventures, LLC and Argent Ventures LLC.
24. **MILESTONE DURATION** - the number of calendar days a Bidder proposes in its Bid to achieve an interim milestone and Substantial Completion.
25. **MTA** - Metropolitan Transportation Authority - A Public Benefit Corporation of the State of New York established pursuant to Title 11 of Article 5 of the New York State Public Authorities Law.
26. **MTA C&D** – MTA Construction & Development Company, a Public Benefit Corporation of the State of New York.
27. **NJT** – New Jersey Transit Rail Operations, Inc. and New Jersey Transit Corporation.
28. **NS** - Norfolk Southern Railway Company and Pennsylvania Lines LLC.
29. **NYSDOT** - New York State Department of Transportation.

30. **P&W** - Providence and Worcester Railroad Company.

31. **PROCUREMENT OFFICER** - shall mean the individual designated by MTA C&D's Contracting Officer (the Executive Vice President and General Counsel or his/her designee, the Senior Vice President Contracts) who is directly responsible for the daily pre-award administration of the MTA's procurement process. The Procurement Officer is also responsible for the administration of post-award Contract business functions such as, but not limited to: (i) the issuance of the Notice of Award and/or Notice to Proceed; (ii) issuance of Task Orders; (iii) negotiation of Contract changes; (iv) the issuance of Contract modifications; and (v) termination proceedings.

32. **PROJECT CEO** – the individual designated by MTA C&D to serve in the capacity of MTA C&D's Chief Executive Officer (or his or her designee) with decision-making authority for the Project or any replacement for such individual who shall be subsequently designated by MTA C&D. The Project CEO shall make all determinations of Metro-North with respect to the Contract.

33. **PROPOSAL** – a Bid and/or an offer to perform the Work in accordance with the Contract, as the case may be.

34. **SUBCONTRACT** - a contract between the Contractor and a Subcontractor or Supplier.

35. **SUBCONTRACTOR** - any person, firm or corporation, other than the employees of the Contractor, who contracts to furnish labor, or labor and materials, in connection with the Work, whether directly or indirectly on behalf of the Contractor and whether or not in privity of contract with the Contractor.

36. **SUPPLIER** - any individual, firm or corporation that contracts to furnish materials, equipment or supplies for incorporation in or in connection with the Work.

37. **WORK** - the furnishing of all labor, materials, equipment, deliverables and other incidentals required by the Contract and the performance of all duties and obligations imposed by the Contract including work performed pursuant to the warranty provisions of the Contract.

#### **ARTICLE 1.03 - NOTICES**

A. The delivery of any notice, direction, or communication to the Contractor at the address set forth in the Contractor's Proposal or to the Contracting Officer at the address specified in the Notice of Award shall be made to the aforesaid addresses by (a) depositing the same in a postpaid wrapper in any post office box regularly maintained by the United States Postal Service or by (b) personal delivery to such party or by (c) dispatching the same by overnight delivery service and shall be deemed to be sufficient service thereof as of the earlier of the date of such actual delivery or (where sent by regular mail) three days after such depositing. The address may be changed at any time by notice and acknowledgment in writing from the Contractor to Metro-North or from Metro-North to the Contractor. Nothing contained herein shall be deemed to preclude or render inoperative the service of any notice, direction or communication personally upon the Contractor, or if the Contractor be a corporation, upon any officer, director or designated agent thereof.

B. Nothing in the above paragraph shall be deemed to serve as a waiver by Metro-North of any requirements for the service of notice or process with respect to the filing of a claim or the institution of an action or proceeding as provided by law or elsewhere in

this Contract.

- C. All notices from Metro-North shall be promptly responded to when the notice requests a response.

#### **ARTICLE 1.04 - GENERAL RULES OF INTERPRETATION**

- A. References to a specific paragraph, section, or schedule shall be construed as references to that specified paragraph, section or schedule in this Contract, unless otherwise indicated.
- B. References to any agreement or other instrument shall be deemed to include such agreement or other instrument as it may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- C. The terms "hereof," "herein," "hereby," "herewith," "hereto," and "hereunder" shall be deemed to refer to this Contract.
- D. The headings of the chapters, articles and paragraphs are inserted for convenience only and shall not affect the actual construction or interpretation of said chapter, article, paragraph, or of this Contract.
- E. All references to "business days" shall be deemed to be references to the days of Mondays through Fridays, exclusive of holidays observed by Metro-North.
- F. All notices hereunder must be in writing, in accordance with the Contract Article entitled "NOTICES", unless expressly indicated otherwise.
- G. As used herein the singular shall mean and include the plural; the masculine gender shall mean and include the feminine and neuter genders; and vice versa.

#### **ARTICLE 1.05 - CHARACTER OF WORK**

- A. Anything mentioned in the Technical Provisions and not shown in the Drawings, or shown in the Drawings and not mentioned in the Technical Provisions, shall be of like effect as if shown or mentioned in both. In case of discrepancy between the Drawings and any part of the Technical Provisions, the Technical Provisions shall supersede the Drawings. Anything addressed in one drawing or drawings of one discipline (e.g., civil, electrical, etc.) and not addressed in another drawing or drawings of another discipline (e.g., civil, electrical, etc.) shall be of like effect as if shown or mentioned in both. In the event of any other discrepancy, or of ambiguity, or if requirements of design or material are not clearly defined in the Technical Provisions, the Contractor shall promptly submit the question to the Project CEO for a written determination. Any adjustment by the Contractor without such determination shall be at the Contractor's own risk and expense.
- B. Materials and workmanship shall in every respect be in accordance with the best modern practice and whenever the Contract or directions of the Project CEO or Metro-North admit of a doubt as to what is permissible or fail to note the quality of any workmanship, materials or equipment, the interpretation which calls for the best quality of workmanship, materials or equipment is to be followed.
- C. All apparatus or materials furnished by the Contractor shall be the latest design of

manufacturers regularly engaged in the production of such apparatus or materials. All items of the same type and rating shall be identical. The Contractor shall be responsible for all cutting, fittings or patching that may be required to complete the Work or to make its several parts fit together properly.

- D. Where materials or apparatus are required by the Technical Provisions or the Drawings to conform to standards, specifications or requirements of named organizations, the most recent revision of such standards, specifications or requirements is to be used, and the Contractor shall furnish to the Project CEO upon request the manufacturer's written certification that such materials or apparatus conform to such standards, specifications or requirements. Such certifications shall not be binding or conclusive on Metro-North and may be rejected at any time if incorrect, improper, or otherwise unsatisfactory. Failure of Metro-North or the Project CEO to request or reject any certification shall not release the Contractor from his full responsibility for the accurate and complete performance of the Work in accordance with the Contract.
- E. The Contractor shall also perform the Work with the highest regard to the safety of life and property and according to directions given by the Project CEO, and to the satisfaction of Metro-North, as well as any provision set forth in the Technical Provisions.

#### **ARTICLE 1.06 - DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, and before such conditions are disturbed, notify Metro-North of: (1) latent physical conditions at the site differing materially from those conditions indicated in the Contract, or (2) physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as occurring in work of the character provided for in this Contract but unknown to the Contractor until encountered during performance of the Work. Metro-North shall promptly investigate such condition(s) to determine if the condition(s) constitute a differing site condition as described in sub-clauses (1) or (2) above. Should Metro-North determine that a differing site condition exists which causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, the Project CEO shall notify Contractor of same, and the Contractor shall provide a detailed Change Order Proposal in accordance with the Contract.
- B. No claim for an extension of time by the Contractor due to a differing site condition under this Article shall be allowed unless the Contractor has given the notice required in (a) above and met all requirements in the Contract in the Article 2.05 "EXTENSIONS OF TIME."
- C. The requirements of the Contract concerning equitable adjustments for compensation for Extra Work under the Contract Chapter 4 "CHANGES TO THE CONTRACT" shall apply to any change under this Article for differing site conditions. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

#### **ARTICLE 1.07 - CONSENT OF METRO-NORTH REQUIRED FOR SUBLETTING OR ASSIGNMENT**

If the Contractor assigns, transfers, conveys, sublets, or otherwise disposes, of this Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of Metro-North, such action shall be an Event of Default under the Contract Chapter 7 "CONTRACTOR'S DEFAULT." Nothing herein shall either restrict the right of the Contractor to assign monies due or to become due pursuant to Section 9-406 of the New York State Uniform Commercial Code or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of his creditors, made pursuant to applicable law.

#### **ARTICLE 1.08 - SUBCONTRACTS**

- A. The prime Contractor shall perform, on the site, with his own staff, Work equivalent to at least 40% percent of the total amount of the Work. Only pay items of the Contract will be used in computing the total amount of Work.

Within 30 calendar days of Contract award, the Contractor shall submit to Metro-North a list of all Subcontractors that will be involved with the Work. This list shall include the names and addresses of the Subcontractors, the Work involved, and the value of each Subcontractor's Work. The list shall be updated as necessary.

- B. Nothing contained in the Contract shall create any contractual relation between any Subcontractor and Metro-North.
- C. In all Subcontracts, including the procurement of materials, the Contractor shall include all provisions of this Contract which are applicable to lower tier contracts, either stated, implied or required by federal, state, or local laws and regulations.
- D. The Contractor shall take such action with respect to any Subcontract or procurement as Metro-North may direct as a means of enforcing such provisions including sanctions for noncompliance. However, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Supplier as a result of such direction, the Contractor shall advise Metro-North of such litigation. This provision shall be inserted in all Subcontracts.

#### **ARTICLE 1.09 - COORDINATION WITH OTHER CONTRACTORS**

During the progress of the Work, it may be necessary for other Contractors and other persons (including personnel of Metro-North) to do work in or about the site of the Work. Metro-North reserves the right to permit and put such other Contractors and such persons to work and to afford them access to the Work site at such time and under such conditions as does not unreasonably interfere with Contractor. The Contractor shall perform its Work continuously and diligently and shall conduct its Work so as to minimize interference with such other work.

In the event of an emergency creating danger to life or property at or near the site of the Work, Metro-North may do anything necessary to alleviate such an emergency situation, including performing work, or directing another contractor to perform work.

#### **ARTICLE 1.10 - PRELIMINARY OCCUPANCY**

Metro-North reserves the right at all times to deliver, place and install furnishings and equipment in the Work Site as the Work progresses, as long as there is no interference with the Contractor. Such preliminary occupancy shall in no event be construed as Substantial Completion or Beneficial Use; however, where Metro-North is occupying a portion of the Work (which had not been contemplated by the Parties to be co-occupied during the performance of the Work), Metro-North will be responsible for damage or loss to such portion of the Work caused by Metro-North's preliminary occupancy.

#### **ARTICLE 1.11 - CONSTRUCTION MEETINGS**

The Project CEO and Metro-North will conduct weekly meetings at the site to review job progress, procurement, Extra Work claims, safety, fire prevention and detection, job cleanliness and housekeeping, coordination of work with others, and other appropriate items. The Contractor shall be represented by his site superintendent or an officer of the Contractor at these meetings. Special meetings may be held at the request of Metro-North, Project CEO, or the Contractor.

#### **ARTICLE 1.12 - SITE FACILITIES AND SERVICES; ACCESS TO SITE**

- A. Except as otherwise specified, the Contractor shall be responsible for obtaining at its own expense, from available sources the required electric power, water, compressed air, telephone and other utilities and facilities required for the Work.
- B. The Contractor may, with the approval of the Project CEO, use the site of the Work for storage of materials and for temporary facilities. During the temporary use of Metro-North's property, the Contractor shall not damage or deface any tree, shrub, or structure. Prior to Substantial Completion the Contractor shall restore the area to its original condition unless otherwise specified. If Metro-North's property is not sufficient for such storage or facilities, the Contractor shall make arrangements for additional working space at its own expense.
- C. Metro-North will provide to the Contractor, either by ownership, easement or permit the right of entry to the site of Work. The Contractor shall at its own expense make any access improvements required for performance of the Work.

#### **ARTICLE 1.13 - SUPERINTENDENCE BY CONTRACTOR**

Except where the Contractor is an individual and provides personal superintendence of the Work, the Contractor shall provide a competent superintendent, satisfactory to Metro-North, for the Work at all times during working hours with full authority to act for the Contractor. The Contractor shall also provide an adequate staff for the proper coordination and expediting of the Work. Should, in the opinion of the Project CEO, any language barrier exist between the superintendent and the Project CEO or his representatives, the Contractor will provide a qualified interpreter. In addition, where any language barrier exists with respect to other Contractor or Subcontractor employees, the Contractor will provide a qualified interpreter(s) who will be present whenever needed, in the opinion of the Project CEO, to enforce safe conduct of the Work including but not limited to, at each work site and during meetings and safety classes.



#### **ARTICLE 1.14 - NOTIFICATION OF EXTRA WORK SHIFTS**

The Contractor must notify the Project CEO in writing at least two working days in advance of the time when the Contractor plans work shifts outside regular working hours.

#### **ARTICLE 1.15 - ACCEPTABLE MANUFACTURERS**

Whenever the Technical Provisions identify materials and/or equipment by product or manufacturer, the intention of said identification is to establish a minimum degree of quality or to indicate requirements as to performance, design or finish. The Contractor, at its option, may by written request solicit approval of an "or equal" substitution. The Contractor's request for substitution shall be reviewed by the Project CEO and, if approved by him, said substitution shall be deemed acceptable.

Whenever the words "equal" or "approved equal" are used in connection with a specific manufacturer or item of equipment in this Contract, they will mean that in order to substitute any other component for use in place of the specified component, the proposed substitute brand or make of material, device or equipment must be proven to the satisfaction of the Project CEO to be the recognized equal of that specified including, but not limited to, an assessment of the following:

- Quality
- Workmanship
- Economy of operation
- Life cycle cost
- Reliability
- Maintainability
- Interchangeability
- Suitability for the intended purpose

#### **ARTICLE 1.16 - SANITATION**

The Contractor shall provide necessary sanitary facilities for employees on this Work wherever needed, properly screened from public observation and kept in a clean and sanitary condition satisfactory to the Project CEO. Same shall be removed when so directed.

#### **ARTICLE 1.17 - PROGRESS PHOTOGRAPHS**

Once each month during the period of the Contract, the Contractor will be required to furnish two (2) Thumb Drives containing a minimum of ten (10) different professional quality digital photographs in JPEG format per work site showing the progress made during the previous monthly period. Multi-site projects will require ten (10) photographs for each site. One (1) Thumb Drive shall be transmitted to the Project CEO and one (1), to the Procurement Officer. The Thumb Drive shall be labeled with the Contract name and number, the name of the Contractor, the name of the photographer, and the date on which the photographs were taken. The Contractor shall clearly mark and identify each picture with the description of the view and location, and, if necessary, shall include a location sketch of each photograph's view. All photographs shall be clear and sharp in detail, and free of light streaks or other blemishes which, in the opinion of the Project CEO, render them unsuitable for their use in progress reports and similar documents.

The Contractor shall furnish to the Project CEO one set of color prints, on 8" x 10" size high gloss premium fade resistant photo paper, acid, lignin, and carbon carbonate free, 11.5 mils in thickness, 75 lbs. in weight, and mounted in sheet protectors. Sheet protectors shall be top loaded, non-glare, heavyweight polypropylene, archival safe, 8½ inch by 11 inch, and with three hole punch. Sheet protector shall be "Avery Office Products, Product No. "74204", or approved equal.

#### **ARTICLE 1.18 - LAYING OUT THE WORK**

- A. The Project CEO will establish reference monuments and bench marks reasonably necessary for the execution of the Work and control of elevations and grades. The Contractor shall lay out all the Work with accurate reference to these bases.
- B. The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense for their replacement and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

#### **ARTICLE 1.19 - CLEAN-UP AND DISPOSAL OF DEBRIS**

The Contractor shall provide an adequate crew at all times for continuous clean-up Work at the job site. All debris resulting from any of the direct or related Work performed by the Contractor shall be removed promptly from the site and disposed of by the Contractor.

If the Contractor does not keep the working and storage areas properly cleaned, as determined by the Project CEO, the Project CEO may, after having given notice in writing, or otherwise as is reasonable under the circumstances, either perform this Work or have this Work performed by others and in either case deduct the cost, including management and inspection costs, from the monies due to the Contractor. Prior notice will not be required where, in the discretion of the Project CEO, there is imminent danger to person, property or the safe and efficient operation of the Railroad.

Upon completion of the Work the Contractor shall remove from the job site all of the Contractor's tools, equipment and surplus material and, unless otherwise directed in writing by the Project CEO, all temporary structures and scaffolding used by the Contractor in the course of the Work, and shall leave the premises "broom clean" or its equivalent.

#### **ARTICLE 1.20 - SAFETY, APPARATUS, DANGER SIGNS AND SIGNALS**

- A. Precautions shall be exercised at all times for the protection of person and property. The safety provisions of applicable Federal and State laws, building and construction codes shall be observed, as well as the safety provisions of the laws, ordinances, codes and regulations of the municipality in which the Work is performed (notwithstanding that such local laws, ordinances, codes and regulations may not be applicable to Work performed for Metro-North). Machinery, equipment and other hazards shall be guarded in accordance with such safety provisions. The presence of a Metro-North flagman (if any) shall not relieve the Contractor of responsibility for taking all proper precautions, especially in the vicinity of tracks and high voltage electrical circuits.

- B. The Contractor shall erect and maintain such danger signs, signals, red lights, guards, protective enclosures, platforms and notices necessary to adequately protect the Work and all individuals against injury to their person or damage to their property and shall promptly replace any of the foregoing that must be removed temporarily during the progress of the Work. If replacement is not properly made, the Project CEO shall have the right to effect such replacements at the expense of the Contractor. In accordance with the requirements of Title VI of the Civil Rights Act, the Contractor may be required under this Contract to erect any and all signs in one or more languages in addition to English as an accommodation for persons with Limited English Proficiency (LEP).
- C. The Contractor shall provide first aid equipment, supplies and competent administering of first aid as may be reasonably prescribed by good practice or as may be required by any law for the care of injured personnel. The Contractor will not be allowed to commence Work until there is a sufficient supply of first aid equipment, as determined by the Project CEO, at all work locations for it and all Subcontractors. Any resultant delay will be charged to the Contractor.
- D. The Contractor shall provide personal protective equipment (PPE) such as: head, hearing, eye, face and respiratory protection; tear-away reflective vests, and any other protective equipment required. The Contractor will not be allowed to commence work until there is a sufficient supply, as determined by the Project CEO, of PPE for it and its Subcontractors on the job site. No person will be allowed on Railroad property, or job site if off Railroad property, without wearing the necessary PPE including work shoes/boots. Any resultant delay will be charged to the Contractor.
- E. Any Contractor personnel who in the Project CEO's opinion violates or is not in conformance with the safety requirements may be prohibited from working on Railroad property. Metro-North will maintain records of such prohibitions and the individual will also be prohibited from working on all other Metro-North projects for the duration of this contract.
- F. All contractor employees who will be working on Metro-North's right of way must complete Metro-North Railroad Contractor Safety Training prior to working on Metro-North property. This includes sub-contractors and consultants, as well as any other person who is onsite or part of the project. All contractor employees must take the Metro-North Railroad Contractor Safety Training every year. Effective immediately, the required Metro-North Railroad Contractor Safety Training is available only online, through a web-based module. Each contractor employee who is on or about the Metro-North right of way must complete the training independently, using the online module, and must carry the required documentation of the training completion at all times when on Metro-North property. The employer creates an account on the [www.ContractorOrientation.com](http://www.ContractorOrientation.com) web site and enrolls the individuals employed by their company who need to complete the training. There is a fee associated with this training which is provided on the website. Employers can make a payment on the web site to cover fees for individual employees. Once the

employer has created the login for an employee, the employee may log on and

complete the training at any time. Training may be completed on desktop computers, laptops, or tablets with an Internet connection. Each contractor employee must complete the Metro-North Railroad Contractor Safety Training before reporting to work on or about the Metro-North right of way, and must retake the training annually.

Upon completing the online training, each employee is able to print a temporary certificate of completion. The temporary certificate is valid only until the employee receives his or her photo ID card and sticker by mail (in 7-10 business days). Until the photo ID card and sticker arrive, the employee must carry the temporary certificate and be prepared to present it at all times while on Metro-North property. Upon receipt of the photo ID card and sticker, the employee must display both the sticker (on his or her hard hat) and the photo ID card (in the front pocket of the safety vest or jacket if possible) at all times while on Metro-North property. When it is not feasible to display the photo ID card in that manner, the employee must carry it and be prepared to present it upon request. In addition to the training, a site orientation is still required. Each employee must present appropriate documentation of the Metro-North Railroad Contractor Safety Training (either the temporary certificate or the photo ID card) to Metro-North during the site orientation. Employees who are required to complete OSHA 10 training are also required to present the OSHA 10 documentation at the site orientation. Employees who do not have the required documentation are not allowed on site. Previous (instructor-led) training will remain valid until the original expiration date. When the training expires, employees must retake the training using the online module. To register a company for Metro-North Railroad Contractor Safety Training, follow these steps:

1. Go to the website [ContractorOrientation.com](http://ContractorOrientation.com).
2. Click on “REGISTER >” in the upper right corner of the screen.
3. Input your company name in the field in the lower left corner of the screen, then click “Submit”.
4. Read and follow the instructions on this page. You should search for your company several times to be sure it is not already registered.
5. When you are sure your company is not already registered, click on the words “Click here to register a new company”.
6. Fill out the form as completely and accurately as possible, then click on “Submit”. If your company has multiple locations, include the location in the name. (Example: Bobs widgets – Seattle, Bobs widgets – Boston)
7. Verify your information. If it is incorrect, click on “Go Back” to change it. If it is correct, click on “Submit”.
8. You should see a confirmation page and you should get an email with instructions on how to proceed. You will be able to log in, register employees to your account, pay for training, take the appropriate course, and more. Most of your tools are in the Administration tab at the top of the screen once you log in.

If you have any questions, you can contact [ContractorOrientation.com](http://ContractorOrientation.com) by using the On Line Chat, calling (866) 599-2482, or emailing to [Support@contractororientation.com](mailto:Support@contractororientation.com)

To log in to [ContractorOrientation.com](http://ContractorOrientation.com) for training as an employee, you have to be registered by your company administrator. The administrator is the person in your company that runs the account. If you don't know who that is, please contact [ContractorOrientation.com](http://ContractorOrientation.com). Once you are registered by your administrator, they will tell you what your user name and password are. You must use your own user name and password only.

1. Go to the website [www.ContractorOrientation.com](http://www.ContractorOrientation.com).
2. Click on "LOGIN HERE >" in the upper right corner of the screen.
3. Enter your user name and password in the pop up form. Passwords are case sensitive. Then click on "LOGIN" at the bottom of the form.
4. Confirm that you are logged in by finding your name in the upper right corner of the screen. **If it is not your name, you are not logged in and will not get the badge with your name on it.**
5. Once logged in you can do several things.
  - You can pay for a course using the payment options at the bottom of the Home page.
  - Upload a photo if one is required for the course.
  - Choose the right course for the railroad you will be working on or near.

#### **ARTICLE 1.21 - PROJECT SIGNS**

- A. The Contractor will install two Metro-North furnished construction signs. The Contractor shall pick up the signs at Metro-North's Harmon Facility, Croton-on-Hudson, New York or as ordered by the Project CEO.
- B. The Contractor shall be fully responsible for maintaining and cleaning all signs regularly to the satisfaction of the Project CEO and shall ask for replacements should their condition become unsatisfactory. All inks, markings, soot, and steel dust shall be removed with soap and water or common solvents without harm to the sign's surface.
- C. Upon Acceptance or Substantial Completion, as determined by the Project CEO the Contractor shall remove all signs and dispose of as ordered by the Project CEO.

#### **ARTICLE 1.22 - REQUIREMENTS FOR PERFORMING WORK ADJACENT TO OR WITHIN THE RIGHT-OF-WAY OF METRO-NORTH**

- A. METRO-NORTH OPERATIONS

The attention of the Contractor is called to the fact that the Contract may require that certain of its operations may be carried on adjacent to and within the right-of-

way of Metro-North. The tracks within this right-of-way may be operating tracks and no changes in operating schedules are contemplated to accommodate the Contractor's operations.

B. PROTECTION OF METRO-NORTH

- (1) The Contractor shall direct the course of his construction operations as to safeguard the tracks, rolling stock and other equipment and appurtenances of Metro-North from being damaged in any manner and agrees to be financially responsible for same.
- (2) The Contractor shall comply with all requirements of Metro-North applicable to this type of construction and agrees not perform any operations which might foul the right-of-way until he has complied with such rules and procedures.
- (3) When an operating track or a power, communication or signal line of Metro-North is or may be fouled, in the course of performing the Work, the Contractor may not undertake the operation without 14 days advance notice to Metro-North, so that Metro-North may arrange to supply special supervisory and protective forces. Further, no such Work may actually commence until an authorized Metro-North representative affirmatively advises the Contractor that the necessary protective forces are stationed and that he may proceed.

If the Work requires a track outage, or a track to be fouled, or a power shutoff, the Contractor shall notify the Project CEO at least 14 days in advance in accordance with this Article.

- (4) An operating track will be considered fouled when any equipment or material is or may be brought closer than fifteen (15) feet from gauge of near rail. Any piece of equipment including but not limited to a crane or derrick shall also be considered as fouling the track if for any reason any part of it would be closer than fifteen feet (15') from gauge of near rail either in normal operation or if the equipment topples. The same rules will apply to the fouling of power, communication and signal lines.
- (5) The Contractor shall obtain approval of construction methods from the Railroad. Contractor shall submit detailed plans with supporting data and calculations for any operation on or adjacent to the Railroad property prior to the start of work. Metro-North will evaluate the effect of this work on the operating Railroad. The plan shall locate and identify all utilities, above and below ground at the work site. Contractor shall make necessary plan revisions, schedule changes, additions, deletions, etc., whatever the cause therefor, at its own expense. The Contractor shall remove at its own expense any pipe, wire, or structural facility installed without Metro-North approval or which deviates from the plan approved by Metro-North.

- (6) Under the direction of the Project CEO, the Contractor shall, at no cost to the Railroad, perform pre- and post-construction surveys of tracks and structures to establish existing horizontal and vertical clearances. The elevations shall reference an established survey benchmark which will remain undisturbed throughout the construction. It may be necessary for the Contractor to monitor tracks and structures on a more frequent basis, monthly, weekly or daily as determined by the Project CEO's representative. Copies of the field notes must be delivered to the Project CEO on a regular basis.

C. REQUIREMENTS FOR ERECTION, DEMOLITION, OR OTHER RIGGING OPERATIONS OVER OR ADJACENT TO METRO-NORTH RIGHT-OF-WAY

The Contractor shall furnish the following information to the Project CEO for approval prior to commencing rigging operations over or adjacent to Metro-North's right-of-way:

- (1) Plan view showing locations of cranes, boom length and rigging operating radii, with delivery or disposal vehicle weight and locations shown.
- (2) Crane, boom truck or lifting equipment rating sheet and manufacturer's recommended data for special applications showing cranes to be adequate for 150% of the Lift.
- (3) Plans and computations showing weight of pick and rigging equipment.
- (4) Location plan and profile showing obstructions, indicating that the proposed swing is possible.
- (5) Plans showing calculations, locations and details of mats, planking or special decking as may be required by the Project CEO to ensure adequacy and provide protection of all surface and subsurface structures and utilities.
- (6) A written statement from the crane owner indicating the date of the last crane condition and safety inspection and the results of the inspection.
- (7) Data sheet listing number, type, size and arrangement of slings or other connecting equipment. Include copies of catalog or information sheets of specialized equipment.
- (8) A complete procedure is to be included, indicating the order of lifts and repositioning or re-hitching of lifting equipment.
- (9) Temporary support of any component or intermediate stage is to be shown.
- (10) A time schedule of the various stages must be shown, as well as a schedule for the entire lifting procedure.



- (11) All plans and calculations submitted to Metro-North as required above, must be sealed by a Licensed Professional Engineer.
- (12) The Contractor shall locate and mark the exact crane or lifting equipment location in the field at least two working days prior to the intended operation. He shall verify the radii and clearances for critical picks, and he shall confirm the stability of the foundation for crane outriggers and supports. Any deviation from this plan must be approved, in writing, by the Engineer prior to the date that the work has been scheduled.

#### D. REQUIREMENTS FOR SHEETING

Sheeting shall be required on all excavations where the side of the excavation is intercepted by the Railroad live load influence line. The live load influence line is defined as a line originating at the bottom outside edge of tie and extending downward at a slope of 1 (vertical) on 1 1/2 (horizontal). Such excavations must be designed to withstand, in addition to all static loads such as structural dead load, soil pressure and hydrostatic pressure, a Railroad live load of Cooper E-80 or other loading magnitude as may be directed by the Engineer.

Timber sheeting left in place shall be treated with wood preservatives in accordance with the American Wood Preservers Association standards for timber in contact with soil.

Moreover, sheeting alongside active track systems must maintain lateral support to the track system. Lateral support shall consist of a compacted stone ballast shoulder level with the top of tie for at least one foot outside the end of tie supported by a slope no steeper than one (1) vertical to two (2) horizontal.

#### E. REQUIREMENTS FOR SCAFFOLDING

Scaffolding shall be necessary to protect the Railroad or the general public from possible falling debris, paint or other materials; to protect personnel working above the right-of-way or to provide a platform for personnel, materials and/or equipment; or where directed by the Engineer. A scaffold intended to contain finely broken concrete decking shall be designed for a live load of 200 pounds per square foot applied uniformly over the entire structure, and a 2 kip concentrated load placed anywhere on the structure. The two loads are not to be applied simultaneously for design purposes. Design of the scaffold intended for any other purpose shall be submitted to the Engineer for approval. The design shall contain details of any construction activities supported or protected by the scaffold. Loads or rigging which exceed the capacity of the scaffold shall be subject to the conditions of Article 1.22.C. All materials for protective scaffolding must be fire retardant. The Contractor must supply the Engineer with certification from the manufacturer or supplier that lumber meets or exceeds the ASTM E-84 fire retardant specification for exterior application 30-minute duration. Plans and calculations for sheeting and scaffolding must be submitted to the Engineer for approval prior to construction and shall include the location and clearance to Railroad property. Further, plans

and calculations must be stamped by a Professional Engineer licensed in the state in which the project is located.

F. EMERGENCY OPERATIONS

If during the progress of the Work, trains, tracks or other facilities of Metro-North are endangered, the Contractor shall immediately do the necessary work, as directed by Metro-North, to restore the operation to a safe condition, and upon failure of the Contractor to implement the Engineer's orders immediately, Metro-North, at the expense of the Contractor may take whatever steps it deems necessary to restore the operation to a safe condition.

G. APPROVAL OF ENGINEER

Without regard to the rules on fouling, whenever any part of the Work may affect the safety or movement of trains, the method of doing the same shall first be submitted to the Engineer for approval, and may not be performed without such approval. The approval of Metro-North shall not release the Contractor from any of his obligations under this Contract.

The Contractor will not permit the storage of materials or equipment upon Metro-North property without first obtaining written permission from the Engineer.

H. PROTECTIVE PERSONNEL

Metro-North will furnish the services of all flagmen and similar protective labor ("Protective Personnel") as required by Metro-North to protect the operation and safety of train traffic and the Railroad during the Contractor's operations under this Contract. There will be no charge to the Contractor for this Protective Personnel provided the Contractor notifies Metro-North 14 days in advance for the Protective Personnel. If the Contractor notifies Metro-North in less than 14 days, the availability of the Protective Personnel cannot be guaranteed; if Protective Personnel are available the cost of the Protective Personnel will be billed by Metro-North to the Contractor.

If the Contractor fails to cancel its request for Protective Personnel at least 96 hours prior to when Protective Personnel are scheduled to work, or if Protective Personnel are scheduled to work and no work is performed by the Contractor the cost of the Protective Personnel and any additional cost to Metro-North will be billed by Metro-North to the Contractor. No charges will be incurred by the Contractor for Protective Personnel if the Contractor is prevented from performing the Work for reasons beyond his control, such as weather or a Metro-North emergency.

Metro-North will provide protective personnel in accordance with the foregoing considerations up to the date of final completion set forth in these documents or as such date of completion may from time to time be extended. Beyond the date of completion as extended, if applicable, Metro-North will provide Protective Personnel and the Contractor shall promptly reimburse Metro-North for all the Protective Personnel Metro-North deems necessary. If the Contractor does not

reimburse Metro-North within a reasonable time, Metro-North will deduct the charges from any monies due the Contractor under this or any other Contract with Metro-North or its affiliates.

Any cost for Protective Personnel incurred due to repairs or replacement because of inferior workmanship by the Contractor will be billed to and paid for by the Contractor.

#### I. HOLIDAY RESTRICTIONS

- (1) The Contractor shall not schedule nor perform any activities that require any overnight inspection or support of any kind by Metro-North or that interferes with the operation of trains or the flow of passengers from 1 p.m. through midnight on the eve of each holiday and from 12.01 a.m. through midnight the day of each holiday. The holidays subject to the foregoing are:

New Year's Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Four Day Weekend  
Christmas Day

- (2) In addition, the Contractor shall not schedule nor perform any activities that interfere with the operation of trains or the flow of passengers from 1 p.m. through 9 p.m. on the eve of Rosh Hashanah, the eve of Yom Kippur, the eve of the first day of Passover, December 23rd, December 31, and the Fridays before July 4th, Memorial Day, Labor Day, and President's Day.

Activities such as, but not limited to, the set-up, relocation and dismantling of protective barriers, barricades, scaffolding and the like, and any activities that produce loud noises, dusts, fumes, airborne contaminants and other discharges will be considered as interfering with the operation of trains and the flow of passengers.

- (3) The date of observance at the worksite of all the foregoing will be as determined by Metro-North. For any holiday that is to be observed on a Monday the designated eve of such holiday, which will be subject to the above restrictions, shall be the preceding Friday.

#### **ARTICLE 1.23 - SAFE AND PROPER CONDUCT OF CONTRACTOR PERSONNEL; BAN AGAINST INTOXICANTS**

While on Metro-North property or otherwise performing work for the Contract, employees and Consultants of the Contractor and its Subcontractors shall conduct themselves in a safe and businesslike manner, conducive to the safe and efficient operation of the Railroad. In connection therewith, the Contractor shall prohibit the possession and use of alcoholic beverages and intoxicants by all Contractor and Subcontractor personnel. Any Contractor or Subcontractor personnel determined by Metro-North, in its sole discretion, to be in

violation of the provision, including but not limited to those determined by Metro-North to have violated the ban against intoxicants, will be prohibited from working on the Contract for its duration.

#### **ARTICLE 1.24 - SAFETY, HEALTH AND ENVIRONMENTAL CONTROL PLAN**

- A. The Contractor is to submit a Safety, Health and Environmental Control Plan to Metro-North for review and approval within 30 days after Contract award. The plan shall include all safety, health and environmental controls applicable to the work, including, but not limited to the items in the 'Technical Provisions' of the Contract, Section 01 33 60 Safety, Health and Environmental Control.

See the Technical Provisions for Environmental Protection, Lead, Asbestos, Dewatering, Construction Waste and Disposal.

The Contractor is to comply with outside agencies such as DOL, EPA, DEC DOT, FRA, OSHA and all other regulatory agencies' their guidelines, laws and regulations and required permitting.

- B. It is the Contractor's responsibility to comply with all federal, state and local laws regulations and guidelines applicable to the project and the Technical Provisions of this Contract.

#### **ARTICLE 1.25 - SITE VISIT BY HEALTH, SAFETY OR ENVIRONMENTAL OVERSIGHT AGENCY**

The Contractor shall immediately notify the Project CEO upon receipt of notification of an inspection or other site visit (or where there is no prior notification, of the occurrence of an actual site visit) by any local, state or federal agency or body with responsibility for health, safety and/or environmental compliance, monitoring, oversight or other similar function (including but not limited to OSHA, USEPA, NYSDEC, NYSDOL and NYCDEP). To the extent practicable, the Contractor shall provide the opportunity for the Project CEO or other designated Metro-North personnel to attend such site visit.

In addition, the Contractor shall provide Metro-North with copies of all citations, violations, reports, correspondence and other documents generated in connection with an actual or prospective site visit.

#### **ARTICLE 1.26 - MONTHLY HEALTH, SAFETY & ENVIRONMENTAL CERTIFICATION**

Contractor shall furnish the following certification to Metro-North within fifteen (15) days of the end of a calendar month in which lead and/or asbestos removal was performed. If the Contractor performed neither lead nor asbestos removal during a calendar month, this Certification need not be provided.

## **ARTICLE 1.27 - RAIL SAFETY IMPROVEMENT ACT (RSIA) OF 2008 MINIMUM TRAINING AND QUALIFICATION REQUIREMENTS**

Each Metro-North contractor (and their subcontractors) who employs one or more safety-related railroad employees (as defined by 49 C.F.R. §243.5) is required to develop and submit a training program to the FRA for approval and to adopt and implement the training program no later than May 1, 2021, or as otherwise required by the FRA. Failure of a contractor to timely comply with the FRA regulations may subject a contractor to civil penalties. In addition, Metro-North contractors who do not comply with the FRA regulations will not be able to work on Metro-North property, and may be subject to termination of their contracts for failure to comply with applicable law. Contractors are required to read the Minimum Training and Qualifications Requirements and sign the corresponding contractor acknowledgment (see Schedules, Forms and Certifications).

## **ARTICLE 1.28 - IDENTIFICATION OF CONTRACTOR'S PERSONNEL**

The Contractor shall identify all Contractor/Subcontractor personnel. He shall supply a listing of the names of all personnel who have reason to enter Railroad property. The list shall be updated whenever there is a change in personnel. He shall supply each worker with company insignia which must be worn on outer garments whenever workers are on Railroad property. Said insignia shall always be visible (it is suggested that it be placed on the reflective vest or hard hat), non-interfering with movement or clothes, and secured so it does not flap or hang loose. Contractor personnel failing to wear identifying insignia shall be removed from the property.

## **ARTICLE 1.29 - OUTAGES**

- A. For the purpose of this Article, an "Outage" is defined as a track outage or permission to foul track or a power, communications or signal line.
- B. Notwithstanding any other provision in the Technical Provisions or elsewhere in the Contract, the Contractor's remedies where an Outage is not granted or is cancelled or delayed by Metro-North are expressly limited as follows:
  - (1) where the Contractor (a) fails to comply with the requirements of Article 1.22.B., including but not limited to requirements of prior and timely notice, or (b) where a request for an Outage is inconsistent with any statements with respect to availability of Outages in the Technical Provisions or elsewhere in the Contract, Metro-North shall have absolute discretion to deny such request for an Outage, and the Contractor shall have no remedy therefor.
  - (2) where the Contractor (a) complies with the requirements of Article 1.22.B., including but not limited to requirements of prior and timely notice, and (b) where a request for an Outage is in accordance with all statements with respect to availability of Outages in the Technical Provisions or elsewhere in the Contract, and where Metro-North nonetheless denies such request for an Outage, the Contractor shall have no claim for damages against Metro-North, and the Contractor's sole remedy shall be an extension of time, provided that such request for an extension of time meets all of the requirements therefor as set forth in Article 2.05 entitled EXTENSIONS OF TIME; except that where the number of Outages denied under this

paragraph and the following paragraph exceed 10%, the Contractor's waiver of damages shall not apply.

- (3) the preceding paragraph (2) shall also apply where an Outage is approved by Metro-North, but thereafter cancelled, unless the Contractor's workforce is already at the work site when notice of cancellation is given, and cannot be diverted to other Contract Work after notice of the cancellation.
- (4) where Metro-North (a) cancels an Outage with insufficient notice to divert the Contractor's on-site workforce to other Contract Work; or (b) cancels an Outage after its commencement, or (c) delays the scheduled start of an Outage, and where the Contractor incurs actual and direct costs due to any such event, then the Contractor's remedies therefor shall be limited to (1) an extension of time, provided that such request for an extension of time meets all of the requirements therefor as set forth in Article 2.05; and (2) actual labor and rental equipment costs directly attributable to such action by Metro-North. Labor costs will be limited to actual rates including fringes, taxes and insurances but will not include any overhead or profit. Rental equipment costs shall be exclusive of any mark-ups or overhead. In no event will an extension of time or costs be allowed in connection with the first thirty (30) minutes of each such cancellation or delay of an Outage.

## MONTHLY HEALTH, SAFETY & ENVIRONMENTAL CERTIFICATION

For the period of \_\_\_\_\_, 20\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_

I, \_\_\_\_\_, Health & Safety Representative/Competent Person, (circle one or both as applicable), on behalf of \_\_\_\_\_ (Contractor), certify that all lead and asbestos removal, abatement and containment work performed in connection with Contract No. [142486](#) was executed in conformance with all applicable local, state and federal regulations, laws, statutes and guidelines.

I also certify that the following is true with respect to the period covered by this certification:

1. All licenses and permits required in connection with lead and/or asbestos removal, abatement and containment have been obtained and were in effect.
2. Sufficient and appropriate containment procedures were used.
3. Sufficient and appropriate personal protection was used by all persons under the employ or control of the Contractor.
4. No citations or violations were assessed as a result of or in connection with lead and/or asbestos abatement.
5. All required ambient and personal air monitoring was performed. If air monitoring was performed by another firm, provide the name of that firm:  
  
\_\_\_\_\_
6. All required worker blood levels and ZPP levels were monitored, and all required employee removals and/or medical surveillance has been initiated.
7. Employees using respiratory protection met all applicable fit testing, training and medical requirements associated with respirator qualification.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sworn to me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

This certification is made under the penalties of perjury, and such other civil and criminal statutes that may apply. If you are unable to certify to all of the above, or to provide all of the information required herein, then place a mark in the adjacent box ☐ and provide an explanation of such exception on a separate page.

## CHAPTER 2 - PROVISIONS RELATING TO TIME

### ARTICLE 2.01 - TIME FOR COMMENCEMENT AND COMPLETION OF WORK

#### A. CONTRACT WORK

The Contract Work is as set forth in the Contract Documents, Drawings and the General Specifications Division 1 (SECTION: 01 11 00). The following outlines the main features of the work to be performed under the Contract, but is not a complete description:

1. Construction of a 472-space surface parking lot including 9 ADA accessible spaces, 8 electric vehicle charging station spaces, and 2 ADA accessible electric vehicle charging station spaces.
2. Construction of a 41-space temporary parking facility including 2 ADA accessible spaces.
3. Reconstruction of the existing access driveway to the proposed parking lot.
4. Improvements to the Croton Falls Road/Route 202 intersection.

The Contractor shall begin the Work within 10 days after the date of the Notice of Award, and shall thereafter perform the Work continuously and diligently. The Contractor shall within

12 MONTHS

from the date of the Notice of Award finally complete the Work as set forth in Article 2.02 (B) Final Completion. The conclusion of this period of time, as it may be extended under Article 2.05, or shortened under Article 4.05, shall be the "Completion Date."

- B. In addition to the "Completion Date", the Contractor shall also meet the following interim milestone within the specified duration:

Milestone B - Substantial Completion - Complete all work of the Contract, including work associated with the Contract Specifications and Drawings C-100 through S-101. within **300 calendar days** from the date of the Notice of Award.

### ARTICLE 2.02 - SUBSTANTIAL COMPLETION AND FINAL COMPLETION

#### A. SUBSTANTIAL COMPLETION

- (1) The Work shall be deemed Substantially Complete when, in the opinion of the Engineer, there are no material and substantial variations from the Contract and the Work is fit for its intended purpose. Upon Substantial Completion the Engineer shall issue a Certificate of Substantial Completion. The issuance of this Certificate shall not relieve the Contractor from its



- obligation hereunder to complete the Work.
- (2) When the Contractor is of the opinion that the Work is Substantially Complete, Contractor may submit to the Project CEO a written request that the Project CEO inspect the Work so as to determine whether Substantial Completion has been achieved. Upon such request, Metro-North must respond within twenty-five (25) days of its receipt with either (i) a Certificate of Substantial Completion or (ii) an explanation of the reasons why the Work is not Substantially Complete, including a list of open items necessary to achieve Substantial Completion. Nothing in this Article precludes the Project CEO from making a determination of Substantial Completion in the absence of a request therefor by the Contractor.
  - (3) Substantial Completion cannot be achieved until all deliverables including but not limited to training, spare parts, manuals and other documentational requirements of the Contract have been completed or delivered and approved.
  - (4) If Metro-North, in its sole discretion, elects not to take possession of the Work upon Substantial Completion, the Risk of Loss as provided in the Chapter entitled "CONTRACTOR'S LIABILITY AND INSURANCE" remains on the Contractor until Metro-North decides to take possession of the Work or until Final Completion as defined below.
  - (5) The Work remaining after Substantial Completion shall be known as "Punchlist Work." The Punchlist Work shall be limited to minor omissions and defects except the Project CEO may in his sole discretion, include Work which cannot be done until Metro-North or third persons perform other work which is not the Contractor's responsibility under the Contract. The Project CEO shall issue a Punchlist with the Certificate of Substantial Completion.
  - (6) Upon Substantial Completion, the Contractor shall remove its tools, materials and equipment from the Work Site, except for the tools, materials and equipment needed to complete the Punchlist Work, or unless otherwise authorized in writing by the Project CEO.

B. FINAL COMPLETION

- (1) The Project CEO shall advise the Contractor of the time reasonably required to complete all the Punchlist Work. The time set by the Project CEO to complete Punchlist Work shall be no more than ninety (90) days from the issuance of the Certificate of Substantial Completion. When in the opinion of the Project CEO the Punchlist Work is properly completed, the Project CEO shall issue a Final Completion Certificate.
- (2) In the event of an emergency or if the Contractor fails to diligently perform the Punchlist Work, Metro-North may complete the Punchlist Work, either by its own forces or by other contractors. Metro-North's costs thereof will be deducted from the Final Payment, except that if Metro-North completes the Punchlist Work because of an emergency, then the amount deducted from the Final Payment shall be based on the Contractor's costs for completing the

Punchlist Work. If such costs exceed the amount due the Contractor, the Contractor shall immediately upon demand pay such excess to Metro-North.

- (3) Acceptance of all Work by Metro-North shall occur when in the opinion of the Project CEO, the Work is complete in all respects including any outstanding items contained in the Punchlist provided with the Certificate of Substantial Completion. Upon Acceptance the Contractor shall be given a Certificate of Final Completion.

#### C. BENEFICIAL USE

Metro-North shall have the right to take possession of or use any completed or partially completed part of the Work. The Project CEO shall have the sole discretion to determine that a discrete portion of the Work is sufficiently complete and fit for its intended purpose in accordance with the Contract. Upon making such a determination Metro-North shall notify the Contractor of Metro-North's intent to take Beneficial Use of a portion of the Work. Prior to such possession or use, the Project CEO shall furnish the Contractor an itemized list of Work remaining to be performed or corrected on such portions of the Work as are to be possessed or used by Metro-North, provided that failure to list any item or Work shall not relieve the Contractor of responsibility for compliance with the terms of the Contract. Such possession or use shall not be deemed an acceptance of any Work under the Contract. While Metro-North has such possession or use, the Contractor, notwithstanding the Article entitled "RISK OF LOSS TO THE WORK" shall be relieved of the responsibility for loss or damage to the Work resulting from Metro-North's possession or use.

### **ARTICLE 2.03 - CONTRACTOR'S DETAILED SCHEDULE OF WORK (CPM)**

#### A. GENERAL

- (1) The Work shall be monitored by a detailed Critical Path Method Scheduling System (hereinafter "CPM Schedule"). The CPM Schedule shall be in the form of Precedence Diagramming Method (PDM). The scheduling of submittals, procurement and construction is the responsibility of the Contractor. The requirement for the CPM Schedule is included to assure adequate planning and execution of the Work and to assist Metro-North in appraising the reasonableness of the proposed schedule, as well as its compliance with Contract requirements. This CPM Schedule shall be the basis for the evaluation of Contractor performance and for progress payments to the Contractor. The CPM Schedule is the Contractor's committed plan to complete all Work (including punch list items) within the allotted time and assumes full responsibility for the prosecution of the Work as shown. The CPM Schedule shall be based on and derived from detailed schedules used to monitor all Contract activities.
- (2) Failure of the Contractor to submit the CPM Preliminary, Baseline or Update Schedules or any required revisions thereto within the time limits stated, shall be sufficient cause to withhold approval of the Contractor's invoices for

progress payment(s) until such delinquent submittal is made and accepted by the Project CEO.

- (3) The CPM shall be prepared and maintained by a project scheduler with at least five (5) years of relevant scheduling experience in planning, scheduling, expediting and maintaining the progress of the work on construction projects of a similar nature ("Project Scheduler"). The name resume and work experience of the Contractor's Project Scheduler shall be submitted to the Project CEO within seven (7) days after Notice of Award for approval by the Project CEO prior to the initiation of work on the Schedule document. Should the Contractor utilize a consultant for scheduling, the consultant's name, resume, and work experience shall be submitted to the Project CEO within seven (7) days after Notice of Award for approval by the Project CEO prior to the initiation of work on the Schedule document.
- (4) If either the proposed consultant or the Contractor's Project Scheduler is not approved, the Contractor shall propose an alternate consultant or another project scheduler within seven (7) days. The Project CEO's approval of the proposed personnel is required before work is initiated on the Schedule document. Rejection by the Project CEO of the proposed Project Scheduler shall not be allowed as a basis for an extension of time to submit the required Schedule document.

#### B. SUBMITTALS

The CPM Schedule shall consist of two (2) distinct initial submittals.

- (1) Preliminary CPM Schedule: No later than 30 calendar days after the award of the Contract, the Contractor shall submit six (6) copies and electronic files in .xer and .pdf formats of the Preliminary CPM Schedule defining the Contractor's planned activities during the first 90 calendar days. The Preliminary CPM Schedule shall contain in detail the Contractor's proposed Schedule of Work to be commenced within the first 90 calendar days after Notice to Proceed. This Preliminary CPM Schedule shall include, in a summary format, the balance of work leading to the final completion of the Work required under the Contract. The Preliminary CPM Schedule package may be conditionally accepted by the Project CEO pending acceptance of the Baseline CPM Schedule. The conditionally accepted Preliminary CPM Schedule shall be updated monthly until the Baseline CPM Schedule is accepted. Contractor shall not make any changes to the conditionally accepted or accepted Preliminary CPM Schedule, without the approval of the Project CEO. The Preliminary CPM Schedule shall indicate the cost of activities and milestones expected to be completed or partially completed before submission and approval of the complete Baseline CPM Schedule as specified in Paragraphs B.(2) through F. inclusive.
- (2) Baseline CPM Schedule: No later than 60 calendar days after the award of the Contract, the Contractor shall submit up to 6 copies and electronic files in .xer and .pdf formats of the complete CPM Schedule documents depicting the Contractor's Work plan for the entire Contract. The Contractor shall submit

to the Project CEO for his review and approval the following:

- a. Schedule and Logic Reports: Computer generated tabular Schedule and Logic Reports (in accordance with Paragraphs F.(1) and F.(2)).
- b. Bar Chart: Time-scaled computer generated bar chart derived from the CPM Time-Scaled Network Logic Diagram (in conformance with Paragraph C. "CPM SCHEDULE REQUIREMENTS").
- c. Line Item Breakdown: A Line Item Breakdown in accordance with Paragraph D. "LINE ITEM BREAKDOWN" and Article 3.03 "DETAILED COST BREAKDOWN FOR LUMP SUM ITEMS."
- d. Cost Report: A Cost Report generated from the cost loaded CPM Schedule is to be submitted 14 calendar days after approval of the Line Item Breakdown, in accordance with Paragraph F.(3).
- e. Narrative: A written narrative explaining the schedule and the Contractor's general approach for meeting interim and completion milestone dates. The narrative report shall include an analysis and summary of the schedule including:
  - i. General project status date.
  - ii. A four-week look ahead of scheduled activities.
  - iii. Critical path analysis taking into account construction sequencing and logic, major procurement items that may influence the critical path, crew workflow, basis of duration for critical and near critical activities, and any other assumptions.
  - iv. Total float.

#### C. CPM SCHEDULE REQUIREMENTS

- (1) The CPM Schedule shall include all of the Contractor's submittals, procurement and construction work activities with sufficient detail such that all interfaces with all direct and related parties to the Work are shown.
  - a. The Work of the Contractor, Subcontractors, Suppliers, Metro-North, and all others that affect progress shall be shown and identified on the schedule by using Activity Codes.
  - b. Procurement activities shall be shown, including submittal and approval of shop drawings, fabrication and delivery of the material.
  - c. Interruption of service, delivery of Metro-North-furnished equipment, project phasing and any other Technical Provision requirements shall be shown.

- (2) The CPM Schedule shall contain sufficient construction activities to represent the Work, subject to the acceptance of the Project CEO.
- a. In addition to all design, engineering, and construction activities, the CPM Schedule, including subsequent updates, shall also identify any other items that may affect the orderly and timely execution of any Contract activity. Such items shall include, but will not be limited to, the following:
- i. Work to be performed by design consultants.
  - ii. Work to be performed by utility companies.
  - iii. Obtaining permits.
  - iv. Service Bulletins.
  - v. Work requiring Metro-North services.
  - vi. Work to be performed by outside agencies.
  - vii. Work to be performed by other Contractors.
  - viii. Procurement, fabrication and delivery of construction material and equipment.
  - ix. Submittals, reviews and approvals of design drawings, shop drawings, as-built drawings, samples, procedures, manuals, training videos and all other deliverables specified in the Contract.
  - x. System software development lifecycle fragnet (if applicable).
  - xi. Inspections by Metro-North.
  - xii. Acceptance process (Metro-North).
  - xiii. Testing.
  - xiv. Punch List.

The CPM shall clearly identify all interdependencies among construction activities and any relationships that might exist between construction activities and those items listed above. Interfaces which serve to demonstrate a constraint associated with crew size, equipment, work area (space) limitations or any other non-physical condition shall be clearly denoted by the Contractor on the CPM as a separate activity with a zero (0) duration and their respective description. For example, activities which restrain paths of logic due to a crew moving from one area to another area, shall be identified as a “CREW RESTRAINT” activity with a zero (0) duration.

The responsibility codes for these types of activities shall be represented as follows:

“CR” for Crew restraint, “ER” for Equipment restraint, “AR” for Area restraint.

All such abbreviations shall be fully explained by the Contractor on a legend sheet which shall accompany the CPM Schedule submittal.

- b. The CPM Schedule shall contain sufficient time for all inspections, training and system demonstrations, as well as systems testing and Metro North acceptance.

The CPM Schedule shall include a System Testing and Acceptance schedule. This schedule will identify all equipment and systems that require testing, training and acceptance by Metro-North. The durations and sequences of the System Testing and Acceptance shall be as specified in the various sections of the technical provisions. Each system may contain, but is not limited to, all of the following activities and constraints:

- i. Interface between the construction activities and their respective systems.
- ii. Contractor's pre-testing work.
- iii. Submittal and Approval of the Contractor's Pre-Testing Data and checklist, as appropriate.
- iv. In accordance with the requirements of the contract documents, advanced notification time to Metro-North prior to system testing.
- v. Submittal and Approval of the Preliminary and Final As-Built Drawings.
- vi. Submittal and Approval of the Preliminary and Final O&M Manuals.
- vii. Submittal and Approval of Testing Plans and Procedures.
- viii. All system interdependencies that are required to be tested and accepted prior to the specific system being tested.
- ix. Software and System testing.
- x. System Testing by Metro-North.
- xi. Other outside agencies, utilities, etc. that are required to test, witness and accept the system.
- xii. Submittal and Approval of the Training Syllabus, Training manual, and Training Video.
- xiii. Performance of Training.

- (3) Logic and activity time durations shall be established by the Contractor consistent with Contract requirements and reflective of proper coordination between trades. Logic shall show how the start of a given activity is dependent on the completion of preceding activities and its completion restricts the start of following activities. No activity shall have a duration greater than 30 calendar days, except in the case of non-construction activities such as procurement of materials, fabrication and delivery of equipment, lifecycle, or such other activities approved by the Project CEO. All activities shall be quantifiable where applicable (e.g. cubic yard, tons, linear feet).
- (4) The start date of the CPM Schedule shall be the Contract award date. The completion date of the CPM Schedule shall be the Contract completion date as specified in this Chapter, which shall be input as the "Finish-On-Or-

Before" date. All intermediate milestones required in the Contract shall be shown in proper logical sequence and input as "Start-On-Or-Before" or "Finish-On Or-Before" dates. The Contractor may add his own milestones with the approval of the Project CEO.

- (5) Activities shall be described such that the Work is readily identifiable for assessment of start and completion, as well as intermediate status.

Descriptions shall utilize Activity Codes for physical locations such as column lines, stations and elevations where possible to define the Work. Activity description of "start", "continue", "completion", "X%", "Y%", "Z%" or similar non-specific descriptions will not be allowed.

- (6) The CPM Schedule shall be calculated in working days. The working day to calendar date correlation shall be based upon the Contractor's proposed work week with adequate allowance for weekends, legal holidays and any special requirements of the Contract. Durations for activities shall not be less than one work day. Multiple shifts per day should be shown using multiple resources.

- (a) Calendar: The calendar(s) basis used to develop the schedule shall be provided with the initial submittal. Items to be identified include holidays and work week (number of days per week and number of hours per day). The working calendar shall be reviewed and accepted by the Project CEO prior to the acceptance of the Preliminary and/or Baseline CPM.

- (7) Seasonal weather conditions shall be considered in the planning and scheduling of all Work influenced by high or low ambient temperatures for the completion of all Work within the allotted Contract time. Appropriate allowances shall be made for anticipated time losses, due to normal rain and snow conditions by statistically expanding the estimated time durations for weather sensitive activities. Additionally, allowance for lower productivity during bad weather periods shall be made by increasing activity durations by an appropriate amount. All allowances for anticipated time losses shall be stated in the baseline narrative.

- (8) The review period shown in the Schedule for submittals shall conform to the provisions of Article 14.01 "SUBMITTALS."

- (9) Constraint dates are permitted only on Milestone activities, unless otherwise approved by the Project CEO. Float shall be calculated against all contractual milestones and any other milestones established by the Project CEO.

- (10) All activities with the exception of Work start and finish shall have predecessors and successors. The start of an activity shall have a start-to-start or finish-to-start relationship with preceding activities. The completion of an activity shall have a finish-to-start or finish-to-finish relationship with a succeeding activity. Start-to-finish relationships are not acceptable.

- (11) CPM Schedules which have been resource leveled are permissible provided the effects of leveling are incorporated in the schedule using "Start-On-Or-Before" date constraint.
- (12) Float Suppression: use of float suppression techniques such as preferential sequencing or logic, special lead/lag logic restraints, and extended activity times or durations are prohibited. The use of negative lags, constraints, unreasonable calendars, or the use of any other float suppression techniques is also prohibited.

#### D. LINE ITEM BREAKDOWN

In conformance with Article 3.03 "DETAILED COST BREAKDOWN FOR LUMP SUM ITEMS", the Contractor shall furnish a breakdown of the total Contract price by assigning dollar values to each activity, which cumulatively equals the total Contract amount ("Line Item Breakdown"). The Line Item Breakdown shall include only CPM activities. Upon approval by the Project CEO, the values shall be used in the Cost Report as a basis for determining progress payments. The Contractor's overhead and profit shall be prorated through all activities. In the event that Line Item Breakdown activities are added, revised, or deleted from the CPM Schedule, the Line Item Breakdown shall be resubmitted for approval.

Resource Loading: The CPM Schedule shall have resource allocation against activities identifying the direct labor hours by trade.

#### E. COMPUTER PROGRAM REQUIREMENTS

- (1) The Contractor shall create and maintain the CPM Schedule using the latest version of Oracle Primavera P6 or a version/software that is approved by the Project CEO.
- (2) Schedule Calculation Requirements:
  - a) Use Retained logic. Progress override may be used if approved by the Project CEO.
  - b) Do not use expected finish dates.
  - c) Calculate Start to Start Lag from Early Start.
  - d) Calculate float based on finish date of each project.
  - e) Calculate total float as finish float – late finish – early finish.
  - f) Calendar for scheduling relationship lag based on predecessor activity calendar.

#### F. COMPUTER REPORTS



(1) Schedule Reports shall be provided in the following sort orders:

- Activity ID.
- Total float, then by start.
- Grouped by responsibility, then by start.
- Grouped by location, then by start.

The minimum activity information required in each of the above reports shall include the following:

- a. A unique four (4) digit alpha-numeric Work item number for each activity.
- b. A description of the Work represented by the activity. The activity description shall clearly describe the work and the location where the work will be performed.
- c. Location code identification.
- d. Work responsibility code identification. A code shall be used to identify the Contractor, each Subcontractor, Metro-North's labor forces, outside forces, or utility company working on an activity. Each activity shall include work by only one entity, be it the Contractor, the Subcontractor or other entity. A legend shall clearly identify all codes used.
- e. Original activity duration and remaining duration in full working days, based on the anticipated time required to do the physical work of the activity.
- f. Start and finish dates calculated according to CPM principles.
- g. Total float.
- h. Actual start and finish dates for activities underway or completed shall replace the appropriate calculated dates.
- i. Percent complete will be based on an Project CEO's approved quantifiable method. On every progress update, the Contractor shall also report physical percent complete as of the status date, for all activities in progress. The physical percent complete for each activity should be established in the following manner: For activities that are quantifiable, the physical progress equals the quantity installed or erected, divided by the total quantity allocated to the particular activity (including overruns and underruns). For those activities that cannot be quantified, physical percent complete shall be estimated.

(2) The Contractor shall submit for approval a computer generated Cost Report,

which shall include the following:

- a. The minimum information required in the Cost Report shall include the following for each activity:
  - Activity ID.
  - Activity Name.
  - Location code identification.
  - Responsibility code identification.
  - Percent complete.
  - Total cost.
  - Cost to date.
  - Cost current period.
- b. The listing shall include subtotals, by locations, and grand totals for the entire Contract.
- c. The Cost Report shall reflect the monthly cost of Contract Work general conditions based on the percent complete of the Contract.
- d. A graph of the total cost to date by month, planned and actual, shall be submitted and will be part of the Cost Report.
- e. After review by the Project CEO, the Cost Report shall be revised and resubmitted as may be required within 10 calendar days. Review, revision and resubmission shall continue until the Project CEO's approval is achieved.

#### G. REVIEW AND ACCEPTANCE

After review by the Project CEO, all Preliminary and Baseline Schedules shall be revised and resubmitted as may be required within 14 calendar days. Review, revision and resubmission shall continue until the Project CEO's acceptance is achieved.

#### H. UPDATING AND REVISION

- (1) The Contractor shall update the CPM Schedule monthly with physical progress through the end of the reporting month, whether or not the Project CEO has accepted the CPM Schedule, to reflect actual construction progress. The update shall include the historical record of actual start and finish dates for activities in progress, or completed, percent complete based on a unit of measure and remaining duration based on the amount of work days required to complete the activity. The Contractor shall submit the updated CPM schedule no later than the 10<sup>th</sup> day of the following month. Failure to submit an updated CPM Schedule each month will result in payment delays and/or a Change Order for credit due Metro-North.

- (2) Monthly Schedule Review/Update Meetings: A monthly schedule review/update meeting shall be held within the last three (3) working days of the reporting month. This meeting shall be attended by the Construction Manager, MNR Project Manager, MNR scheduler, Contractor's Project Manager and Contractor's Project Scheduler. The purpose of the meeting shall be to obtain joint agreement on work progress shown on the activity list as well as to discuss schedule-related problem areas, proposed logic changes, revisions to previously established productivity rates and other schedule issues. At this meeting, all progress during the calendar month shall be addressed and reviewed for incorporation into the CPM Schedule by the Contractor. These meetings shall precede the formal submittal of the monthly updated CPM schedule. The updated CPM schedule shall be the basis for the progress payment.

Two (2) working days prior to the monthly schedule review/update meeting, Contractor will provide Metro-North with electronic files of the "Activity List" which will identify, at a minimum, the following information for all activities that have started, are in progress, or have been completed during the reporting period:

- a. The actual start and assessment of each in-progress activity's remaining duration.
- b. The actual start and finish dates for completed activities.
- c. Actual quantities installed and the physical percent complete for all design and construction activities.

In no case shall an actual start be entered beyond the Data date (defined as the 1<sup>st</sup> of the month).

- (3) The monthly schedule update submission package to Metro-North by the Contractor shall include electronic files in .xer and.pdf formats of all of the following objects in the formats required by Metro-North, and two (2) hard copies of the following reports:

- a. Activity tabular reports.
- b. Resource tabular reports.
- c. Resource/cost graphic reports.
- d. Bar Charts.
- e. CPM Narrative Progress Report and earned value calculation and percent complete curve based on earned value.

- (4) The CPM Progress Narrative Report submitted as part of the update analysis shall include, but not be limited to:

- a. Description of cost and schedule status including a listing of all

intermediate contractual milestones with their respective float.

- b. Discussion of current and anticipated delaying problem areas and their estimated impact.
  - c. Discussion of schedule slippage and/or progress along the critical path in terms of days ahead or behind the allowable dates, and if the Work is behind schedule, progress along other paths with negative float.
    - c1. An explanation of corrective action (recovery plan) either taken or proposed for critical areas.
  - d. Logic changes and an explanation of the revisions. Revisions to activities not worked on during the period, including changes in duration, or revisions to activity relationships are to be considered logic revisions. Out-of-sequence activities are not acceptable and shall be corrected in logic revisions prior to submission to Metro- North.
- (5) When, in the Project CEO's opinion, the CPM Schedule fails to reflect the Contractor's actual plan and method of operation, or the Contractor's completion date as indicated by the CPM is more than 1 month behind the Contract completion date, the Project CEO may require the Contractor to submit for review within 2 weeks, a revised CPM Schedule showing a recovery plan for completion of the remaining Work within the Contract completion date.
- (6) Bar Chart: The Bar Chart shall show a comparison between the updated CPM Schedule and the accepted Baseline CPM Schedule. The length of the current bar shall reflect the status based on the updated CPM Schedule and the length of the target bar shall equal the accepted Baseline Schedule.
- (7) When it becomes apparent activities must be added to the CPM Schedule, they must be added in a method such that completion dates of any succeeding baseline activities are not affected. All revisions must be submitted to the Project CEO for approval before incorporation into the CPM Schedule.

## I. EXTRA WORK

To ensure that the CPM Schedule shall continue to accurately reflect the Contractor's plan for the Work and that it incorporates the impact of all Extra Work as soon as the Work scope can be defined, the following procedure shall be followed to incorporate Extra Work (including deletions of Work) in the CPM Schedule.

When an Extra Work proposal is submitted by the Contractor, the Contractor must identify in a subnet or fragnet, additional work required as a result of the proposal and its interrelationship to the CPM Schedule. This subnet or fragnet shall show all activities, logic revisions, duration changes, and associated cost changes for performing the Work in question. Upon the Project CEO's approval of the subnet or fragnet, the Contractor shall incorporate the revisions into the Baseline Schedule and

the Monthly Cost Report for the next Schedule update. No additional compensation will be paid the Contractor for preparing these revisions. Any request for Extension of Time must be verified by CPM Analysis and be in accordance with the article pertaining to "EXTENSIONS OF TIME."

In those cases in which the Contractor is submitting a schedule delay claim, the claim request shall include a schedule subnet, tabular reports and an explanation that clearly demonstrates the impact of the claim on the entire critical path of the Project Schedule. The Schedule to be utilized as the basis for the claim shall be the "Current Updated Schedule" accepted by Metro-North which reflects the status of the Project at the time the delay occurred. The Contractor shall provide to the Project CEO, at a minimum, the following information:

- a. Schedule subnets (logic diagrams) and tabular reports (prior to and after the Change Order insertion) that clearly demonstrate the schedule impact on the entire Current Updated Schedule accepted by Metro-North.
- b. Schedule impact on Engineering/Design related activities.
- c. Impact on the activity's labor-hours and quantities (if required).
- d. Schedule impact on material and/or equipment procurement, fabrication and delivery schedules.
- e. Narrative that clearly identifies, describes, and substantiates the schedule impact on both the affected and subsequent (unchanged work) activities.
- f. Corrective action that can be taken in order to avoid/minimize the schedule impact.
- g. Schedule impact on Material Storage, Temporary Services (water, air power, etc.), Supervision, Construction Equipment, Productivity, and Manpower.
- h. Computerized storage media containing all required schedule, man-hours, and narrative information.
- i. Any other tabular/graphical reports required by the Project CEO.

**J. 4 WEEK LOOK AHEAD SCHEDULE**

The Contractor shall provide together with the monthly schedule update, or more frequently if required by Metro-North, a 4 Week Look Ahead Schedule to be used for coordination of the Contractor's work with Railroad operation, other work groups and at regular Progress Review Meetings.

This 4 Week Look Ahead Schedule shall contain start and finish dates for all activities scheduled or planned for start and/or completion in the upcoming 4 week period. It shall include design, submittal, procurement and construction activities as applicable.

**ARTICLE 2.04 - METRO-NORTH'S DAMAGES IN CASE OF DELAY**

- A.** Time is of the essence in this Contract. The Contractor is firmly obligated to meet the stipulated completion date or dates, except as any such date may be extended in accordance with the provisions of the Article entitled "EXTENSIONS OF TIME."

Inasmuch as the damage and loss to Metro-North which will result from the failure of the Contractor to meet such date or dates, as extended, will include items of loss or damage which are not susceptible to accurate estimation, the damages for delay in the case of such failure on the part of the Contractor shall be liquidated in the amount of **\$4,000.00** for each calendar day of unexcused delay in meeting each completion date for each individual item in the Article entitled "TIME FOR COMMENCEMENT AND COMPLETION OF WORK."

- B. Upon Substantial Completion of the Work as determined by the Project CEO, the Contractor shall be issued a Certificate of Substantial Completion and liquidated damages shall cease to accrue. After Substantial Completion the Contractor shall be liable for any and all actual damages incurred by Metro-North as a result of the Contractor's failure to complete all Work (including Punchlist Work), by the Contract completion date including any extensions of time. Actual damages shall include, but shall not be limited to, engineering and consulting fees incurred as a result of the Contractor's failure to complete all Work by the Contract completion date.
- C. Metro-North shall have the right to deduct such liquidated and actual damages from any monies due or which may thereafter become due to the Contractor under this Contract or any other sums due or which become due to the Contractor under other contracts with Metro-North. If the amount which may become due hereunder shall be less than the amount of liquidated damages due to Metro-North, the Contractor shall pay the difference immediately upon demand by Metro-North.

#### **ARTICLE 2.05 - EXTENSIONS OF TIME**

- A. If the Contractor is delayed at any time during the progress of the Work, then the Contract Completion Date(s) shall be extended by Metro-North subject to the following conditions:
  - (1) such cause is beyond the Contractor's reasonable control and arises without its fault;
  - (2) the cause of the delay arises after Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
  - (3) the Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
  - (4) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
  - (5) the Contractor makes written request and provides other information to Metro-North as described in Paragraph D. below.

A delay which the Contractor establishes to the reasonable satisfaction of Metro-North meets all the conditions of this Paragraph A. shall be deemed an

Excusable Delay.

- B. Any reference in this Article to the Contractor shall be deemed to include Suppliers and permitted Subcontractors, whether or not in privity of Contract with the Contractor, all of whom shall be considered as agents of the Contractor for the purpose of this Article.
- C. Metro-North reserves the right to rescind or shorten any extension previously granted if subsequently Metro-North determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in either a shorter extension of time or a denial of the request for an extension of time. Notwithstanding the above, Metro-North will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor with the reasonable belief that it was valid.
- D. As a condition precedent to the granting of an extension of time, the Contractor shall give written notice to the Project CEO and the Contracting Officer within two (2) business days after the time when the Contractor knows or should know of any cause which might under reasonably foreseeable circumstances result in delay for which he may claim an extension of time (including those causes for which Metro-North itself is responsible or of which Metro-North or Project CEO have knowledge). The Contractor must specifically state in such notice that an extension is or may be claimed; identifying the cause and describing, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice.
- E. Since the possible necessity for an extension of time may materially alter the scheduling plans, and other actions of Metro-North, and since, with sufficient notice, Metro-North might, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since mere oral notice may cause dispute as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the Contractor's obligations hereunder and failure of the Contractor to give written notice as above required shall be conclusive waiver of any right Contractor may otherwise have for an extension of time for the delay in question.
- F. It shall in all cases be presumed that no extension, or further extension of time is due unless the Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Metro-North. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, this presumption shall be deemed conclusive.
- G. In accordance with Article 2.03 "CONTRACTOR'S DETAILED SCHEDULE OF WORK", the records supporting a claim for an extension of time shall be related to the scheduling system. They shall show that the Contractor has taken all reasonable

efforts, including planning, scheduling, rescheduling, and the use of all float time available for the activities being delayed, to avoid or mitigate the delay. Actual delays in activities which do not affect the critical path in the scheduling system shall not be the basis for an extension of time.

#### **ARTICLE 2.06 - EXTENSION OF TIME NOT CUMULATIVE**

In case the Contractor shall be delayed during any one time by two or more of the causes mentioned above in Article 2.05, the Contractor shall not be entitled to a separate extension for each one of the causes, but shall only be entitled to one extension for the actual period of time completion of the Work will be necessarily delayed.

#### **ARTICLE 2.07 - CONTRACTOR'S DAMAGES FOR DELAY**

- A. Except as otherwise specifically provided for in this Article 2.07 herein, the Contractor agrees to make no claim for compensation or damages for delay of any kind in the performance of this Contract on behalf of itself, its subcontractors or suppliers whether occasioned by any act or omission of Metro-North, or any other entity within the MTA, or any of their representatives, whether it is an Excusable Delay or otherwise, and the Contractor agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Work as provided therein. In this regard, the Contractor solely and specifically assumes the risk of such delays, including, but not limited to the following: delays in processing or approving any Submittals, responding to any requests for information, or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner.
- B. A delay that entitles the Contractor to an adjustment in the Contract Price is a "Compensable Delay." A Delay that is not a Compensable Delay is a "Non-Compensable Delay." All claims of Excusable and Compensable Delays must be verifiable and documented by the Contractor.
- C. To be considered a Compensable Delay, a delay must: (1) meet all prerequisites for extension or increase in time, including the requirement that the delay be an Excusable Delay within the meaning of Article 2.05; (2) actually, necessarily, and verifiably delay the Contractor in achieving Substantial Completion by the Substantial Completion Date; and (3) arise out of one or more of the following events:
- i. Metro-North's failure to provide access to the Work Site,
  - ii. Metro-North's issuance of a Change Order,
  - iii. Metro-North's issuance of a stop work order,
  - iv. Metro-North's cancellation of more than forty (40) weeknight approved diversions of service and more than three (3) weekend approved diversions of service. Delays caused by the cancellation of the first forty (40) weeknight approved diversions of service and the first three (3) weekend approved diversions of service may be Excusable Delays, but such delays shall not be Compensable Delays.
- D. Except as specifically set forth herein, any failure or delay, whether with respect to the number, duration, timing, availability or other aspect of Metro-North supplied services, in providing a service such as, but not limited to, access and protection personnel, flagging



personnel, inspectors, or work trains shall not constitute a failure to provide access to the Work Site, and therefore is not a Compensable Delay.

- E. Should the Contractor demonstrate all elements of a Compensable Delay, then the Contractor may request Impact Costs. Impact Costs shall be the Contractor's sole and exclusive damage remedy, and no other compensation of any kind shall be permitted for any other delays or claimed events that arise from, or are related to, Excusable Delay events. Impact Costs shall only be allowed for those periods of Compensable Delays which are not concurrent with any other non-Excusable Delays, or with other Excusable Delays that do not give rise to Impact Costs, and which are actually, reasonably and necessarily incurred and verifiable by the requisite documentation.
- F. Impact Costs are strictly limited to the following:
  - 1. Increased wages attributable to Work being performed by trades in a higher wage period.
  - 2. Increased field office expenses.
  - 3. Increased cost to purchase materials.
  - 4. Increased cost to store materials, to the extent that the Contractor can demonstrate that such storage is specific to this Project.
  - 5. Cost incurred to keep the Work Site open, such as temporary power and sanitary facilities.
  - 6. Extended insurance and bonding.
  - 7. With respect to rented equipment, the lesser of the actual rental cost or the reasonable rental value, as reflected in the latest edition of the "Rental Rate Blue Book" published by K-III Directory Corp., for idled equipment on the Work Site. With respect to owned heavy construction equipment, the additional cost of maintaining the equipment consistent with, and in an amount not to exceed, the price schedule set forth in the latest edition of the "Contractor's Equipment Cost Guide" as published by Dataquest/Dun & Bradstreet.
- G. In no event will Metro-North be required to pay Impact Costs, nor is Metro-North liable under this Contract for sums, which are in the nature of consequential damages, decreased productivity or efficiency, profits or indirect costs, such as Contractor's home office overhead and general and administrative expenses including claims preparation.
- H. Acceptance by the Contractor of any payments made by Metro-North in connection with this Article 2.07 shall serve as a release to Metro-North, or any other entity within the MTA, or any of their representatives, from all claims and liability to the Contractor arising out of such delay.
- I. In no event shall any delay, obstruction, or interference of any kind or duration whatsoever,

whether or not compensable hereunder, give rise to a claim or right on the Contractor's behalf to rescind or terminate this Contract, nor shall the Contractor have any cause of action under any theory of quasi-contract or quantum meruit by reason of such occurrence(s).

#### **ARTICLE 2.08 - TERMINATION FOR CONVENIENCE BY METRO-NORTH**

In addition to its other rights to terminate or cancel the Contract as herein provided, Metro-North may in its sole discretion at any time after the issuance of the Notice of Award terminate this Contract without cause. The Notice of Termination will state the date the termination is to be effective. In the event of such termination, Metro-North shall have no liability to the Contractor except to pay for Work performed prior to the effective date of such termination, at the unit prices specified in the Proposal or, in the case of items for which lump sums are specified in the Proposal, the fair and reasonable value of such work (judged by reference to such lump sum prices and the Line Item Breakdown).

After receipt of a Notice of Termination, the Contractor shall stop Work on the effective date of such termination, cancel all cancelable orders for material and equipment, and place no further orders for material and equipment, except as may be necessary to comply with the requirements stated in the Notice of Termination. Within thirty (30) days after the effective date of termination, the Contractor, at its option, shall have the right upon written notice to the Contracting Officer to sell to Metro-North (i) any material or equipment in stock which was to be incorporated into the Work, and (ii) any material or equipment ordered pursuant to noncancelable orders, but not yet delivered; provided, however, that the option shall apply only to such material and equipment not capable of use except in performance of this Contract and reasonably anticipated to be consumed or incorporated into the Work within a reasonable period of time commencing with the effective date of such termination.

The Contractor's notice shall specify the material to be sold and state the price paid by the Contractor, as evidenced by an invoice or invoices from the Contractor's Supplier(s). All such material must fully conform to the Technical Provisions and shall be of good quality and fit for the intended use.

The Contractor shall be required to ship any such material or equipment F.O.B. delivery point. All such materials or equipment claimed by the Contractor to be covered by the option are subject to approval and acceptance by Metro-North. Within thirty (30) days after delivery of any such material or equipment and the receipt of the Contractor's invoice, Metro-North shall pay the Contractor the lesser of (i) the reasonable value of such material or (ii) the price paid by the Contractor as documented by its invoice(s), plus five percent (5%) of such price together with the reasonable cost of shipping (to the extent not included in such price).

The Contractor shall furnish Metro-North, as a condition to receiving payment, documents which will convey all right, title and interest (including rights under warranty) free of all liens and encumbrances, in such material and equipment to Metro-North.

The Contractor shall not be entitled to any other payment by virtue of Metro-North's exercise of its right of termination as provided in this Article and expressly waives and relinquishes any right to claim damages or pursue any other remedy at law or relief in equity (including

specific performance), by virtue of Metro-North's exercise of such right of termination. Metro-North may deduct or set-off against any sum due and payable under this Article any claims it may have against the Contractor.

Nothing herein shall diminish the Contractor's warranty obligations with respect to Work completed prior to termination under this Contract.

## **CHAPTER 3 - PRICE AND PAYMENTS**

### **ARTICLE 3.01 - PRICE TO INCLUDE**

Metro-North shall pay and the Contractor shall accept the amounts set forth in the Price Schedule of the Contractor's Proposal as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including, but not limited to, all labor and material required to be done or furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing storage yard or facilities; all risks and obligations set forth in the Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulty encountered in the prosecution of the Work, except as otherwise expressly set forth in Article 1.06 "DIFFERING SITE CONDITIONS."

### **ARTICLE 3.02 - VARIABLE QUANTITIES CLAUSE**

With respect to any unit price item as to which an estimated quantity is set forth in the Contractor's Proposal, such unit price shall apply regardless of the actual quantity of such item ultimately utilized in, or required by, the Work; except that, if the actual quantity for a unit price item differs from the estimated quantity in the Price Schedule by more than fifteen percent (15%), then Metro-North shall review whether application of the Unit Price would cause a substantial inequity to either party, and, if so, the Unit Price for such item will be equitably adjusted, upward or downward, as determined by Metro-North.

### **ARTICLE 3.03 - DETAILED COST BREAKDOWN FOR LUMP SUM ITEMS**

The Contractor shall furnish a breakdown of the Contract price for items for which lump sums are specified in the Proposal ("Line Item Breakdown") within thirty days from the date of Contract award. The Line Item Breakdown shall include a listing of line items, line item quantities, line item unit costs and line item total costs. The sum of the line item costs shall be equal to the total Contract amount. The cost for performance and payment bonds shall reflect the Contractor's actual cost for such bonds whenever such cost can be reasonably determined at the time such Line Item Breakdown is approved. The payment to the Contractor for mobilization costs shall be made in accordance with the requirements of the Technical Provisions, and shall not exceed four (4) per cent of the total contract value unless otherwise stated in the Technical Provisions.

Each line item shall be further subdivided such that its total quantity is realistically apportioned among its relevant scheduled activities as defined in Article 2.03 "CONTRACTOR'S DETAILED SCHEDULE OF WORK." After review by the Project CEO, the Line Item breakdown shall be revised and resubmitted as required within seven (7) days. Review, revision and resubmission shall continue until Metro-North approval is achieved. Only work items in place and material specially designed, fabricated, delivered and stored in accordance with Article 3.05 "PROGRESS PAYMENTS" shall be cost loaded. No other activities (e.g., submittals, materials not specially fabricated) shall be cost loaded.

### **ARTICLE 3.04 - PROMPT PAYMENT**

- A. All payments will be made pursuant to Section 2880 of the Public Authorities Law (the Prompt Payment Law) and implementing rules and regulations set forth at 21 NYCRR Part 1002, (the "Prompt Payment Statement"). Any terms used in this Chapter which are not defined herein, shall have the meanings ascribed in the

Prompt Payment Statement. A copy of the Prompt Payment Statement may be obtained from the Procurement Officer.

- B. In accordance with the Prompt Payment Statement, all payments will be made within 30 days, excluding legal holidays, of the "Receipt of Invoice", as defined for Progress Payments, Payment on Substantial Completion, and Final Payment, in Articles 3.05, 3.06 and 3.07, respectively, subject to Paragraphs C. and D. below.
- C. Metro-North reserves the right to conduct an inspection or audit of any Preliminary Estimate, the Substantial Completion Payment Estimate and the Final Payment Estimate to verify that the amount to be paid is in accordance with the provisions of the Contract. The applicable "Receipt of Invoice" date under Articles 3.05, 3.06 and 3.07 will be deemed extended ten (10) business days in the event Metro-North elects to perform this function.
- D. Notwithstanding anything to the contrary in the Contract, the 30 day payment period in Paragraph B. above will be tolled as set forth below, whenever the audit or inspection reveals a defect in delivered materials or services, or suspected improprieties of any kind, which might include, but is not limited to, a determination by the Project CEO that the Contractor is in breach of a material term of this Contract. In any such case, the date of Receipt of Invoice date shall be tolled until the date that acceptable goods or services are delivered or provided, or the date that the impropriety is resolved.
- E. Interest for late payments hereunder shall be payable in accordance with the Prompt Payment Statement.
- F. The Designated Payment Office shall mean the office of Metro-North's Assistant Senior Director, Financial Management of Project Reporting and Budget Control.

#### **ARTICLE 3.05 - PROGRESS PAYMENTS**

##### **A. PAYMENT**

Metro-North shall, upon Acceptance of the Work in accordance with the terms of this Contract, pay to the Contractor the lump sum price quoted in the Contractor's Proposal, which shall be and is accepted by the Contractor in full compensation therefor, subject to the deduction of liquidated and/or actual damages for delay, if any, and to any other provision of the Contract permitting the withholding of monies by Metro-North. Before such payment is made, the Contractor shall submit to Metro-North the verified statements required under Section 220-a of the New York State Labor Law together with a copy of the Contractor's certified payroll.

##### **A. PROGRESS PAYMENT**

Progress Payments will be made periodically for the earned value of the Work performed and for materials specially designed, fabricated, delivered and stored at the work site. For a Progress Payment the Receipt of Invoice shall mean the later of the dates that (i) the Preliminary Estimate is issued or (ii) the Supporting

Documentation is received at the Designated Payment Office, as described respectively in Paragraph E. below. All progress payments shall be supported by documentation required by Article 2.03 "CONTRACTOR'S DETAILED SCHEDULE OF WORK."

B. PRELIMINARY ESTIMATE

At the Contractor's request, but not more often than once a month, the Project CEO and the Contractor shall perform a joint inspection of the Work. Upon completion of the joint inspection, the Contractor shall prepare the Preliminary Estimate based upon the Project CEO's determination of the reasonable value of (i) the Work performed, and (ii) materials meeting the requirements set forth in Paragraph D. below, which have not been included in any other Preliminary Estimate. The Project CEO's determination shall be based upon the prices set forth in the Contractor's Proposal, or the Line Item Breakdown, as applicable.

C. RETAINAGE

Retainage shall be withheld from each progress payment in accordance with Chapter 5 "SECURITY FOR THE PERFORMANCE OF WORK."

D. MATERIALS STORED ON SITE

Estimation of the percentage of Work completed may include an allowance for materials paid for and specially fabricated for inclusion in the Work and delivered to the site and suitably stored and secured.

E. SUBMISSION OF INVOICES

Requests for progress payment under this Article, together with supporting documentation in the form required by Metro-North, in such detail as requested, shall be submitted to:

Capital Accounting  
MTA Metro-North Railroad  
Graybar Building  
420 Lexington Avenue, 2nd Floor  
New York, NY 10170

Supporting documentation shall include, but not be limited to the CPM Schedule, updates or Bar Chart (as applicable), QC Submissions, DBE reports, any other required deliverables and the verified statements required under Section 220-a of the New York State Labor Law together with a copy of the Contractor's Certified payroll.

Upon Acceptance of all the Work by Metro-North, the Contractor will be paid the remainder of the Contract price for the Work, as increased or decreased in accordance with the terms of the Contract, and subject to the deduction of liquidated damages, if

any, and to any other provision of the Contract expressly permitting the withholding or deduction of monies by Metro-North. Payment of the remainder of the Contract price shall be deemed final payment for all the purposes of the Contract.

F. PAYMENTS

The MTA Business Service ("MTA BSC") is the component of the Metropolitan Transportation Authority that will make authorized payments to Contractor. All payments by the MTA BSC shall be made via Automated Clearing House ("ACH"). Contractor authorizes the MTA BSC to make payments to Contractor using an ACH designated by the MTA BSC. If you have not previously provided ACH instructions to the MTA BSC or if previously provided ACH instructions have changed, promptly upon award the Contractor shall prepare and submit current ACH information to the MTA BSC. The form for submitting that and other information, the Vendor Master Setup Maintenance form, is available online at <http://www.mtabsc.info/vendors/>.

G. FORCE ACCOUNT WORK

Any billings from Metro-North to the Contractor for work performed by Metro-North ("Force Account Work") on the Contractor's behalf must be paid in full by the Contractor to Metro-North within 30 days of receipt of bill for force account charges, subject to the right to audit Metro-North's bills and supporting documents after payment has been made by the Contractor. Unless expressly agreed to by Metro-North in writing, the Contractor shall not be permitted to deduct charges for Force Account Work from retainage held by Metro-North. Additionally, upon the Contractor's failure to remit payment for Force Account Work in a timely fashion, Metro-North reserves the right to withhold payments from the Contractor.

**ARTICLE 3.06 - PAYMENT UPON SUBSTANTIAL COMPLETION**

- A. The "Receipt of Invoice" for the Payment on Substantial Completion shall mean the date the Substantial Completion Payment Estimate is received at the Designated Payment Office.
- B. Upon receipt of a Certificate of Substantial Completion, the Contractor shall, prepare a Substantial Completion Payment Estimate covering (i) the entire value of the Work performed that has not been the subject of previous Progress Payments and is still due and owing to the Contractor; and (ii) the amount of retainage held pursuant to Article 5.02, less an amount equal to twice the value of any Remaining Work, as determined by the Project CEO in accordance with Article 2.02 and less any other withholdings, reductions or set-offs permitted under the Contract. Upon approval of the Substantial Completion Payment estimate by the Project CEO, it shall be submitted for payment in accordance with Article 3.05 E.

**ARTICLE 3.07 - PROVISIONS RELATING TO FINAL PAYMENT**

- A. The Receipt of Invoice for the Final Payment shall be the date the Final Payment Estimate is received at the Designated Payment Office.
- B. Upon receipt of a Certificate of Final Completion, the Contractor shall prepare a Final Payment Estimate covering any monies due and owing to the Contractor.

Upon approval of the Final Payment Estimate, by the Project CEO, it shall be submitted for payment in accordance with Article 3.05 E. "SUBMISSION OF INVOICES."

- C. In addition to the Supporting Documentation required for a Progress Payment detailed in Article 3.05 E. "SUBMISSION OF INVOICES", as applicable, the required supporting documentation for the Final Payment is as follows:
- (1) Subcontractor and Supplier guarantee(s), if any, specifically set forth in the Contract.
  - (2) Any other supporting document or item specifically stated in the Contract to be a condition precedent to the Final Payment.

**ARTICLE 3.08 - PAYMENT BY THE CONTRACTOR TO  
SUBCONTRACTOR(S) AND SUPPLIER(S)**

The Contractor agrees to make all payments with respect to its Subcontractors and suppliers in accordance with 139-f of the New York State Finance Law. The following provisions shall be incorporated into all subcontracts:

- A. Within fifteen (15) calendar days of the receipt of any payment from Metro-North, the Contractor shall pay each of his Subcontractors and Materialmen the proceeds from the payment representing the value of the Work performed and/or materials furnished by the Subcontractor and/or Materialman and reflecting the percentage of the Subcontractor's work completed or the Materialman's material supplied in the requisition approved by Metro-North and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the Subcontractor or Materialman which have not been suitably discharged and less any retained amount as hereafter described.
- B. Failure by the Contractor to pay any Subcontractor or Materialman within fifteen (15) calendar days of the receipt of any payment from Metro-North shall result in the commencement and accrual of interest on amounts due to such Subcontractor or Materialman for the period beginning on the day immediately following the expiration of such fifteen (15) calendar day period and ending on the date on which payment is made by the Contractor to such Subcontractor or Materialman. Such interest payment shall be the sole responsibility of the Contractor, and shall be paid at the rate of interest specified below in effect on the date payment is made by the Contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the Commissioner of Taxation and Finance pursuant to Subsection (e) of Section one thousand ninety-six (1096) of the New York State Tax Law.
- C. The Contractor shall retain not more than five percentum of each payment to the Subcontractor and/or Materialman except that the Contractor may retain in excess of five percentum but not more than ten percentum of each payment to the Subcontractor provided that prior to entering into a subcontract with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and a labor



and material bond, both in the full amount of the subcontract, at the request of the Contractor. However, the Contractor shall retain nothing from those payments representing proceeds owed the Subcontractor and/or Materialman from Metro-North's payments to the Contractor for the remaining amounts of the Contract balance as provided in Paragraph A. of this Section.

- D. If the Contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety (90) days of substantial completion, then any clause in the subcontract between the Contractor and the Subcontractor or Materialman which states that payment by the Contractor to such Subcontractor or Materialman is contingent upon payment by the owner to the Contractor shall be deemed invalid.
- E. Within fifteen (15) calendar days of the receipt of payment from the Contractor, the Subcontractor and/or Materialman shall pay each of his Subcontractors and Materialmen in the same manner as the Contractor has paid the Subcontractor, including interest as herein provided above.
- F. Nothing provided herein shall create any obligation on the part of Metro-North to pay or to see to the payment of any moneys to any Subcontractor or Materialman from any Contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the Subcontractor or Materialman and Metro-North.

#### **ARTICLE 3.09 - NO ESTOPPEL AND NO WAIVER**

- A. Metro-North shall not be precluded or estopped by any payment or certificate made or issued by Metro-North, the Project CEO or other officer, agent or appointee thereof under any provision of this Contract from, at any time either before or after the completion of all of the Contractor's obligations under this Contract and payment therefor pursuant to any Preliminary Estimate, Substantial Completion Payment Estimate, or Final Payment Estimate, showing the true and correct classification, amount, quality and character of the Work done and materials furnished by the Contractor, or from showing at any time that such certificate is untrue or incorrect or improperly made in any particular or that the Work and materials or any part thereof do not in fact conform to the requirements of this Contract. Metro-North shall not be precluded or estopped, notwithstanding any certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of the Contractor's failure to comply with the Contract.
- B. Neither the acceptance by Metro-North or the Project CEO or any of the employees of Metro-North, nor any order, measurement or certificate issued by the Project CEO nor any order by Metro-North for payment of money nor any payment for, nor acceptance of, the whole or part of the Work nor any extension of time, nor any possession taken by Metro-North or the employees of Metro-North, shall operate as a waiver of any portion of this Contract or of any power herein reserved to Metro-North or of any right to damages herein provided; nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach.

## **ARTICLE 3.10 - SALES TAX**

### **A. NEW YORK STATE SALES TAX**

The Contractor represents that no amount of New York State sales or compensating use taxes on the sale to the Contractor of any personal property which will become an integral component part of the Work has been included in the price or prices set forth in the Contractor's Proposal. If any claim is made against the Contractor by the State of New York or any municipality thereof for sales or compensating use taxes in connection with such sale, Metro-North will reimburse the Contractor in an amount equal to the amount of such tax required to be paid and actually paid by Contractor in accordance with the requirements of law, provided that the Contractor follows the procedures stated in Paragraph C. below.

### **B. CONNECTICUT STATE SALES TAX**

If the Work under this Contract, or any part of the Work, is located in the State of Connecticut, the Contractor represents that no amount of Connecticut sales or compensating use taxes on the sale to the Contractor of any personal property which will become an integral component part of the Work has been included in the price or prices set forth in the Contractor's Proposal. If any claim is made against the Contractor by the State of Connecticut or any municipality thereof for sales or compensating use taxes in connection with such sale, Metro-North will reimburse the Contractor in an amount equal to the amount of such tax required to be paid and actually paid by Contractor in accordance with the requirements of law, provided that the Contractor follows the procedures stated in Paragraph C. below.

### **C. SALES TAX REIMBURSEMENT PROCEDURE**

- (1) Metro-North must be afforded the opportunity, before any payment of tax is made, to contest said claim in the manner and to the extent that Metro-North may choose, and to settle or satisfy said claim, and to designate such attorney as Metro-North may elect to designate who the Contractor agrees will be authorized to act on behalf of the Contractor for the purpose of contesting, settling and/or satisfying said claim; and
- (2) The Contractor shall give immediate notice to Metro-North of any such claim, cooperate with Metro-North and its designated attorney in contesting said claim and furnish promptly to Metro-North and said attorney all information and documents necessary or which may become necessary to contest said claim, said information and documents to be preserved for seven years after the date of final payment hereunder or longer if such a claim is pending or threatened at the end of such seven years. If Metro-North elects to contest any such claim, it will bear the expense of such contest.

### **D. CONNECTICUT TAX EXEMPTION CERTIFICATE**

Upon award of the Contract and upon request, a State of Connecticut Tax Exemption Certificate shall be presented to the Contractor. Any unauthorized use of this certificate for purposes other than for the performance of this Contract in the manner

designated in Paragraph B. above, shall be a breach of this Contract and may further subject the Contractor to criminal and/or civil prosecution.

### **ARTICLE 3.11 - FINAL PAYMENT, RELEASE, STATEMENT OF CLAIM**

- A. Except as provided in Paragraph B. of this Article, the acceptance by the Contractor or any person claiming under it of the final payment for the Work, whether such payment be made pursuant to any judgment or order of any court or otherwise, shall be and shall operate as a release to Metro-North from all claim and liability for anything theretofore done or furnished for, or relating to, the Work, or for any prior act, neglect, fault or default by Metro-North, its officers, agents or employees, relating to, or affecting the Work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations in connection with this Contract or the Performance and Payment Bonds.
- B. The Contractor, however, shall not be barred from commencing an action for breach of Contract under this provision provided that a detailed and verified statement of claim is served upon Metro-North not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the action will be based and any such action shall be limited to such items.

### **ARTICLE 3.12 - TAXES, DUTIES, ETC.**

Except as provided in Article 3.10 "SALES TAX", the Contractor covenants and agrees to pay all foreign, federal, state and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the performance of the Work, excluding Metro-North supplied apparatus.

### **ARTICLE 3.13 - SET OFFS, WITHHOLDING AND DEDUCTIONS**

- A. Metro-North may disapprove and set-off, deduct and/or withhold any payment (in whole or in part, as may be applicable) if and to the extent that:
  - (1) an invoice and/or supporting documentation (as set forth in Article 3.05 or elsewhere in the Contract) are not correct and complete;
  - (2) the Work covered by an invoice (and/or previous invoices), or the Contractor's rate of progress, does not comply with the Contract (in the Project CEO's judgment);
  - (3) any material statement or representation in any invoice or other documentation submitted by the Contractor with respect to the Contract or the Work is or was untrue when made;
  - (4) the Contractor has failed to submit deliverables in accordance with the terms of the Contract, including without limitation, as may be applicable, manuals, as-built drawings or specifications, Safety Plan(s), QA/QC documentation and progress photographs.
  - (5) such set-off, deduction and/or withholding is otherwise provided for in the

Contract, including without limitation as set forth in Articles 2.02, 2.03, 2.04, 3.05, 5.03, or is provided for under applicable law.

- (6) such set-off, deduction and/or withholding is for any unpaid legally enforceable debt owed by the Contractor to Metro-North as provided in Metro-North's Prompt Payment Statement.

- B. Metro-North shall promptly advise the Contractor in writing if Metro-North disapproves of, or has set-off, deducted and/or withheld, all or any payment. Even if the Contractor disagrees with Metro-North's action, the Contractor shall nonetheless immediately undertake all corrective or other action required by the Project CEO and shall continue to progress the Work expeditiously in accordance with the Contract. Any withholding which is ultimately held to have been wrongful shall be paid to the Contractor in accordance with the Prompt Payment Statement.

## **CHAPTER 4 - CHANGES TO THE CONTRACT**

### **ARTICLE 4.01 - NO ORAL CHANGES**

Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative.

### **ARTICLE 4.02 - CLARIFICATION OF CONTRACT DRAWINGS**

Metro-North shall have the right during the progress of the Work to clarify the Contract Drawings to the extent that such clarification does not materially alter such drawings and to add explanatory specifications without the same being deemed a change to the Contract.

### **ARTICLE 4.03 - EXTRA WORK**

- A. Metro-North reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract in accordance with this Article. Any such changes which result in additions to the Work will be known as "Extra Work."
- B. No Extra Work shall be performed except pursuant to a written Change Order issued by the Procurement Officer expressly authorizing the performance of such Work and explicitly declaring the intention of Metro-North to treat the Work described therein as Extra Work. In the absence of such a Change Order, if the Project CEO shall direct, order or require any work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within five (5) days of the Project CEO's order or directive give written notice to the Procurement Officer stating why the Contractor deems it to be Extra Work. Such notice is required to afford an opportunity to Metro-North to (1) cancel promptly such order, direction or requirement; (2) keep an accurate record of the materials, labor and other items involved; and (3) take such action as may be deemed advisable in light of the Contractor's claim. The failure of the Contractor to give written notice within the time limit stated therefor shall be deemed a conclusive and binding acceptance on the Contractor's part that the direction, order or requirement of the Project CEO does not involve the performance of Extra Work.
- C. Within thirty (30) days of the Contractor's submission of written notice that an order, direction or requirement of the Project CEO is deemed by the Contractor to involve Extra Work, the Contractor and each Subcontractor shall submit in a form satisfactory to Metro-North a detailed proposal ("Change Order Proposal") (including the elements of cost identified in Article 4.04, Paragraphs A., B., C., and D.) which shall include adjustments to the Contract price, to the extent permitted under Article 4.04 "CHANGE ORDER BASIS FOR PAYMENT," to the delivery schedule, or to any other provisions of the Contract necessary to accomplish the Extra Work. Upon written request of the Contractor, within the thirty (30) day period set forth above, for good cause shown, the

Procurement Officer may grant the Contractor additional time in which to submit a Change Order Proposal. The failure of the Contractor to submit a detailed proposal within the time limit stated therefor, or within such additional time as is granted by the Procurement Officer at its sole discretion, shall be deemed a waiver of any claim for compensation that the Contractor may have with respect to the claimed Extra Work.

- D. The provisions of the Contract relating to the Work and its performance shall apply without exception to Extra Work and the performance thereof, except as otherwise provided in a written Change Order between the Contractor and Metro-North.
- E. The Contractor must utilize the most recent updated CPM or bar chart as required by the Contract to establish the price and schedule modifications. Contractor's Change Order Proposal must include a schedule subnet and an explanation of the cost and schedule impact of the claimed Extra Work on the Contract. The Contractor must demonstrate clearly how it proposes to incorporate the Extra Work into the schedule. If Contractor fails to notify the Project CEO of the schedule changes associated with a Change Order Proposal by submitting a revised schedule, it will be deemed to be an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences.

#### **ARTICLE 4.04 - CHANGE ORDER BASIS FOR PAYMENT**

If Extra Work requires the provision of items of Work or material of the same type as those for which unit prices are quoted in the Proposal, compensation for such Extra Work shall be computed on the basis of the unit price in the Contractor's Proposal for such items.

If Extra Work requires the provision of items of Work or material for which compensation cannot be computed on the basis of unit prices quoted in the Contractor's Proposal and the scope and extent of the Extra Work can be determined before the Extra Work is performed, Metro-North will perform a cost analysis of the Contractor's proposal and negotiate a lump sum amount with the Contractor as compensation for such Work. The Project CEO may in such case direct the Contractor to proceed with the Extra Work pending performance of the cost analysis and negotiation of the amount of compensation for such Extra Work.

If it is not possible beforehand to estimate the extent and duration of the Extra Work or to estimate costs with any degree of certainty, such Extra Work shall be compensated on a time and material basis, limited to the following amounts only:

- A. The sum of plant, field and engineering labor hours performed by the Contractor's or Subcontractor's own employees, and deemed by the Project CEO to be reasonably required for such Extra Work, multiplied by a fixed hourly rate for each such class of labor, which hourly rate shall include the cost of labor, F.I.C.A., unemployment insurance, Worker's Compensation insurance, fringe benefits (to the extent actually incurred for each item) required by agreement or custom, plus 21% for overhead, administrative expenses, and profit, plus actual increase in insurance premiums, not included above, for insurances required by the Contract. Where Extra Work is performed on overtime or premium basis the 21% additive shall not apply to the premium portion of such costs.

- B. The actual reasonable cost of materials, together with the actual reasonable cost of the rental of equipment or use of Contractor or Subcontractor owned equipment, required by the Contractor or Subcontractor for performance of such Extra Work, plus material handling costs (inclusive of general and administrative expenses) of

10% of the cost of the material actually incorporated into the Extra Work. Rental of equipment, by Contractor or Subcontractor, from related entities (e.g., parent or subsidiaries) shall be treated as Contractor or Subcontractor owned equipment. There shall be no markup allowed on rental equipment or Contractor or Subcontractor owned equipment.

Compensation for Contractor or Subcontractor owned equipment shall be based on the rates published in the latest edition of Rental Rate Blue Book published by Equipment Guide-Book Company as hereinafter modified.

- (1) The hourly rate shall be eighty five percent (85%) of the monthly rate divided by one hundred seventy-six (176).
  - (2) The daily rate shall be eighty five percent (85%) of the monthly rate divided by twenty-two (22).
  - (3) Where equipment is used on a double or triple shift basis, rates for the additional shifts will be calculated at fifty percent (50%) of the applicable foregoing base rate for each additional eight-hour shift.
  - (4) Estimated operating costs per hour shall be allowed at one hundred percent (100%) of the operating rate indicated.
  - (5) Transportation costs for equipment will be paid on an actual cost basis only if it is allocable to a specific item of "Extra Work."
- C. The actual reasonable cost of permitted Subcontract Work, as enumerated above, incorporated in such Extra Work, plus an amount for the Contractor's own administration, overhead and supervision, of 5% of the cost of such permitted Subcontract Work. A single allowance of 5% will be allowed notwithstanding that more than one tier of Subcontractors is employed with respect to such subcontract Work.
- D. Fees or other costs for required Bonds, and increases thereto, are deemed to be included in the overhead rates enumerated above, and in no event shall additional sums be allowed for such costs in connection with Extra Work under this Contract.

For all Work or materials required to be done or furnished under the provisions of this Article, the Contractor shall furnish to Metro-North upon request such documentation as Metro-North may require to substantiate all costs of the Extra Work.

Payments to the Contractor for any "Extra Work" shall be subject to the retainage provisions of Articles 3.05 "PROGRESS PAYMENTS" and 5.02 "RETAINED PERCENTAGE", unless otherwise provided for in a written Change Order.

#### **ARTICLE 4.05 - COMPENSATION REDUCTIONS**

If any Work required by the Contract should be reduced by Metro-North, a suitable reduction



in the compensation payable to the Contractor shall be computed in the same manner as are increases for Extra Work under the provisions of Article 4.04 "CHANGE ORDER BASIS FOR PAYMENT." However, where any such reduction of Work is effected by a reduction in quantity of any item in the Contractor's Proposal for which there is a unit price, the unit price shall determine the amount by which the compensation payable to the Contractor will be reduced. The Contractor shall adhere to the time requirements for furnishing a Change Order Proposal set forth in this Chapter and upon failure of the Contractor to do so, Metro-North unilaterally may determine the value of the compensation reduction and deduct same from payments made to the Contractor. In addition, the Contractor shall submit a CPM-type sketch, as provided in Article 2.03 (J) showing logic revisions, duration changes and other features as specified herein. The Project CEO shall thereafter determine whether, and to what extent, the time for completion shall be shortened.

#### **ARTICLE 4.06 - VALUE ENGINEERING CHANGE PROPOSAL (VECP)**

##### **A. PURPOSE AND SCOPE**

It is the intent of this provision to encourage the Contractor to propose means to achieve savings to Metro-North in the making of the improvements contemplated by the Work or their operation by providing a mechanism to share with the Contractor any cost savings which may be generated on this Contract as a result of such a proposal offered by the Contractor and approved by Metro-North.

The Value Engineering Change Proposals ("VECP") contemplated are those that could produce a savings to Metro-North without, in the sole judgement of Metro-North, impairing essential functions and characteristics of the facility being improved as a part of the Work, including but not limited to service life, economy of operation, ease of maintenance, desired appearance and safety; and which are proved to Metro-North's satisfaction under similar conditions on other Metro-North projects or location acceptable to Metro-North. Proposals should state changes not already incorporated in options in the Contract.

##### **B. SUBMITTAL OF PROPOSAL**

At a minimum, the following materials and information shall be submitted with each VECP plus any additional information which may be requested by Metro-North.

- (1) A Statement that the proposal is submitted as a VECP.
- (2) A description of the difference between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each, including considerations of service life, economy of operation, ease of maintenance, reliability, desired appearance and safety.
- (3) Complete plans and specifications showing the proposed revisions relative to the original Contract features and requirements.
- (4) A complete cost analysis indicating the Bid prices and quantities to be replaced by the VECP, the new costs and quantities generated by the VECP,

and the cost effects of the proposed changes on operational, maintenance and other considerations and any other necessary changes to the Contract.

- (5) A statement and a schedule describing in detail the effect the VECP will have on the original Work schedule and the time for completion of the Contract.
- (6) A description of any previous use or testing of the VECP on another Railroad project or elsewhere and the conditions and results therewith. If the VECP was previously submitted on another Railroad project, indicate the date, Contract number, and the action taken by the Railroad.

#### C. CONDITIONS

VECPs will be considered only when all of the following conditions are met:

- (1) No Bid prices may be based on the anticipated approval of a VECP, and if such VECP is rejected, the Contractor will be required to complete the Contract in accordance with the Contract at the prices Bid.

Metro-North shall be the sole judge as to whether a VECP qualifies for consideration and evaluation. Metro-North may reject any VECP in its sole discretion, for any reason or for no reason.

Metro-North alone in its sole discretion will determine the value of savings, based on the VECP's.

- (2) All VECPs, whether or not approved by Metro-North for use in this Contract, apply only to the on-going Contracts or Contracts referenced in the VECP and become the property of Metro-North and shall contain no restrictions imposed by the Contractor on their use or disclosure. Metro-North shall have the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VECP. Metro-North retains the right to utilize any accepted VECP or part thereof on any other or subsequent project without any obligation to the Contractor submitting same.
- (3) If prior to submittal of the VECP, Metro-North already has under consideration certain revisions to the Contract or has approved certain changes in specifications or standards for general use which are subsequently incorporated in a VECP submitted by the Contractor, Metro-North may proceed with such revisions if it so desires without any obligation to the Contractor notwithstanding the rejection of the VECP.
- (4) The Contractor shall have no claim against Metro-North for any cost or delay due to Metro-North's rejection of a VECP, including but not limited to development costs, anticipated profits or increased material or labor costs and any other impact costs resulting from delays attributable to the review of such VECPs.
- (5) Any additional information Metro-North deems necessary or desirable, in its

sole discretion, to utilize the value engineering concepts incorporated in the VECP must be provided in a timely manner.

- (6) VECPs that are considered in the sole discretion of Metro-North to be only deletions of work will not be considered VECPs.

#### D. METRO-NORTH ACTION

- (1) Metro-North shall notify the Contractor of the status of the VECP within 45 calendar days after Metro-North receives it. If additional time is required, Metro-North shall notify the Contractor within the 45-day period, and provide the reason for the delay and the expected date of its decision. Metro-North will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.
- (2) If the VECP is not accepted, Metro-North shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may not withdraw any VECP in whole or in part, for 90 days after the date it is submitted to Metro-North.

Any VECP may be accepted in whole or in part by Metro-North issuing a Change Order to this Contract citing this clause. Metro-North may accept the VECP, even though an agreement on price has not been reached by issuing the Contractor a Notice to Proceed with the change. Until a Notice to Proceed or a Change Order is issued, the Contractor shall perform the Work in accordance with the existing Contract. Metro-North's decision to accept or reject all or part of any VECP shall be final and binding upon the Contractor.

- (3) After approval of the VECP, the Contractor shall revise the Work schedule and submit updated reports as specified in the Contract for review and approval.

#### E. PAYMENT

If the VECP is accepted by Metro-North, the changes and payment therefor will be negotiated by Metro-North under the Extra Work provisions of the Contract. Reimbursement to the Contractor will be made under the Compensation for Extra Work and Compensation Reductions provisions as follows:

- (1) The changes will be incorporated into the Contract by a Change Order which will include changes in quantities, new agreed price items, as appropriate, in accordance with the Contract.
- (2) Payment for the revised workscope will be calculated in accordance with the Compensation Reductions and Extra Work provisions of the Contract. In addition to payment for Work required under the revised workscope, Metro-North will pay the Contractor an amount equal to 50% of the savings to Metro-North to be determined by calculating the difference between the cost of the original workscope and the revised workscope. For purposes of

calculating this additional payment to the Contractor, all costs incurred by Metro-North in the review and implementation of the revised workscope will be added to the cost of the revised workscope.

- (3) The Contractor's costs for development, design and implementation of the Value Engineering proposal are not eligible for reimbursement.

## **CHAPTER 5 - SECURITY FOR THE PERFORMANCE OF WORK**

### **ARTICLE 5.01 - PERFORMANCE AND PAYMENT BONDS**

- A. The Contractor shall be required to furnish Performance and Payment Bonds as set forth in Paragraph 15. of the Information for Bidders.
- B. In the event a surety shall become insolvent, or its license is revoked or suspended, or in the event a surety is listed as an approved federal surety, and such federal approval is revoked or suspended, the Contractor, within ten (10) days after notice by Metro-North, shall substitute other and sufficient surety or sureties. If the Contractor fails to do so, such failure shall be an Event of Default.
- C. In lieu of defaulting the Contractor under Paragraph B. above, Metro-North may allow the Contractor to continue the Work, in which event Metro-North may deduct from any monies then due or which thereafter may come due to the Contractor the amount for which the surety shall be held and bound upon said bond. The monies so deducted may be held by Metro-North as collateral security for the performance of the conditions of the bonds and such monies shall in such case be deemed to have been paid to the Contractor under this Contract.

### **ARTICLE 5.02 - RETAINED PERCENTAGE**

As additional security for the faithful performance of this Contract, Metro-North shall deduct and retain from all progress payments five percent (5%) of the amount certified to be due thereunder.

### **ARTICLE 5.03 - WITHHOLDING MONEY DUE CONTRACTOR TO SATISFY CLAIMS, LIENS OR JUDGMENTS**

- A. If at any time a claim, lien or judgment shall be made by any person or corporation against the Contractor, or any of the Indemnified Parties under this Contract to which Contractor is liable under this Contract or otherwise by law, with respect to matters pertaining to the Work, the amount of such claim, lien or judgment or so much thereof as may be deemed reasonable, shall be retained by Metro-North, in addition to the other sums herein authorized by the Contract to be so retained, out of any monies then due or thereafter becoming due to the Contractor hereunder as security for the payment of such claim, lien or judgment. If the liability of any such party on such claim(s) or lien(s) shall have been finally adjudicated by a court of competent jurisdiction as evidenced by a lawful order or judgment or such claim(s) or lien(s) shall have been admitted by the Contractor to be valid, then the claim or lien or judgment may be paid from the amount so retained hereunder, credited against the payments due to the Contractor, and the balance, if any, paid to the Contractor.
- B. Should any claim, lien or judgment remain unsatisfied at the time the Substantial Completion or Final Payments are due, Metro-North shall have the right to retain out of either payment a sum it determines to be sufficient to protect Metro-North in regard to all such unsatisfied claims, liens and judgments. In lieu of the foregoing, Metro-North may require other security.
- C. Should the amount thus retained be insufficient to pay the amount determined to be due upon such claim, lien or judgment, the Contractor shall pay the amount of the

deficiency to Metro-North.

- D. Notwithstanding anything in this Article to the contrary, in the event of a claim by persons or corporations other than Metro-North, Metro-North shall have the option to not withhold money due to the Contractor, provided Metro-North receives adequate written assurance from the Contractor's insurance carrier or surety on bonds required hereunder that the insurer or surety will assume all responsibility in connection with the claim, including defending the Contractor and the Indemnified Parties under this Contract in any lawsuit, and paying any judgment based on said claim. Metro-North shall have sole discretion to determine the adequacy of the assurance furnished.

#### **ARTICLE 5.04 - SUBSTITUTION OF APPROVED SECURITIES**

- A. The Contractor may from time to time withdraw portions of the amounts so retained under Article 5.02 Retained Percentage or monies otherwise withheld under the Contract, provided any such monies have not been applied by Metro-North for reimbursement to itself or a third party in accordance with applicable provisions of the Contract, by depositing with the Fiscal Officer of Metro-North approved securities with a market value equal to the amount to be withdrawn.
- B. The Contractor shall pay to Metro-North any service charge as may then be in effect for the custodial safekeeping of securities deposited with Metro-North by the Contractor pursuant to the terms of this Contract.
- C. Approved securities are: securities of the United States Government, State of New York, City of New York, New York City Transit Authority, Metropolitan Transportation Authority or Triborough Bridge and Tunnel Authority. Other securities may be submitted for Metro-North's approval. All such securities must be payable to, run in favor of, or be transferred to, Metro-North. If the securities diminish in market value in the opinion of Metro-North, or are sold as set forth in Article 5.05, then, within 10 days after notice, the Contractor shall deposit cash or securities to restore the value to that originally stated.

A failure by the Contractor to deposit such cash or securities in accordance herewith shall be an Event of Default.

In lieu of defaulting the Contractor, Metro-North may allow the Contractor to proceed with the Work and may deduct from any monies then due or which thereafter may become due to the Contractor the amount necessary to restore the original valuation of such securities, and to hold such amount in lieu thereof.

- D. Metro-North shall pay to the Contractor all interest, dividends and other income on the securities, within a reasonable time when same is collected. If the securities are in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the Contractor; provided, however, that the Contractor shall not be entitled to interest, dividends or other income on any securities the proceeds of which shall be used or applied as authorized under the Contract.

#### **ARTICLE 5.05 - USE OF MONIES WITHHELD**

Deposits, retainage or other monies withheld, whether in cash or securities, shall be security for the faithful performance of the Contract by the Contractor, including the payment of claims, liens or judgments (as herein provided). In the event any default results in loss, damage or expense to Metro-North, then Metro-North may apply such amounts withheld as may be necessary to compensate it for such loss, damage or expense, including liquidated damages.

## CHAPTER 6 - CONTRACTOR'S LIABILITY AND INSURANCE (SEE ATTACHMENT 'F')

### ARTICLE 6.01 - INSURANCE COVERAGES REQUIRED

- A. Except that as otherwise provided in this Article, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, through the completion of Contract, including the Warranty Period, if applicable, policies of insurance, in accordance with the Insurance Schedule annexed hereto and made a part hereof, approved by the MNR/MTA. Contractor shall deliver evidence of such policies in the manner described in the Insurance Schedule.
- B. Except as otherwise indicated in the detailed coverage paragraphs below, self insured retentions and policy deductibles shall not exceed \$500,000, unless such increased deductible or retention is approved in writing by MNR/MTA. The Contractor shall be responsible for all claims expense and loss payments within the deductible or self-insured retention.
- C. The insurance monetary limits required herein may not be satisfied through the insured's umbrella/excess insurance policies.

### ARTICLE 6.02 - INDEMNIFIED PARTIES

The term Indemnified Parties, whenever referred to in this Contract shall consist of the following parties, including their officers, directors, employees, agents, and the respective affiliates and subsidiaries existing currently or in the future and successors to each Indemnified Parties listed herein:

All Contracts:

Metropolitan Transportation Authority (MTA), Metro-North Commuter Railroad (MNR), MTA Construction and Development Company (MTA C&D) and their respective subsidiaries and affiliates existing currently or in the future of and successors to each Indemnified Parties listed herein.

#### CHECK ALL THAT APPLY

☒ **MTA C&D**

MTA Construction & Development (MTA C&D), New York City Transit Authority ("NYCT"), Metro North Commuter Railroad Company ("MNR"), Long Island Railroad ("LIRR"), MTA Bus Company ("MTA Bus"), Triborough Bridge and Tunnel Authority ("B&T"), Metropolitan Transportation Authority ("MTA") and its subsidiaries and affiliates, and the City of New York ("City" as owner) and the State of New York and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Party listed herein.

☐ **Contracts involving Grand Central Terminal:**

Metro-North Commuter Railroad (MNR), Metropolitan Transportation Authority (MTA), Midtown TDR Ventures LLC, Midtown Trackage Ventures LLC, the State of Connecticut, Connecticut Department of Transportation (CDOT), Jones Lang LaSalle Americas, Inc./LPI (when applicable), Argent Ventures LLC and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.



- ☐ CBRE, Inc. and any successor thereto as property manager.

**When work is performed at:**

- 420 Lexington Ave New York, NY 10170 -
- 525 North Broadway, North White Plains, NY 10603 (MN)
- Buildings 341, 345, 347 Madison Avenue

☒ **MNRR**

Metro-North Railroad (“MNRR”), MTA Construction & Development Company (“MTA C&D”), and Metropolitan Transportation Authority (“MTA”) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Additional Indemnitees based on location of work:

☐ **Contracts involving the Hudson Line:**

Metro-North Commuter Railroad (MNR), Metropolitan Transportation Authority (MTA), Midtown TDR Ventures, LLC & Midtown Trackage Ventures LLC, Argent Ventures LLC, State of Connecticut and Connecticut Department of Transportation (CDOT), National Railroad Passenger Corp (AMTRAK), CSX Transportation, Inc. & New York Central Lines, LLC, and Delaware & Hudson Railway Company Inc. (D&H) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein..

☒ **Harlem Line**

Midtown Trackage Ventures LLC, State of Connecticut and Connecticut Department of Transportation (“CDOT”), CSX Transportation Inc. and New York Central Lines, LLC, LAZ Parking New York/New Jersey, LLC (where applicable) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

☐ **Contracts involving the Beacon Line:**

Metro-North Commuter Railroad (MNR), Metropolitan Transportation Authority (MTA), Danbury Terminal Railroad Company, Maybrook Railroad Company and Housatonic Railroad Company and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

☐ **Contracts involving the New Haven Line Including All Branches:**

**METRO-NORTH COMMUTER RAILROAD (MNR), METROPOLITAN TRANSPORTATION AUTHORITY (MTA), STATE OF CONNECTICUT AND CONNECTICUT DEPARTMENT OF TRANSPORTATION (CDOT) NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), CSX TRANSPORTATION, INC. & NEW YORK CENTRAL LINES, LLC, AND PROVIDENCE & WORCHESTER RAILROAD COMPANY (P&W) AND THE RESPECTIVE AFFILIATES AND SUBSIDIARIES EXISTING CURRENTLY OR IN THE FUTURE OF AND SUCCESSORS TO EACH INDEMNIFIED PARTIES LISTED HEREIN.**

☐ **Contracts involving the West of Hudson Lines** (including Port Jervis Line, Pascack

Valley Line and Piermont Branch): Metro-North Commuter Railroad (MNR), Metropolitan Transportation Authority (MTA), New Jersey Transit Rail Operations, Inc. (NJT), New Jersey Transit Corporation and Norfolk Southern Railway Company & Pennsylvania Lines LLC and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein

**☒ Other:**

Additional insureds to be included on Contractor's insurance: The Town of Somers, New York City Department of Environmental Protection (NYCDEP), New York State Department of Transportation (NYSDOT) and New York State Electric and Gas (NYSEG).

**ARTICLE 6.03 - RESPONSIBILITY FOR INJURIES TO PERSONS AND PROPERTY**

- A. The Contractor shall be solely responsible for (1) all injuries (including death) to persons, including, but not limited to, employees of the Contractor and Subcontractors and Indemnified Parties, and (2) damage to property, including, but not limited to, property of the Indemnified Parties, the Contractor or its Subcontractors. The liability hereunder shall be limited to such injuries or damage occurring on account of, or in connection with, the performance of the Work, whether or not the occurrence giving rise to such injury or such damage happens at the Work Site or whether or not sustained by persons or to property while at the Work Site, but shall exclude injuries to such persons or damage to such property to the extent caused by the negligence of Metro-North.
- B. The Contractor's liability hereunder includes any injury (including death) or damage to property related to the performance of, including the failure to perform the Work under the Warranty provisions of the Contract and miscellaneous Incidental Work.

**ARTICLE 6.04 - INDEMNIFICATION**

- A. The Contractor shall indemnify and save harmless the Indemnified Parties, to the fullest extent permitted by law, from loss and liability upon any and all claims and expenses, including, but not limited to, reasonable attorneys' fees, on account of such injuries to persons or such damage to property, irrespective of the actual cause of the accident, irrespective of whether it shall have been due in part to negligence of the Contractor or its Subcontractors or the negligence of the Indemnified Parties, or of any other persons, but excepting bodily injuries and property damage to the extent caused by the negligence of Metro-North.
- B. The term "loss and liability", as used herein, shall be deemed to include, but not be limited to, liability for the payment of workers' compensation benefits under the Workers' Compensation Law of the State of New York, or liability under the Federal Employers' Liability Act or similar statutes.
- C. Except as otherwise provided in Paragraph A. above, the liability of the Contractor under this Article is absolute and is not dependent upon any question of negligence on its part or

on the part of its agents, officers, employees or Subcontractors. The approval of Metro-North of the methods of doing the Work, or the failure of Metro-North to call attention to improper or inadequate methods or to require a change in methods or to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall not excuse the Contractor in the event of injury to persons or damage to property.

- D. If any damage shall occur to any property of the Indemnified Parties (except that reasonably associated with the Work and then only that which is specifically required by this Contract) on account of the Work, and the Contractor is responsible therefore, Metro-North shall have the right to cause such damage to be repaired and to charge the expense of such repairs to the Contractor. In the event that such Work is performed by Metro-North, then Metro-North shall deduct the amount of such expense that may be incurred in repairing any such damage from any monies due or to become due to the Contractor under this Contract or any other agreement between the Contractor and Metro-North.
- E. If at any time, claim shall be made by any person or corporation against the Indemnified Parties for any such injury or damage, or for any infringement of patents or copyrights as hereinafter provided, and if final payment has not yet been made under the Contract, then the amount of such claim or so much thereof as may be deemed reasonable by Metro-North may be retained by Metro-North out of any monies then due or thereafter becoming due to the Contractor under the Contract (in addition to other sums, if any, elsewhere herein authorized to be so retained) as security for the payment of such claim or claims. In lieu of such retainage, Metro-North may permit the posting of a bond, in form satisfactory to it, for the full amount of such claim or claims, such bond to be held until such claim or claims are satisfied or otherwise discharged.

#### **ARTICLE 6.05 - RISK OF LOSS TO THE WORK**

- A. The Contractor assumes risk of loss or damage to the Work occurring prior to Final Completion of all the Work to the fullest extent permitted by applicable law, irrespective of whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor, Metro-North or third persons, or from any cause whatsoever, excepting loss or damage arising solely from negligent or willful acts of Metro-North, occurring prior to Substantial Completion and risk of loss or damage to incomplete Work until Final Completion of all the Work, except that if the failure to complete the incomplete Work causes damage to the Work, the Contractor shall be responsible for all resulting loss or damage. When risk of loss to the Work (or a portion thereof) is transferred to Metro-North, Metro-North shall thereafter assume responsibility for the care, protection and ordinary upkeep (excluding Contractor's Warranty obligations) for said Work, except to the extent that Contractor remains responsible for incomplete Work or is otherwise responsible for loss or damage as provided in this Chapter.
- B. In the event that a part of the Work is subject to Metro-North's determination of Beneficial Use, then risk of loss for the specified part of the Work shall transfer to Metro-North upon the issuance of Beneficial Use Certification, except that Contractor shall be liable for any damage to such part of the Work so beneficially used by Metro-North to the extent caused by acts or omissions to act of the Contractor in performing other portions of the Work or completing Work at such portion beneficially used.

- C. Contractor's obligation hereunder is to immediately repair, replace and make good such loss or damage so as to restore the Work to the same character and condition as before the loss or damage occurred in accordance with the Contract without cost to Metro-North.
- D. Risk of loss or damage to work trains, cranes, or special equipment supplied and operated by Metro-North shall be on Metro-North, but the Contractor shall be responsible for loss or damage thereto arising out of Contractor's failure to fulfill a Contract obligation hereunder or the negligence or willful act of the Contractor, its Subcontractors and Suppliers.
- E. The Contractor shall exercise due care and diligence to ensure that all Work and materials whether temporary or permanent (including items supplied by the Indemnified Parties) are at all times thoroughly protected from vandalism or theft, the weather, and any and all other damage prior to acceptance of the Work. The Contractor shall provide watchmen and labor, materials, protective features such as tarpaulins, boards, boxing, frames, canvas guards, fireproofing, protective coatings and other safeguards as are necessary or as may be directed by the Project CEO. Any loss or damage resulting from Contractor's failure to comply herewith shall be corrected or repaired by and at the Contractor's sole expense.

#### ARTICLE 6.06 - CLOSING

##### Submission of Insurance:

1. **Initial Evidence of Insurance:** The Contractor shall furnish evidence of all policies before any work is started to the:

Metro-North Commuter Railroad Company  
C/o: [RAMZI BASHJAWISH](#)  
Graybar Building  
420 Lexington Avenue, 12<sup>th</sup> Floor  
New York, NY 10170  
Email: [BASHJAWISH@MNR.ORG](mailto:BASHJAWISH@MNR.ORG)

2. **Address for Renewal Insurance:** After the Contractor's insurance has been approved, a "compliant message" verifying insurance compliance will be sent to the Contractor via the MTA Certificate of Insurance Management System (CIMS), Complianz™. It will also provide the email address for all insurance renewals, specific to this contract. Do not bundle certificates as each contract is assign a specific email address.

Except for Railroad Protective Liability or Builder's Risk insurance, certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the MNR, the Contractor shall deliver to the MNR within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted, it must: (1) be provided on the Certificate of Insurance Form(s) designated in the Insurance Schedule; (2) be signed by an authorized representative of the insurance carrier or producer; (3) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds and Named Insureds as required herein and in the Insurance Schedule. The Contractor must provide a physical copy of the endorsements specified in the Insurance Schedule, and the endorsements must

include policy number(s), contract number, description and location of Work; (5) reference the Contract by number on the face of the certificate; and (6) expressly reference the inclusion of all required endorsements.

Evidence of Railroad Protective Liability and/or Builder's Risk Insurance, when required, requires submission of the original policy. The original binder(s) will be accepted, pending issuance of the policy(s), provided that the binder (i) indicates the contract number, description and location of Work and the designated Contractor, and (ii) is signed by the authorization producer or insurance carrier.

Nothing herein contained shall be deemed to limit the Contractor's liability to the limits of liability, or coverage of Policies listed above, their renewals, or replacement.

The Contractor shall file with the MNR's Tort Division (with a copy to the Project Manager), 420 Lexington Avenue, 11<sup>th</sup> Floor, New York, NY 10170, a notice of any occurrence likely to result in a claim against the MNR, and shall also file with the Torts Division detailed sworn proof of interest and loss with the claim. This paragraph shall survive the expiration or earlier termination of the Contract.

If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to the MNR/MTA, the MNR/MTA shall have the option to: (i) direct the Contractor to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.

## **CHAPTER 7 - CONTRACTOR'S DEFAULT**

### **ARTICLE 7.01 - EVENT OF DEFAULT**

- A. An Event of Default shall mean a material breach of the Contract by the Contractor which, without limiting the generality of the foregoing and in addition to those instances specifically referred to in the Contract as a material breach or an Event of Default, shall include a determination by the Project CEO that: (i) the Contractor has failed to begin the Work in accordance with the Contract requirements; (ii) performance of this Contract has been unnecessarily or unreasonably delayed; (iii) the Contractor has willfully violated any of the provisions of the Contract or has not executed the same in good faith and in accordance with this Contract; (iv) the Contractor has abandoned the Work; (v) Contractor has become insolvent (other than as a bankrupt), or has assigned the proceeds of this Contract for the benefit of creditors, or taken advantage of any insolvency statute or debtor or creditor law or if his property or affairs have been put in the hands of a receiver; (vi) the Contractor has failed to obtain an approval required by the Contract; (vii) the Contractor has failed to provide Metro-North the required insurances; or (viii) the Contractor has failed to provide "adequate assurance" as required under Paragraph B. hereof.
- B. When, in the opinion of the Contracting Officer, reasonable grounds exist concerning the Contractor's ability to perform the Work or any portion thereof, Metro-North may request that Contractor, within a reasonable time, provide written adequate assurance of its ability to perform in accordance with the Contract. Such assurance must be provided by Contractor within the time set forth in Metro-North's request. If the Contractor fails to provide same, or if same proves

inadequate, Contractor shall be in default of its obligations hereunder.

#### **ARTICLE 7.02 - NOTICE OF DEFAULT/OPPORTUNITY TO CURE**

If an Event of Default occurs, Metro-North may so notify the Contractor ("Default Notice"), specifying the basis(es) for such default, and advising the Contractor that, unless such default is rectified to the satisfaction of Metro-North within seven (7) days from such Default Notice, the Contractor shall be in default; except that, at its sole discretion, Metro-North may extend such seven (7) day period for such additional period as Metro-North shall deem appropriate without waiver of any of its rights hereunder. The Default Notice shall specify the date the Contractor is to discontinue all Work (the "Termination Date"), and thereupon, unless rescinded by Metro-North, the Contractor shall discontinue the Work upon the Termination Date.

#### **ARTICLE 7.03 - REMEDIES IN THE EVENT OF DEFAULT**

- A. Upon Contractor's default, Metro-North shall have the right to either complete the Work with its own forces and/or other Contractors or to require the Contractor's Surety to complete the Work under the Performance Bond hereunder. Metro-North, in connection with its right to complete the Work, may take possession of and use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the Contractor, and/or procure other materials, plant, tools, equipment, supplies and property for the completion of same, and to charge the expense of said labor, materials, plant, tools, equipment, supplies and property to the Contractor.
- B. If a Default occurs, Contractor shall be liable for all damages resulting from the Default, including the difference between the total Contract price and the amount actually expended by Metro-North to complete the Work, as well as liquidated damages for delay in the completion of the Work beyond the Substantial Completion Date. The Contractor shall also remain liable for any other liabilities and claims related to the Contract. All damages may be deducted and paid out of such monies due the Contractor.
- C. Metro-North may also bring any suit or proceeding for specific performance, for injunctive relief, to recover damages, to obtain any other relief or for any other purpose proper under the law and under this Contract.
- D. Metro-North may in its sole discretion waive a default by the Contractor, but no such waiver, and no failure by Metro-North to take action in respect to any default, shall be deemed a waiver of any subsequent default.
- E. If Metro-North makes a determination pursuant to this Chapter to hold the Contractor in default and/or terminate the Contract for cause, and it is determined subsequently for any reason whatsoever that either such determination was improper, unwarranted or wrongful, then any such termination shall be deemed for all purposes to have been a termination for convenience in accordance with Article 2.08 "TERMINATION FOR CONVENIENCE BY METRO-NORTH." The Contractor agrees that it shall be entitled to no damages, allowance or expenses of any kind other than as provided in Article 2.08 in connection with any such

termination.

#### **ARTICLE 7.04 - METRO-NORTH MAY AVAIL ITSELF OF ALL REMEDIES**

Metro-North may avail itself of each and every remedy herein specifically given to it or now or hereafter existing at law or in equity or by statute, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such manner as may be deemed expedient by Metro-North, and the exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy.

### **CHAPTER 8 - AUTHORITY OF THE PROJECT CEO: DISPUTES AND CLAIMS**

#### **ARTICLE 8.01 - AUTHORITY OF THE PROJECT CEO**

- A. The Contractor hereby authorizes the Project CEO to determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract including without limitation: questions as to the value, acceptability and fitness of the Work; questions as to either party's fulfillment of its obligations under the Contract, negligence, fraud or misrepresentation before or subsequent to acceptance of the Bid; questions as to the interpretation of the Specifications and Contract Drawings; and claims for damages, compensation and losses.
- B. The Project CEO may give orders to do work which he or she determines to be necessary for the Contractor to fulfill the Contractor's obligations under the Contract. The Project CEO may also give orders in every case in which an unsafe condition shall arise in performance of the Work.
- C. The Project CEO will promptly provide appropriate explanations and reasons for his or her determinations and orders hereunder, if requested by the Contractor. All determinations under this Article shall be reasonable.
- D. The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project CEO, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project CEO's determination or order. Determinations and orders shall be in writing unless not practicable, in which event any oral determination or order must be confirmed in writing by the Project CEO as soon thereafter as practicable.
- E. The Contractor shall have a representative at the Work Site at all times during performance of the Work authorized to receive determination and orders from the Project CEO.
- F. In the performance of the Work, the Contractor shall conform to all orders, directions and requirements of the Project CEO and shall perform the Work to the Project CEO's satisfaction. The Work shall at all stages be subject to the Project CEO's inspection. The Project CEO shall determine the quality, acceptability and fitness of the Work, and his determination shall be final and binding. The Project CEO may stop any part of the Work under the Contract if the methods or conditions are such that unsatisfactory Work might

result, if improper material or workmanship is being used, or unsafe conditions exist.

- G. The Contractor shall employ only competent and skillful workers to do the Work and whenever the Project CEO shall notify the Contractor orally, (to be followed in a reasonable time by a written notice), that any worker on the Work is, in his opinion, incompetent or disorderly, the Contractor shall forthwith remove such person and shall not again employ that worker on any part of the Work without the written consent of the Project CEO.
- H. Upon request, the Project CEO will promptly confirm in writing any oral order, direction, requirement or determination. Any such order, direction, requirement or determination made pursuant to this Article, or any approval required to be given by the Project CEO pursuant to any other provision of the Contract will be made or given in conformance with the Contract, it being understood that the Terms and Conditions, including the Technical Provisions, of this Contract may be altered only pursuant to a Change Order or amendment duly authorized and executed by Metro-North.
- I. All labor, materials, devices, apparatus and processes of design and manufacture shall be at all times and places subject to the inspection of the Project CEO.
- J. No variation in any required material, equipment, method or procedure shall be made by the Contractor unless approved in writing by the Project CEO. Any such request for approval shall not impose upon the Project CEO any obligation whatsoever to discuss, disclose, or justify the reasons for his opinion, approval, acceptance or rejection. Furthermore, any such approved variation shall not, of itself, in any way entitle the Contractor to additional compensation or Metro-North to any credit therefor, except as specifically agreed in writing by the Contractor and Metro-North.
- K. If, in the performance of the Work, the Contractor discovers any error or omission in the Contract, or if, without regard to proof of such discovery, such error or omission is patent or easily discoverable, then in either such event he shall immediately notify the Project CEO, and the Project CEO shall promptly verify same. If the Contractor proceeds with any part of the Work affected thereby without the written approval of the Project CEO, he does so at his own risk and the Work so done shall not be considered as Work done under and in performance of the Contract unless and until approved and accepted.
- L. The Contractor shall at all times during the term of this Contract perform the Work with such forces and equipment as in the judgment of the Project CEO will be sufficient to complete the Work within the specified time; this includes support staff as well as direct labor. The Contractor agrees that whenever it becomes apparent that phasing milestones or Contract completion dates will not be met, he will take actions, including, but not limited to, the following actions at no additional cost to Metro-North:
  - (1) Increase laborpower in such quantities and crafts as will eliminate the backlog; and
  - (2) Subject to the provisions of the New York Labor Law, increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing to eliminate



the backlog of Work.

- M. Proposed actions shall be subject to the approval of the Project CEO and approved actions shall be incorporated in the next update of the scheduling system provided in Article 2.03 "CONTRACTOR'S DETAILED SCHEDULE OF WORK."

#### **ARTICLE 8.02 - APPROVALS BY PROJECT CEO: NO LIABILITY**

Any approval given by the Project CEO pursuant to any provision of the Contract of any materials, workmanship, plant, equipment, engineering designs, drawings, program, methods or procedure shall be construed merely to mean that at that time the Project CEO knew of no good reason for objecting thereto; and no such approval shall release the Contractor from his full responsibility for the accurate and complete performance of the Work in accordance with the Contract or any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

#### **ARTICLE 8.03. DISPUTE RESOLUTION PROCEDURE**

- A. The provisions of this Article shall constitute the Contractor's sole means for challenging any determination or order of the Project CEO pursuant to the Project CEO's authority under Article 8.01. The Contractor must receive a final determination or order from the Project CEO as described above in Article 8.01, before the Contractor may initiate a challenge to the determination or order (hereinafter referred to as a "Dispute") under this Contract, by filing either an Arbitration Notice (as defined below in Article 8.04) or Litigation Notice (as defined below in Article 8.05)).
- B. Disputes between the parties arising before Final Completion shall be resolved pursuant to the following dispute resolution procedure:
1. If the Contract Price as awarded is less than One Hundred Million Dollars (\$100,000,000), (a) any individual Dispute of up to Five Million Dollars (\$5,000,000) arising out of a determination or order of the Project CEO shall be resolved by binding Arbitration as described below in Article 8.04 – **BINDING ARBITRATION**, and (b) for any individual Dispute of Five Million Dollars (\$5,000,000) or more, the Parties may pursue all available legal and equitable remedies limited only by Article 8.05 – **OTHER LEGAL REMEDIES**.
  2. If the Contract Price as awarded is One Hundred Million Dollars (\$100,000,000) or greater, (a) any individual Dispute of up to Ten Million Dollars (\$10,000,000) arising out of a determination or order of the Project CEO shall be resolved by binding arbitration as described below in Article 8.04 – **BINDING ARBITRATION**, and (b) for any individual Dispute of Ten Million Dollars (\$10,000,000) or more, the parties may pursue all other available legal and equitable remedies limited only by Article 8.05 – **OTHER LEGAL REMEDIES**.
  3. Notwithstanding the jurisdictional classifications outlined above, the Parties may, by written mutual agreement, submit a Dispute for adjudication by either of the methods described above.

## **ARTICLE 8.04. BINDING ARBITRATION**

### **A. AUTHORITY OF THE ARBITRATOR TO ADJUDICATE DISPUTES UP TO THE ARBITRATION THRESHOLD**

The parties to this Contract hereby authorize and agree to the full and final resolution of all Disputes up to the applicable arbitration threshold as set forth in Article 8.03 by binding arbitration ("Arbitrable Claims") before a neutral Arbitrator (defined below) acting in his or her personal capacity.

### **B. THE ARBITRATOR**

1. The Arbitrator shall be an attorney located in the New York City metropolitan area who shall have not less than ten (10) years' experience in the field of construction law.
2. The Arbitrator shall be selected by the parties immediately following the Contract award from a pool of pre-qualified attorneys provided by Metro-North, or otherwise selected by the parties.
3. The Arbitrator's hourly fees shall also be posted by Metro-North. The fees shall only be incurred if the Arbitrator actually performs any work to adjudicate a qualified dispute. Responsibility for the Arbitrator's fees is discussed further in paragraph D.1 below.
4. The Arbitrator shall, once so selected, serve as Arbitrator for all qualified Disputes hereunder until death, incapacity, resignation, disqualification for cause or removal (by mutual agreement of the parties) of the Arbitrator. In such event the parties shall agree on a successor Arbitrator from the pool of pre-qualified attorneys.

### **C. BINDING ARBITRATION PROCEDURE**

1. Binding arbitration shall be initiated through a written submission by either party to the Arbitrator and the adverse party within thirty (30) days of the event giving rise to the right to initiate the Dispute Process under Article 8.03.A (such submission is hereinafter referred to as the "Arbitration Notice").
2. The Arbitration Notice shall state on its face that it is an Arbitration Notice, shall state an initial claim value, and include a general statement of the nature of the Dispute. The Arbitration Notice shall also identify and attach the determination or order of the Project CEO under Article 8.03.A giving rise to the claim.
3. A party's failure to timely submit the Arbitration Notice shall constitute a waiver of that party's right to pursue the claim Arbitrable Claim in any forum.
4. The arbitration shall be conducted on the basis of written submissions by the Parties

provided pursuant to the procedures set forth herein. No oral testimony will be permitted.

5. Within thirty (30) days after submission of the Arbitration Notice, the party initiating the arbitration must submit a Position Statement to the Arbitrator and the adverse party that includes a written explanation of the party's claim and all documentary evidence necessary in support of the party's claim. Following submission of the Position Statement, the adverse party shall have thirty (30) days to submit its Statement in Response to the Arbitrator and the initiating party, which shall include an explanation of the party's position in response and all documentary evidence necessary to support the party's stated position.
6. Failure of either party to timely submit its Position Statement or Statement in Response shall constitute a waiver of that party's rights to prosecute or respond to the subject Arbitrable Claim.
7. The Arbitrator shall have the discretion to extend the time for the parties' submissions on the Arbitrator's own initiative or in response to a written request submitted by either party; such request shall not be unreasonably denied.
8. The Arbitrator shall render his or her decision in writing and deliver a copy of the decision to the parties within a reasonable time not to exceed sixty (60) days after the receipt of all submissions from the parties.
9. Prior to issuing a decision, the Arbitrator in his or her discretion and by written notice to both parties, may request additional information or documents from a party, or the opportunity to meet with both parties to discuss the facts of the Dispute. Such a meeting shall not include oral testimony from any witness, including expert testimony. The Arbitrator is prohibited from meeting with or speaking to either party individually.
10. The parties are prohibited from requesting an in-person meeting with the Arbitrator, submitting any additional unsolicited supporting documents not included in the party's initial submission and from having any *ex parte* communication with the Arbitrator.
11. The Arbitrator's determination shall not be impaired or waived by any negotiations or settlement offers, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.
12. The Arbitrator's determination shall be conclusive, final and binding on the parties, and shall constitute an "award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction in accordance with Article 75 of the New York State Civil Practice Law and Rules or the Federal Arbitration Act.
13. It is expressly understood and agreed that the pendency of an arbitration hereunder shall at no time and in no respect constitute a basis for any modification, limitation

or suspension of the Contractor's obligation to perform fully in accordance with the Contract and that the Design-Contractor shall remain fully obligated to perform the Work notwithstanding the pendency of any such arbitration.

**D. FEES, SETTLEMENT AND RELEASE AT FINAL COMPLETION**

1. The parties shall share equally the fees due to the Arbitrator for conducting the arbitration.
2. Each party shall bear its own attorneys' fees and disbursements in connection with the arbitration. The Arbitrator shall not award attorneys' fees and disbursements to either party.
3. It shall be a condition to the achievement of Final Completion that all Disputes that are Arbitrable Claims shall have been resolved and all amounts due thereunder paid in full.

**ARTICLE 8.05. OTHER LEGAL REMEDIES**

**A. COMMENCEMENT OF JUDICIAL PROCEEDINGS FOR DISPUTES OVER THE ARBITRATION THRESHOLD**

1. The parties reserve their rights to pursue all available legal and equitable remedies to resolve Disputes as to individual claims over the arbitration threshold as set forth in Article 8.03 including initiating litigation ("Litigable Claims"). However, if such litigation may only be pursued in a Court of competent jurisdiction of the State of New York, County of New York or the United States District Court for the Southern District of New York.
2. In the event that the Contractor or Metro-North intends any legal or equitable remedies described in 8.05.A.1, the party must submit a notice to the Project CEO, or the Contractor's Authorized Representative, within thirty (30) days of the event giving rise to the right to initiate the Dispute under Article 8.03.A (such submission hereinafter is referred to as the "Litigation Notice"). If a Litigation Notice is not served within said time period, the disputing party shall be deemed to have waived its right to pursue such legal or equitable remedy.
3. A party's failure to timely submit a Litigation Notice shall constitute a waiver of the party's right to pursue the claim in any forum.
4. If the action shall result in a recovery by Metro-North or a credit for Metro-North, then Metro-North may offset said credit against the Contract Price.
5. The Contractor shall initiate any arbitration or litigation no later than six (6) months after the date of Substantial Completion of all Work set forth in the Certificate of Substantial Completion and in any event before the date of Final Completion set forth in the Certificate of Final Completion.

**ARTICLE 8.06. SUBCONTRACTOR CLAIMS LIMITED**

- A. This Chapter provides for resolution of Dispute between the Contractor and Metro-North. Such claims may relate to Subcontractors' work and/or may relate to pass through claims asserted by a Subcontractor or Vendor against the Contractor (collectively called "Subcontractor Claims"). In such case the claims addressed in this Chapter and under this Contract, including that portion related to Subcontractor Work or claims, solely address the rights and responsibilities of the Contractor and Metro-North under this Contract.
- B. The Contractor shall include in all Subcontracts, and shall require its Subcontractors and Vendors to include in all lower-tier Subcontracts, provisions that any claim by a Subcontractor that is based on any alleged action or inaction, error or omission of Metro-North must be brought to the attention of the Contractor so that the Contractor may timely assert same as a Dispute under Article 8.03 and all provisions of this Contract, otherwise it is waived by the Subcontractor. The Contractor shall hold the Indemnified Parties harmless from any failure to include such provision in any Subcontract.
- C. If the Contractor decides to pursue a claim against Metro-North that includes a Subcontractor Claim, the Dispute shall be processed and resolved in accordance with this Chapter and this Contract and shall be subject to the following additional conditions:
  - 1. The Contractor shall identify clearly in all submissions that portion of the Dispute that involves Subcontractor Claims.
  - 2. The Contractor shall include, a certification executed by the Subcontractor's officer, partner, principal or representative, with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor Claim that the claim is made in good faith. The Contractor also shall submit a certification that:
    - a. the Subcontractor Claim has been thoroughly reviewed by the Contractor and is submitted by the Contractor in good faith and complies with all Contract requirements; and
    - b. the Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor Claim is falsely represented.
  - 3. At any Arbitration hearing requested by the Arbitrator, the Contractor shall require that each Subcontractor or Vendor that is involved in the Dispute have present a representative who is authorized to bind the Subcontractor or Vendor, with actual knowledge of the facts underlying the Subcontractor Claim to assist in presenting the matter and to answer questions raised by Arbitrator and representatives of Metro-North.
  - 4. Failure of the Contractor to include a Subcontractor Claim on behalf of its Subcontractor or Vendor (including pass-through claims) at the time of submission of the Contractor's Arbitration Notice or Litigation Notice shall constitute a release of Metro-North by the Contractor on account of such Subcontractor Claims.
  - 5. The Contractor agrees that Metro-North, by allowing this limited Subcontract in the

dispute resolution process between Contractor and Metro-North, shall not be deemed to have created or recognized any claim, right, or cause of action by any Subcontractor or Vendor against Metro-North, the Contractor shall ensure that all Subcontracts include a provision indicating that Subcontractors and Vendors agree to same.

- D. Notwithstanding the foregoing, the disputes process in this Chapter shall not apply to:
1. any Subcontractor claim between the Subcontractor(s) or Vendor(s) and the Contractor that is not actionable by the Contractor against Metro-North;
  2. any Subcontractor claim based on remedies expressly created by statute;
  3. any Subcontractor claim that is covered by insurance; or
  4. any Subcontractor claim that is actionable only against a bonding company.
- E. Nothing contained in Chapter 8 or elsewhere in the Contract is intended to create any claim or other right of action by a Subcontractor or vendor against Metro-North or the MTA.

#### **ARTICLE 8.07. CONTINUED PERFORMANCE REQUIRED**

The Contractor shall proceed diligently with the Work during the pendency of any Dispute initiated under this Chapter. No Dispute shall constitute a basis for any modification, limitation or suspension of the Contractor's obligation to promptly, continuously and fully perform its Work.

#### **ARTICLE 8.08 LIMITATION OF JUDICIAL REVIEW, CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

- A. This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor; and shall be governed by and construed in accordance with the laws of the State of New York.
- B. The Contractor also agrees as follows:
1. If Metro-North or the MTA initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to Metro-North in writing.
  2. With respect to any action between Metro-North and the Contractor commenced in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

3. With respect to any action between Metro-North or the MTA and the Contractor commenced in Federal Court located in New York County, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the County of New York.
4. If the Contractor commences any action against Metro-North in a court located other than in the County and State of New York, upon request of Metro-North, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the State of New York, County of New York as above described or, if the court where the action is initially brought will not or cannot transfer the action the Contractor shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in New York County as above-described.

## **CHAPTER 9 - INSPECTION, TESTING AND GUARANTEES**

### **ARTICLE 9.01 - INSPECTION**

- A. At all times during the Contract, the Project CEO shall have the right to make the most thorough and minute inspection of the Work, including materials and their manufacture or preparation, and to draw the attention of the Contractor to all defects in workmanship or materials or other errors or variations from the Contract requirements.
- B. The right of inspection by Metro-North herein provided is intended solely for the benefit of Metro-North. Neither the right of inspection nor any failure to draw attention to or point out such defects, errors or variations shall give the Contractor any right or claim against Metro-North or shall in any way relieve the Contractor from its obligations under the terms of the Contract.
- C. If the Work or any part thereof shall be found defective, the Contractor shall without cost to Metro-North promptly remedy such defect in a manner to comply with the Contract.
- D. The Contractor shall at all times provide the Project CEO and his designated representatives all facilities necessary, convenient or desirable for inspecting the Work. The Project CEO and any designated representative shall be admitted any time without delay to any part of the Work site and shall be permitted to inspect materials at any place or stage of their manufacture, preparation, shipment or delivery.
- E. Any inspection hereunder shall not unreasonably disrupt the Contractor's performance of the Work.

### **ARTICLE 9.02 - UNCOVERING FINISHED WORK**

The Project CEO's right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. Should the Work thus exposed or examined prove to be in accordance with the Contract, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as Extra Work for purpose of computing additional compensation and an Extension of Time; but should the Work exposed or examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor and no Extension of Time will be granted. Such expenses shall also include repayment to Metro-North for any and all expense or cost incurred by Metro-North in connection with such uncovering, taking down, replacing and restoration.

### **ARTICLE 9.03 - TESTS**

- A. All tests required to be performed by the Contractor shall be done as set forth in the Technical Provisions and shall be made at the expense of the Contractor.
- B. The Project CEO shall be apprised of all such tests in advance in order to enable the Project CEO to witness such tests.

### **ARTICLE 9.04 - WARRANTY OF CONSTRUCTION**



- A. The Contractor warrants that the Work conforms to the requirements of the Contract and is free of any defect of material and workmanship.
- B. Contractor agrees that this warranty shall commence from the date of Final Completion, whether the defect be patent or latent, and shall extend for a period of one year.
- C. In the event that Metro North, in its sole discretion, elects to take Beneficial Use of the Work or a portion of the Work, the Warranty shall commence upon issuance of the Notice of Beneficial Use, for that portion of the Work named in said Notice, and shall extend for a period of one year.
- D. The Contractor's entire obligation under this warranty shall be, at his own cost and expense, promptly to repair, or, at his option and at his own cost and expense (including cost of removal, transportation and installation and any other expenses associated therewith), replace that item (or part or component thereof) which under the contemplated specified use and with proper maintenance, proves defective or insufficient within the warranty period or during such period proves to have failed to comply with the Technical Provisions or the Drawings, provided Metro-North gives the Contractor written notice of the failure.
- E. The warranty covering any item, part or component that shall be replaced or repaired by the Contractor under the above conditions shall be reinstated for a period of twelve months effective as of the day when such repair or replacement is completed. If the failure is found to affect any other part, component or item, the reinstatement of the warranty shall then be extended to cover the part, component or item so affected as well, and shall start as of the date the interrelated parts, components and items function normally.
- F. The Contractor shall furnish the name (including the address, telephone and fax numbers) of the party designated by the Contractor as the contact person for any warranty claims that may be submitted by the Railroad.

#### **ARTICLE 9.05 - SPECIFIC GUARANTEES**

Any additional guarantees and warranties required under the Contract are set forth in the Technical Provisions.

#### **ARTICLE 9.06 - MANUFACTURERS' WARRANTIES AND GUARANTEES**

The Contractor shall obtain all manufacturers' warranties and guarantees for all equipment and materials required by this Contract in the name of Metro-North and shall deliver same to Metro-North; provided that the delivery of such manufacturers' warranties and guarantees shall in no respect relieve the Contractor of its obligation under the preceding warranty provisions of this Chapter.

#### **ARTICLE 9.07 - PERFORMANCE GUARANTEES**

Fulfillment of guarantees of performance of Contractor-furnished apparatus as a condition of acceptance will be determined by the tests stipulated. The Contractor shall be responsible for all Work and costs involved in effecting replacement, changes, or adjustments necessary

to fulfill these guarantees, whether they are required by the Technical Provisions or the Drawings or are provided in the Contractor's Technical Data.

#### **ARTICLE 9.08 - SOFTWARE WARRANTY**

In addition to any other warranties in this Contract, the Contractor warrants that any software provided in connection with this Contract shall (i) be of a language that is commercially available and for which software tools are available; (ii) be capable of being copied by Metro-North (subject to licensing restrictions thereon, if any); (iii) not contain viruses or pre-programmed devices which will cause any software utilized by Railroad to be erased or become inoperable or incapable of processing accurately; (iv) function fully and correctly in conjunction with other software and/or equipment purchased pursuant to the Contract; (v) not contain any code that will, upon the occurrence or the nonoccurrence of any event, disable the Software; (vi) not include any "back door" or other unauthorized entry point into the software; and (vi) accurately process all date/time related data, including but not limited to the occurrence of leap years.

## **CHAPTER 10 - MISCELLANEOUS PROVISIONS**

### **ARTICLE 10.01 - CONTRACT DOCUMENTS CONTAIN ALL TERMS**

These Contract Documents represent the fully integrated agreement between the parties and contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be of legal effect or otherwise bind any of the parties hereto, or vary any of the terms contained herein.

### **ARTICLE 10.02 - ALL LEGAL PROVISIONS INCLUDED**

It is the intent of the parties that each and every provision of law required to be inserted in this Contract should be and is deemed to have been inserted herein. If any such provision is not inserted or is not inserted in correct form, then this Contract shall be deemed amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

### **ARTICLE 10.03 - SEVERABILITY**

If this Contract contains any provision found to be unlawful, the same shall be deemed to be of no force and effect and shall be deemed stricken from the Contract without invalidating the binding force and effect of any other term and condition of the Contract after the deletion of such provision.

### **ARTICLE 10.04 - ANTITRUST ASSIGNMENT**

The Contractor hereby assigns, sells and transfers to Metro-North all right, title and interest in and to any claim and cause of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procured by Metro-North under this Contract.

### **ARTICLE 10.05 - INTELLECTUAL PROPERTY CLAIMS**

- A. All inventions, ideas, designs and methods contained in the Contract in which Metro-North has, or acquires patent, copyright or other related intellectual property rights (hereinafter referred to as patents or patentable subject matter) shall remain reserved for the exclusive use of Metro-North and may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, Subcontractor or agent without the written consent of Metro-North except to the extent necessarily required in connection with performance of the Work.
- B. If, pursuant to performance of the Work, the Contractor or any of its agents, officers, employees or Subcontractors shall produce any patentable subject matter, Metro-North, MTA, its affiliates and subsidiaries shall thereupon have, without cost or expense, an irrevocable, non-exclusive, royalty-free license to make, have made or use, either themselves or by another contractor or other party on their behalf, such subject matter in connection with any work or any activity now or hereafter undertaken by or on behalf of Metro-North, MTA, its affiliates and subsidiaries. The license herein granted shall not be transferable and shall not extend to contractors or other parties except to the extent of their work or activities is on behalf of Metro-North, MTA, its affiliates and subsidiaries.
- C. All drawings, parts lists, data, and other papers of any type whatsoever, whether in

the form of writings, figures or delineations, which have been or may be receive from the Contractor at any time either prior or subsequent to execution of the Contract and which are prepared in connection with the Contract and submitted to Metro-North shall become the property of Metro-North. Except to the extent that rights are held by Contractor or others under existing valid patents and are not given to Metro-North, Metro-North shall have the right to use or permit the use of all such drawings, data, and other papers, and also any oral information of any nature whatsoever received by Metro-North, and any ideas or methods represented by such papers and information, for any purposes and at any time without other compensation than that specifically provided herein, and no such papers or information shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said drawings, data, or other papers shall be void and of no legal effect.

- D. The Contractor shall be liable and responsible for any claim made against the Indemnified Parties for any infringement of patents through the use or application of patented tools, articles, appliances, structures, materials, devices, applications, methods, ways, processes or any other use of such patent in the performance of the Work or by the use of any process or method connected with the Work or by the use of any materials used upon the Work, except to the extent that a claim results from the Contractor's use of a material or product specifically required by Metro-North in the Technical Provisions. The Contractor shall save harmless and indemnify the Indemnified Parties from and against all costs, expenses and damages (including reasonable attorney fees) which any of them shall incur or be obligated to pay by reason of any such infringement or claim of infringement, and shall, at the election of Metro-North, defend at the Contractor's sole expense all such claims in connection with any alleged infringement.
- E. If Metro-North be enjoined from using any portion of the Work as to which the Contractor is to indemnify Metro-North against patent claims, Metro-North may at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any patent and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove such offending facilities and refund the cost thereof to Metro-North or take such steps as may be necessary to ensure compliance by Metro-North with such injunction, to the satisfaction of Metro-North.
- F. The Contractor is responsible to determine whether a prospective supplier or Subcontractor is a party to any litigation involving patent copyright or trademark infringement, trademark, antitrust or other trade regulation claims or is subject to any injunction which may prohibit it from selling equipment to be used or installed under this Contract. The Contractor enters into any agreement with a party to such litigation at his own risk and Metro-North will not undertake to determine the merits of such litigation. Metro-North, however, reserves the right to reject any article which is the subject of such litigation or injunction when in its judgment use of such article as a result of such circumstances would delay the Work or be unlawful.

#### **ARTICLE 10.06 - RELATIONSHIP BETWEEN METRO-NORTH AND OTHERS (THIRD PARTY BENEFITS)**

Except as specifically provided in the Contract with respect to MTA, MTA C&D and affiliates of Metro-North, and their respective directors, officers and employees, and except as otherwise provided in Chapter 6 "CONTRACTOR'S LIABILITY AND INSURANCE", nothing expressed or implied in the Contract is intended or shall be construed to confer upon any person, firm or corporation, other than the parties hereto and their successors and assigns, any right, remedy, claim or benefit under or by reason of the Contract or of any term, covenant or condition hereof.

#### **ARTICLE 10.07 - AUDIT AND INSPECTION**

- A. The Contractor agrees to provide the Metro-North, the MTA, the New York State Comptroller, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of every description of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Oversight contractor access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports of every description required under this contract for a period of not less than seven (7) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Metro-North, the MTA, the New York State Comptroller, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### **ARTICLE 10.08 - INDEPENDENT CONTRACTOR**

The Contractor agrees that in accordance with its status as an independent Contractor, it will conduct itself and its affairs in a manner consistent with such status, that it will neither hold itself out as, nor claim to be a director, officer or employee of Metro-North, the MTA, CDOT, Midtown, CRC, NJT, Amtrak, their affiliates or subsidiaries, or of the State of New York by reason hereof, or make any claim, demand or application to or for any right or privilege applicable to a director, officer or employee of Metro-North, the MTA, CDOT, Midtown, CRC, NJT, Amtrak, their affiliates or subsidiaries, or of the State of New York, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security Coverage or Retirement membership or credit.

#### **ARTICLE 10.09 - GENERAL REPRESENTATIONS AND WARRANTIES**

The Contractor represents that:

- A. The Contractor is financially solvent, is experienced in and competent to perform the Work, and is authorized by the laws of the State of New York and by all other applicable jurisdictional bodies to perform the Work.
- B. The Contractor is familiar with all general and special federal, state, local and municipal laws, ordinances and regulations, if any, which may in any way affect the Work or its performance, or those employed thereunder, and with the standards referred to in the Technical Provisions or reflected on the Drawings.
- C. Prior to Bidding on the Work the Contractor has satisfied itself as to the nature and location of the Work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric power, roads and uncertainties of weather, the conformation and condition of the ground, the character of apparatus and facilities needed preliminary to and during the performance of the Work and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract. The Contractor further acknowledges and represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the sites, from exploratory work done by Metro-North, as well as from information presented on the Drawings and in the Technical Provisions which are part of this Contract. Any failure by the Contractor to acquaint and familiarize itself with all available information concerning these conditions will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- D. To the best of the Contractor's knowledge, no member, director, officer, agent, or employee of Metro-North, the MTA, its affiliates or its subsidiaries and no member of or delegate to the Congress of the United States is personally interested directly or indirectly in the Contract or the compensation to be paid thereunder; and that no representation, statement or promise, oral or in writing, of Metro-North, the MTA, its affiliates or its subsidiaries, or its or their members, directors, officers, agents or employees has induced it to enter into the Contract, with the exception of those contained in the Contract.

#### **ARTICLE 10.10 - ANTIDUMPING**

Contractor agrees to indemnify and hold harmless Metro-North from any dumping duty, loss or expense, including, but not limited to, reasonable attorney fees which Metro-North may incur arising from any claim or demand alleging that the sale of the apparatus covered by this Contract at the price therefor stated herein violates the U.S. Antidumping Act, Title 19 U.S. Code Annotated, Section 160 et. seq.

#### **ARTICLE 10.11 - LAWS AND PERMITS**

- A. The Contractor shall comply with all provisions of federal, state, and local laws, ordinances, rules, regulations and orders which would affect the Work as if it were being performed for a private corporation, except where different requirements are specifically set forth in the Contract.
- B. If the Work requires the Contractor to open, alter, remove, damage or otherwise

affect property owned by a federal, state, or local government, the Contractor shall obtain in its own name any permit or license required to allow such property to be so affected. However, the Contractor shall not apply for any permit or license in the name of, or on behalf of, Metro-North or take any other actions which would subject Metro-North to any laws, ordinances, rules, regulations and orders from which it is exempt.

#### **ARTICLE 10.12 - TRANSFER OF WORK; ASSIGNMENT OF METRO-NORTH RIGHTS**

No provision of the Contract shall in any way be affected by the transfer or any subsequent retransfer of title to the completed Work or any part thereof between or among Metro-North, MTA, or any of its subsidiaries and its affiliates, Metro-North and any financing agency or CDOT. For the purpose of the Contract, no such transfer shall be deemed to have taken place.

Nevertheless, should Metro-North from time to time formally assign to the MTA or its subsidiaries, or affiliates Metro-North's rights under the Contract, then, to the extent of such assignment, such right shall be for the benefit of MTA, such affiliate or such subsidiary (as the case may be) which shall, to such extent, have direct rights to causes of action against the Contractor under the Contract.

## **CHAPTER 11 - FEDERAL PROVISIONS**

### **ARTICLE 11.01 - NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

- A. Metro-North and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Metro-North, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **ARTICLE 11.02 - PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **ARTICLE 11.03 - FEDERAL CHANGES**

- A. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by



reference in the Master Agreement between the Metropolitan Transportation Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

- B. If change to applicable FTA regulations, policies, procedures or directives requires a change to any section of this Article XX, that change shall be incorporated into any subcontract in accordance with the flow down provision of the affected section, if any.

#### **ARTICLE 11.04 - CIVIL RIGHTS**

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor

agrees to comply with any implementing requirements FTA may issue.

- (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **ARTICLE 11.05 - VETERANS PREFERENCE**

- A. The Contractor agrees to comply with the requirements of 49 U.S.C. 5325(k), as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), which requires the Contractor to give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. 2108) who have the requisite skills and abilities to perform the work required under the Contract.
- B. This **ARTICLE** shall not be understood, construed or enforced in any manner that would require the Contractor to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- C. The Contractor shall ensure that its hiring practices reflect the requirements of this **ARTICLE** and shall, upon request, provide to Metro-North personnel data which reflects compliance with the terms contained herein.

#### **ARTICLE 11.06 - INCORPORATION OF FTA TERMS**

- A. This Contract includes, in part, certain Standard Terms and Conditions required by the United States Department of Transportation ("DOT"), whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, or any subsequent revision, including any flow down provisions, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor, or any of its subcontractors, shall not perform any act, fail to perform any act, or refuse to comply with any Metro-North requests which would cause Metro-North or the MTA to be in violation of the FTA terms and conditions.
- B. The Contractor agrees to include this requirement in all subcontracts issued pursuant to this Contract.

#### **ARTICLE 11.07 - CLEAN AIR**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations

issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Metro-North and understands and agrees that Metro-North will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or part with Federal assistance provided by FTA.

#### **ARTICLE 11.08 - CLEAN WATER**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to Metro-North and understands and agrees that Metro-North will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or part with Federal assistance provided by FTA.

#### **ARTICLE 11.09 - CARGO PREFERENCE – USE OF UNITED STATES-FLAG VESSELS**

- A. The Contractor agrees:
  - (1) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
  - (2) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Metro-North (through the Contractor in the case of a Subcontractor's bill-of-lading.)
  - (3) to include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **ARTICLE 11.10 - FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10,

which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

## **ARTICLE 11.11 - DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **A. Minimum wages**

- (1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii) The classification is utilized in the area by the construction industry; and
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (4) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
  - (5) a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise

the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- c. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**B. Withholding**

Metro-North shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Metro-North may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**C. Payrolls and basic records**

- (1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash

equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) a. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Metro-North for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents



for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
  - d. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (3) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**D. Apprentices and trainees**

- (1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its

program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**E. Compliance with Copeland Act requirements**

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**F. Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**G. Contract termination: debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**H. Compliance with Davis-Bacon and Related Act requirements**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**I. Disputes concerning labor standards**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**J. Certification of eligibility**

- (1) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **ARTICLE 11.12 - CONTRACT WORK HOURS AND SAFETY STANDARDS**

- A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- C. Withholding for unpaid wages and liquidated damages – Metro-North shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **ARTICLE 11.13 - SEISMIC SAFETY**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **ARTICLE 11.14 - FEDERAL TRANSIT ADMINISTRATION DRUG USE AND TESTING**

Each Metro-North Contractor (and their subcontractors) who provide public transportation services or services involving the performance of safety-sensitive functions (as defined in 49 C.F.R. Part 655) hereby certify compliance the Federal Transit Administration's ("FTA") regulations for the "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" set forth at 49 C.F.R. Part 655 and 49 C.F.R. Part 40. Contractor (and its subcontractors) shall permit Metro-North, the FTA, and any authorized representative, the right to inspect all facilities, records, data, and materials related to the Contractor's (and its subcontractors) compliance with 49 C.F.R. Part 655 and 49 C.F.R. 40. Such records shall be made available, upon request of the FTA and/or Metro-North, at the Contractor's place of business during normal working hours or such other place as designated by the FTA and/or Metro-North.

## **ARTICLE 11.15 - RAIL SAFETY IMPROVEMENT ACT (RSIA) OF 2008 RANDOM DRUG AND ALCOHOL USE TESTING REGULATIONS**

- A. The Contractor and its employees, agents and representatives shall comply with 49 CFR Part 219 and 49 CFR 40 in the performance of any work under the Contract. The Contractor shall have in place during the term of the Contract a random drug and alcohol testing program pursuant to Part 219 of its own or an agreement with a consortium to administer the Contractor's random testing program.
- B. The Contractor shall randomly test, or ensure that the all maintenance of way employees who perform work for METRO-NORTH are randomly tested for drug and alcohol in accordance with Part 219. A maintenance of way employee hereunder shall mean the Contractor, its employees, subcontractors, agents and any individual performing work on behalf of the Contractor whose duties include the inspection, construction, maintenance or repair of roadway track, bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen, watchmen and lookouts.
- C. The Contractor shall establish a minimum random testing pool of fifty percent (50%) for drug testing and twenty-five percent (25%) for alcohol testing of is maintenance of way employees on an annual basis such other pool designated by the FRA.
- D. The Contractor shall submit to the FRA and send a copy to METRO-NORTH on their 219 Compliance Plan that complies with 49 CFR Part 219 that details the Contractor's Random Drug and Alcohol Testing Plan, or in the event the Contractor is using a consortium, the Random Drug and Alcohol Testing Plan of the consortium. The FRA shall solely determine if the 219 Compliance Plan meets regulatory requirements.
- E. If the Contract was awarded:
  - 1. Prior to June 12, 2017, the Contractor shall submit its 219 Compliance Plan to the FRA and send a copy to METRO-NORTH prior to the June 12, 2017 effective date of the

regulation. The 219 Compliance Plans submitted to METRO-NORTH shall be sent to the attention of METRO-NORTH's Designated Employer Representative.

2. After June 12, 2017, the Contractor shall within 30 days of Notice of Award, submit to METRO-NORTH a *Certification of Compliance with FRA Random Drug and Alcohol Use Testing Regulations* (see Schedules, Forms and Certifications) that it is in compliance with 49 CFR Part 219 or, in the event that the Contractor is not in compliance, that it has submitted its 219 Compliance Plan to the FRA. The Contractor shall provide a copy of the 219 Compliance Plan to METRO-NORTH with the certification.
- F. METRO-NORTH shall have the right, at its sole discretion, to reject any 219 Compliance Plan that designates a consortium unacceptable to METRO-NORTH.
- G. The Contractor shall, at its expense, maintain its 219 Compliance Plan and any records, data, and materials related to the plan for a minimum of six (6) years after completion of the Contractor's completion of the work under the Contract or termination of the Contract. In the event that the Contractor has in place a consortium to administer its random drug and alcohol testing program, the Contractor shall ensure that any agreement with such consortium provides for the maintenance of records, data, and materials as set forth herein.
- H. The Contractor shall permit the FRA and METRO-NORTH, and also shall require its employees, subcontractors, agents (including any consortium administering the Contractor's random drug and alcohol testing program) and/or any individual who is a maintenance of way employee as defined in Part 219, to permit representatives of the FRA and METRO-NORTH to inspect all records, data, and materials related to the Contractor's 219 Compliance Plan. Such records shall be made available, upon request of the FRA and/or METRO-NORTH, at the Contractor's place of business during normal working hours or such other place as designated by the FRA or METRO-NORTH.
- I. The Contractor shall submit to METRO-NORTH a written certification attesting that it is in compliance with its obligations under Part 219 including, but not limited to, the establishment of random test pools and the actual testing of its employees as set forth in Part 219. The Contractor shall submit its certification, together with the related testing data (in a form compliant with Part 219), to the METRO-NORTH Regulatory Compliance Department on a semi-annual basis. For purposes of this section, the date for semi-annual reporting shall be calculated from the date of METRO-NORTH's Notice of Award.
- J. Unless otherwise authorized by METRO-NORTH in writing, the Contractor shall not perform any work subject to 49 CFR Part 219 subsequent to June 12, 2017 unless it has implemented a random drug and alcohol testing program in accordance with 49 CFR Part 219.

- K. Failure to comply with this provision shall be deemed a material breach of the Contract and may subject the Contractor to termination of the Contract.
- L. Failure to comply with this provision may subject the Contractor to civil penalties.
- M. In the event of any inconsistency between the terms of this provision and the FRA requirements, Part 219 of Title 49 of the Code of Federal Regulations shall govern.

#### **ARTICLE 11.16 - ENERGY CONSERVATION**

Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the New York State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C Section 6321 et. seq. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **ARTICLE 11.17 - RECOVERED MATERIALS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **ARTICLE 11.18 - CONFORMANCE WITH INTELLIGENT TRANSPORTATION SYSTEMS (ITS) NATIONAL ARCHITECTURE**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 34 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives.

#### **ARTICLE 11.19 - AMERICANS WITH DISABILITIES ACT (ADA) ACCESS**

- A. The Contractor shall comply with all relevant laws and regulations regarding accessibility for individuals with disabilities, including but not limited to 49 CFR Part 37, as well as other provisions that may be required by the particular requirements of this Contract, and any subsequent amendments to those laws and regulations.
- B. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

#### **ARTICLE 11.20 - OTHER FEDERALLY REQUIRED PROVISIONS**

Other federally required provisions have been incorporated elsewhere in this Contract. Of those, the following flow down requirements apply:

- A. Termination – The Contractor agrees to ensure that all subcontracts in excess of

\$10,000 contain termination provisions that describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated in the event this Contract is terminated for convenience by Metro-North.

- B. Breaches and Dispute Resolution – The Contractor agrees to include in all subcontracts provisions similar to the provision(s) in this Contract with regard to breaches and dispute resolution to the extent that such provision(s) allow for administrative, contractual, or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may be appropriate and may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.
- C. Government Wide Debarment and Suspension (Nonprocurement) – The Contractor agrees to include the requirements for Government Wide Debarment and Suspension in all subcontracts exceeding \$25,000 and to obtain and submit to Metro-North all such certifications from subcontractors.
- D. Restrictions on Lobbying – The Contractor agrees to include the requirements for Restrictions on Lobbying in all subcontracts in excess of \$100,000 and obtain the certification entitled “Certification of Restrictions on Lobbying” and if applicable the form entitled “Disclosure of Lobbying” for all subcontractors and suppliers whose contracts exceed \$100,000.

#### **ARTICLE 11.21 - CERTIFICATION OF FLOW DOWN OF FEDERAL PROVISIONS TO SUB-CONTRACTORS**

The Contractor shall ensure that all federally required provisions under this Contract are included in all sub-contract agreements executed in connection with this Contract. The Contractor shall certify such compliance by executing the certification found in the SCHEDULES, FORMS AND CERTIFICATIONS section and returning it to Metro-North together with a listing of each subcontractor included in the certification. The Contractor has a continuing obligation to keep the listing updated. Accordingly, the Contractor may submit more than one certification if necessary to demonstrate that all subcontract agreements executed in connection with this Contract are in compliance with this requirement.

#### **ARTICLE 11.22 - BUY AMERICA**

- A. The Contractor agrees to comply with all federal “Buy America” requirements applicable to this Contract as set forth in 49 U.S.C. §5323(j) as amended by Public Law 114-94, Fixing America’s Surface Transportation (“FAST Act”), Section 3011 and the applicable regulations (i) for rolling stock, as defined in 49 CFR §661.11, and (ii) steel, iron, or manufactured products, as defined in 49 CFR §§661.3 and 661.5. For rolling stock, the cost of components produced in the U.S. must be at least seventy percent (70%), and one hundred percent (100%) of final assembly must occur in the U.S. The conditions for a general waiver applicable to rolling stock are described in Appendix A to 49 CFR §661.11. With respect to all other deliverables, steel, iron, and manufactured products are to be produced in the United States, unless



a waiver has been granted by FTA or the product is subject to a general or specific waiver. In the case of a claimed waiver, the Contractor shall provide documentation thereof to the Railroad in advance of award of the Contract, or after award, in the case of waivers granted after award.

1. The Contractor shall obtain and maintain documentation adequate to substantiate the manufacturer, country of origin, and costs of the Contract's end products, components, and first tier subcomponents as those terms are defined in 49 CFR §661, including the location of, and description of activities for rolling stock that will take place at, the final assembly point.
  2. The Contractor shall maintain documentation in accordance with Article 10.07 [AUDIT AND INSPECTION].
- B. Flow Down: The Contractor acknowledges that it is responsible for ensuring that its subcontractors and suppliers, and all subsequent subcontractors and suppliers, are in compliance with the Buy America requirements. The Contractor shall include these requirements in each subcontract, at every tier.

#### **ARTICLE 11.23 - RESTRICTIONS ON TELECOMMUNICATIONS EQUIPMENT AND SERVICES**

This Contract is subject to 2 CFR 200.216 and Section 889 of Public Law 115-232, the National Defense Authorization Act for Fiscal Year 2019. The Contractor shall not provide under this Contract any equipment or services prohibited by those laws and regulations.

#### **ARTICLE 11.24 – NOTICE OF LEGAL MATTERS**

The Contractor shall promptly notify the FTA Chief Counsel and the FTA Regional Counsel for FTA Region 2 of any current or prospective legal matter with respect to this Contract that may affect the Federal Government.

Flowdown: The Contractor shall include an equivalent provision in each subcontract and shall ensure that such provision is included in subcontracts at any tier.

#### **ARTICLE 11.25 – CERTIFICATION OF ELIGIBILITY**

- A. The Contractor represents that neither it, its principals as defined in 2 CFR Part 180.995, nor its Subcontractors:

1. Are presently excluded, disqualified, debarred, suspended, proposed for debarment, declared ineligible to participate, or voluntarily excluded from participation in any federally assisted contract;
  2. Have been convicted within the three preceding years of any of the offenses listed in 2 CFR Part 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
  3. Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in 2 CFR Part 180.800(a); or
  4. Have had one or more public transactions (Federal, State or local) terminated within the preceding three years for cause or default.
- B. The Contractor shall comply with 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200.
- C. If the Contractor learns that it, any of its principals, or a Subcontractor at any tier meets any of the criteria in paragraph A of this Article, it must immediately notify the Project CEO in writing with a copy to the Office of the General Counsel of MTA C&D.
- D. The Contractor shall include the requirements in paragraphs A, B and C of this Article in all subcontracts for \$25,000 or more and shall require its Subcontractors to include these requirements in their subcontracts at all tiers.
- E. The representations in paragraph A of this Article are material representations of fact relied upon by MTA C&D in entering into the contract with the Contractor.

## **CHAPTER 12 - NEW YORK STATE PROVISIONS**

### **ARTICLE 12.01 - NON-DISCRIMINATION**

Contractor agrees, as required by Section 220-e (as amended) of the New York State Labor Law, that in hiring employees for Work under this Contract, or any subcontract hereunder, neither the Contractor or its Subcontractors, nor any person acting on its behalf or on behalf of such Subcontractor, shall by reason of race, creed, color, sex, national origin or disability discriminate against any person who is qualified and available to perform the Work to which the employment relates. Neither will the Contractor, its Subcontractors nor any person acting on its behalf or on behalf of such Subcontractor, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color, sex, national origin or disability. Contractor agrees that there may be deducted from the amount payable to it under this Contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of these provisions of the Contract, and that for a second or subsequent violation of this clause, the Contract may be canceled and all monies due or to become due may be forfeited. The application of these provisions of this Article shall be limited to operations performed within the territorial limits of the State of New York.

### **ARTICLE 12.02 - NEW YORK STATE LABOR LAW**

Contractor agrees that it will cause all persons employed upon the Work, including its Subcontractors, agents, officers and employees, to comply with all applicable laws in the jurisdiction in which the Work is performed. The Contractor further agrees to comply with the requirements of the New York State Labor Law. More particularly, if any part of the Work falls within the purview of the State Labor Law, the Contractor agrees as to such part of the Work to comply therewith, including Sections 220, 222, and 223 thereof, as amended and supplemented.

In conformity with such sections of the Labor Law, the Contractor agrees and stipulates that no laborer, workman or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work shall be permitted or required to work more than eight hours in any one calendar day, nor more than five days in any one week, except in cases of extraordinary emergency as defined in Section 220 of the Labor Law; and further that all wages paid for a legal day's work as herein before defined to all classes of such laborers, workmen or mechanics upon the Work or upon any material to be used upon or in connection therewith shall be not less than the prevailing rate of a day's work at the time the Work is performed in the same trade or occupation, in the location as defined in said Section 220 of the Labor Law wherein the physical work is being performed, and shall be paid in cash; except as otherwise permitted by Section 220 of the Labor Law and that each laborer, workman or mechanic employed by the Contractor or by any Subcontractor or other person on, about, or upon the Work shall receive the wages and supplements provided for in said Section 220 of the Labor Law. In obedience to the requirements of Section 222 and 222-a of the Labor Law, as amended and supplemented, the Contractor further agrees that if the provisions of the said Section 222 and 222-a are not complied with, the Contract shall be void.

### **ARTICLE 12.03 - WORKER'S COMPENSATION LAW (NYS FINANCE LAW SECTION 142)**

If the Work shall fall within the purview of the provisions of Chapter 615 of the Laws of 1922, known as the Worker's Compensation Law, and acts amendatory thereof, the Contract shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of the Contract the employees engaged thereon in compliance with the provisions of said law.

#### **ARTICLE 12.04 - WAGE RATES (NEW YORK STATE)**

The Commissioner of Labor of the State of New York, in pursuance of the provisions of Section 220 of the State Labor Law, has ascertained and determined the schedule of supplements to be provided and wages to be paid workmen, laborers and mechanics engaged in the Work. These are listed in the Prevailing Rate Schedule included hereinafter. The supplements and wages listed in the said attached schedule are subject to redetermination by the said Commissioner, in accordance with the provisions of the said Section 220, to account for changes occurring after the date of the Contract and notice thereof shall be transmitted to the Contractor whereupon the Contractor shall be required to provide such redetermined supplements and to pay such redetermined wages. If Federal Provisions are included in this Contract then the Secretary of Labor of the United States of America, in pursuance of his authority under the Federal Davis-Bacon Act, has also established minimum wage rates which must be paid to laborers and mechanics employed on the Work, included hereinafter. Where there are differences between these rates for any particular job classification and those established by the Commissioner of Labor of the State of New York, the higher rate shall apply.

In accordance with Section 220(3-a), the Contractor and every Subcontractor shall post the current prevailing wage rate schedule in a prominent and accessible place on the work site. The Contractor shall also post Public Work Project posters regarding prevailing wages which may be obtained from the New York State Department of Labor ("NYSDOL") at [www.labor.state.ny.us](http://www.labor.state.ny.us). The Contractor and every Subcontractor shall furnish Metro-North with copies of certified payrolls at least once a month, and shall maintain a copy at the work site.

The Contractor and every Subcontractor shall notify all laborers, workers or mechanics engaged in the Work in writing of the prevailing wage rate for their job classification on each and every pay stub for such workers. At the beginning of the Work and with the first paycheck after July 1 of each year, the Contractor and every Subcontractor shall provide all laborers, workers and mechanics with written notice of (i) the telephone number and address of the NYSDOL in the required NYSDOL format, and (ii) a worker's right to contact the NYSDOL if such worker is not receiving the proper prevailing wage rate or supplement. Failure to comply with these requirements will result in penalties as determined by NYSDOL.

#### **ARTICLE 12.05 - OSHA REQUIRED TRAINING**

In accordance with the New York State Labor Law, §220, section 220-h, all Public work contracts of \$250,000 or greater shall require all laborers, workers and mechanics working on the site be certified as having successfully completed the OSHA ten (10) hour construction safety and health course prior to performing any work under any such affected contract.

The Contractor and every Subcontractor shall submit to Metro-North proof that each such laborer, worker or mechanic has successfully completed the OSHA ten (10) hour training

construction safety and health course with the first certified payroll submitted under this Contract, and with each succeeding payroll where any new or additional employee is added.

Additional information regarding the training is available from the New York State Department of Labor website:

<http://www.labor.state.ny.us/workerprotection/publicwork/PDFs/OSHA10Comp.pdf#page=1>

**ARTICLE 12.06 - COMPLIANCE WITH SECTION 1269-G OF THE  
PUBLIC AUTHORITIES LAW**

- A. The Contractor shall comply fully with Section 1269-g of the Public Authorities Law.
- B. No later than 90 days from this Contract's effective date, the Contractor shall file with Metro-North a certification signed by an officer of Contractor and sworn to under the penalties of perjury that Contractor has posted and distributed the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Section 1269-g(1) requires contractors to (a) post the required information in one or more conspicuous places at each major workplace site where persons working on the project are most likely to see it; (b) post the required information on its internet and intranet Web site (if it has one) or provide a conspicuous hyperlink (labeled "Protections for Reporting Fraud in New York") to the applicable part of MTA's Web site; and (c) distribute the required information to persons, including employees and managers, who work on the project by including it in an employee handbook or by sending an e-mail.
- C. MTA has posted on its Web site, [www.mta.info](http://www.mta.info), a page providing the information specified in Section 1269-g(2), and also a sample statement. Posting and distributing that statement in the manner required by Section 1269-g(1) will satisfy the Contractor's disclosure obligations under Section 1269-g.
- D. The Contractor shall insert into every first-tier Subcontract, and require the insertion into any lower-tier Subcontract, a provision requiring each Subcontractor to comply with Section 1269-g, and requiring each Subcontractor, no later than 90 days from the effective date of each Subcontract, to file with the Contractor a certification signed by an officer of such Subcontractor and sworn to under the penalties of perjury that such Subcontractor has posted and distributed the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). In complying with their disclosure obligations, Subcontractors may also rely on the sample statement posted by MTA on its Web site.
- E. No later than 90 days from the effective date of each Subcontract of any tier, Contractor shall file with Metro-North a copy of the Subcontractor's certification filed with it pursuant to the preceding paragraph.
- F. Material compliance by the Contractor with these provisions of the Contract and with Section 1269-g shall be a material condition of payment. The Contractor shall

insert into every first-tier Subcontract, and require the insertion into all lower-tier Subcontracts, a provision stating that material compliance by a Subcontractor with Section 1269-g shall be a material condition of payment under such Subcontract. Each request for payment submitted by Contractor shall include a certification signed by an officer of Contractor and sworn to under penalties of perjury certifying that Contractor and every Subcontractor has continued to comply with the requirements of Section 1269-g.

**ARTICLE 12.07 - EQUAL EMPLOYMENT OPPORTUNITY (NYS  
EXECUTIVE LAW SECTION 312)**

The Bidder/Proposer agrees to the terms and conditions of non-discrimination as set forth within. The Bidder/Proposer, as a precondition to entering into a valid and binding contract, shall during the performance of this contract, agree to the following:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status. The contractor will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. The contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on this contract. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. The contractor shall state in all solicitations or advertisements for employees that, in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- C. At the request of Metro-North, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- D. After an award of this contract, the contractor shall submit to Metro-North a workforce utilization report, in a form and manner required by Metro-North, of the work force actually utilized on this contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by Metro-North.
- E. Prior to the award of this contract, the contractor shall submit an Equal Employment Opportunity (EEO) Policy Statement and an EEO-1 form, to Metro-North within the time frame established by Metro-North. The contractor's EEO Policy Statement, shall contain, but not necessarily be limited to, and the contractor, as a

precondition to entering into this contract, shall, during the performance of the contract, agree to the provisions set forth in paragraphs (A)-(C) above. The EEO-1 Form shall reflect contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

- F.** Within sixty (60) days of the execution of this Contract, the Contractor shall submit a staffing plan, in a form and manner required by Metro-North, which shall contain information on employees projected to work on activities related to the contract. This information must be broken down by specified ethnic background, gender and related job titles.
- G.** For construction contracts, after the award of the contract, the contractor shall submit on a monthly basis, in a form and manner required by Metro-North, throughout the life of the contract, a workforce utilization report which details employee's hours worked on activities related to this contract. This information must be broken down by specified ethnic background, gender and related job titles.
- H.** Except for construction contracts, after the award of the contract, the contractor shall submit on a semi-annual basis, in a form and manner required by Metro-North, throughout the life of the contract, a workforce utilization report which details the number of employees that worked on activities related to this contract. This information must be broken down by specified ethnic background, gender and related job titles. In instances where a contractor's workforce cannot be broken out, the contractor must affirm such and submit, an EEO-1 Form detailing its current workforce.
- I.** The provisions of this Article shall not apply to the extent that the Contractor or a Subcontractor has obtained a waiver from the Authority based on duplication or conflict with federal laws.
- J.** The contractor agrees to include the language of the provisions of paragraphs (A)-(I) above in every subcontract in such manner that the requirements of the provisions will be binding upon each subcontractor and each party to this contract as to work in connection with this contract, including the requirement that subcontractors and parties to this contract shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

#### **ARTICLE 12.08 - TROPICAL HARDWOODS**

- A.** Unless otherwise specified in this Contract or unless the Contractor has received written permission from Metro-North, the furnishing or supplying of "tropical hardwood" and "tropical wood products" as defined in New York State Finance Law Section 165(1)(b) is not permitted in connection with the performance of this Contract. The provisions of Section 165 are incorporated in this Contract by reference.

B. A list of tropical hardwoods is as follows:

<b>Scientific Name</b>	<b>Common Name</b>
<i>Vouacapous americana</i>	Acapu
<i>Pericopsis elata</i>	Afromosis
<i>Shorea almon</i>	Almon
<i>Peltogyne</i> spp	Amaranth
<i>Guibourtia ehie</i>	Amazaque
<i>Aningeris</i> spp.	Aningeria
<i>Dipterocarpus grandiflorus</i>	Apilong
<i>Ochroma lagopus</i>	Balsa
<i>Virola</i> spp.	Banak
<i>Anisoptera thurifera</i>	Bella Rose
<i>Guibourtis arnoldiana</i>	Benge
<i>Deterium Senegalese</i>	Boire
<i>Guibourtis demeusil</i>	Bubinga
<i>Prioria copaifera</i>	Cativo
<i>Antiaris africana</i>	Chenchen
<i>Dalbergis retusa</i>	Concobola
<i>Cordia</i> spp.	Corida
<i>Diospyros</i> spp.	Ebony
<i>Aucoumes klaineana</i>	Gaboon
<i>Chlorophors excelsa</i>	Iroko
<i>Acacia koa</i>	Koa
<i>Pterygota macrocarpa</i>	Koto
<i>Shorea negrosensis</i>	Red Lauan
<i>Pentacme contorta</i>	White Lauan
<i>Shores ploysorma</i>	Tanguile
<i>Terminalia superba</i>	Limba
<i>Aniba duckei</i>	Louro
<i>Kyaya ivorensis</i>	Africa Mahogany
<i>Swletenia macrophylla</i>	Amer. Mahogany
<i>Tieghemella leckellii</i>	Makora
<i>Distemonanthus benthamianus</i>	Movinqui
<i>Pterocarpus soyauxii</i>	African Padauk
<i>Pterocarpus angolensis</i>	Angola Padauk
<i>Aspidosperma</i> spp.	Peroba
<i>Peltogyne</i> spp.	Purpleheart
<i>Gonystylus</i> spp.	Ramin
<i>Dalbergia</i> spp.	Rosewood
<i>Entandrophragma cylindricum</i>	Sapela
<i>Shores philippinensis</i>	Sonora
<i>Tectona grandis</i>	Teak
<i>Lovoa trichilloides</i>	Tigerwood
<i>Milletia laurentii</i>	Wenge
<i>Microberlinia brazzavillensis</i>	Zebrawood



- C. A list of non-tropical hardwoods is as follows:

<b>Scientific Name</b>	<b>Common Name</b>
Fraxinus americana	Ash
Tilia americana	Basswood
Fagus grandifolia	Beech
Betula papyrifera	Birch
Juglans cinerea	Butternut
Prunus serotina	Cherry
Populus spp.	Cottonwood
Ulmus spp.	Elms
Nyssa sylvatica	Black Gum
Liquidambar styraciflua	Red Gum
Celtis laevigata	Hackberry
Hicoria spp.	Hickory
Acer spp.	Maples
Quercus spp.	Oaks
Hicoria spp.	Pecan
Liriodendrontulipi fera	Yellow Poplar
Platanus occidentalis	Sycamore
Juglans nigra	Black Walnut

**ARTICLE 12.09 - HAZARD COMMUNICATION STANDARD (29 CFR 1910.1200)(EMPLOYEE RIGHT-TO-KNOW - NYS LABOR LAW ARTICLE 28)**

New York State and Federal law mandate that Metro-North advise its workers about the health effects of any toxic substances to which they may be exposed. In order to properly inform employees of the composition and effects of toxic substances, Metro-North must keep on file Safety Data Sheets (SDS) for each product delivered for use or used at Metro-North facilities. Safety Data Sheets shall be in compliance with the federal Hazard Communication Standard (29 CFR 1910.1200(g)), inclusive of Appendix D, of 2012.

The following duties are incumbent upon the Contractor (including but not limited to distributors, manufacturers, suppliers, or any other company, form, or individual):

- A. Prior to shipment, the Contractor shall supply a SDS to Metro-North for chemical containing substances delivered to or used at a Work location or Work Site frequented by Metro-North employees. All SDS sheets and product labels must reference Metro-North item numbers when specified. The required documents must include the applicable contract or purchase order number and be submitted with a copy to the Procurement Officer for this contract:

Metro-North Commuter Railroad  
Assistant Director, Industrial Hygiene  
Office of System Safety  
420 Lexington Ave, 11th Floor  
New York, NY 10170

- B. SDS shall contain all health hazard information as required under Federal OSHA

Regulations inclusive of but not limited to:

- Identity of manufacturer, with emergency telephone number.
- Hazardous ingredients, with specific work exposure limits.
- Physical and chemical characteristics.
- Physical hazards.
- Reactivity data.
- Health hazards, with target organs.
- Precautions for safe handling and use (including emergency procedures).
- Control measures used to reduce potential harmful exposure.
- Emergency first aid procedures.
- Spill or leak clean-up procedures.
- Waste disposal information.

C. Manufacturer's product labeling shall include the following:

- Identity of chemical compound.
- Identity of manufacturer and emergency telephone number.
- Health Hazards with target organs.
- Storing and handling instructions.
- Protective equipment, including protective equipment symbols.
- First Aid instructions.
- Spill or leak clean-up procedure.

D. The Contractor shall supply an updated SDS whenever a product is modified.

E. Submittal of an SDS does not constitute the acceptance of the product by Metro-North. If the Contractor fails or refuses to comply with these provisions, Metro-North may declare the Contractor to be in default and exercise its rights under the termination provisions of this Contract.

F. Safety Data Sheets should be available through the product distributor and/or manufacturer. However, lack of availability does not release the Contractor of the obligation to provide the SDS as outlined in this provision.

#### **ARTICLE 12.10 - PUBLIC OFFICERS LAW SECTION 73(8)**

The Contractor is hereby informed that New York State Public Officers Law Section 73(8), which restricts certain activities by former officers and employees of public agencies, shall apply to this Contract. The Contractor shall not permit the violation of this statute by any person. Without limitation to any other remedies that Metro-North may have, the Contractor shall take all necessary actions, to the satisfaction of Metro-North, to remedy any violation of this statute.

#### **ARTICLE 12.11 - DIESEL EMISSIONS REDUCTION ACT OF 2006 ("DERA")**

Contractor represents that, in connection with activities relating to this contract, it will be in

compliance with the Diesel Emissions Reduction Act of 2006 ("DERA"), as codified at Section 19-0323 of the Environmental Conservation Law, and its implementing regulations.

In accordance with DERA, Contractor:

- A. Will use ultra low sulfur diesel fuel ( $\leq 15$ ppm) in all heavy-duty diesel vehicles ( $>8500$  lbs. G.V.W.R.) ("HDVs") employed at or on MTA job sites in rendering services or providing materials or equipment hereunder unless said vehicles are otherwise exempt.
- B. Represents that all of its affected vehicles will meet the Particulate Matter (PM) and Oxides of Nitrogen ( $\text{NO}_x$ ) emission standards required by DERA through 1) utilization of devices certified by the EPA or California Air Resources Board that achieve reductions in PM and  $\text{NO}_x$  at the highest classification level for emission control strategies that is applicable to the particular engine and application ("Best Available Retrofit Technology"), 2) utilization of engines certified to meet the 2007 EPA standard for PM ( $0.01\text{g/bhp-hr}$ ) as set forth in section 86.007-11 of Title 40 of the Code of Federal Regulations or to any subsequent USEPA standard that is at least as stringent, or 3) employment of alternative fuel vehicles which do not operate on diesel fuel ("alternative fuel" means natural gas, propane, ethanol, methanol, gasoline[when used in hybrid electric vehicles only], hydrogen, electricity, fuel cells, or advanced technologies that do not rely solely on diesel fuel or a diesel/non-diesel mixture).

If Contractor has secured a waiver (including waivers based on the useful life of the vehicle) from the BART or ultra low sulfur diesel fuel requirements from the New York State Department of Environmental Conservation, contractor will present same to MTA during negotiations or with its bid documents.

Contractor understands and acknowledges that MTA is required to submit an annual report detailing compliance with DERA by MTA and Contractor. Contractor agrees that it will provide, no later than September 1<sup>st</sup> of each calendar year, the following information as to any covered vehicles performing work on any MTA work site at which work is to be performed pursuant to this contract: 1) the number of diesel-fuel powered motor vehicles owned or operated, 2) the number of such vehicles that were powered by ultra-low sulfur diesel fuel, 3) the total number of on road diesel fuel-powered motor vehicles owned or operated having a GVWR of more than 8500 pounds, 4) the total number of off road vehicles owned or operated, 5) the number of such on road and off road vehicles that utilized BART, including a breakdown by BART installation date, vehicle model, VIN (if applicable), engine year and the type and classification level of technology used for each vehicle including the CARB designated diesel emission control strategy family name, if applicable, 6) the number of such vehicles that have been replaced/repowered with an engine certified to the applicable 2007 US EPA standard for PM as set forth in section 86.007-11 of Title 40 of the Code of Federal Regulations or to any subsequent US EPA standard for PM that is at least as stringent, 7) the number of such vehicles that have been replaced with alternative fuel vehicles, 8) the number of inventoried HDVs retired, 9) identification of all ultra low sulfur diesel waivers, findings, and renewals of such findings,

which, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated; and specific information concerning the availability of ultra low sulfur diesel fuel, 10) identification of BART waivers issued to contractor, 11) the quantity of ultra low sulfur diesel fuel used, , 12) a statement of compliance that by December 31, 2012 100% of inventoried HDV's will meet the law's requirements, and 13) any other information that may be required by the New York State Department of Environmental Conservation.

#### **ARTICLE 12.12 - IRAN DIVESTMENT ACT OF 2012**

Contractor represents that, in connection with activities relating to this contract, it will be in compliance with the Iran Divestment Act of 2012, as codified in the New York State Finance Law § 165-a.

#### **ARTICLE 12.13 - MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

#### **ARTICLE 12.14 - DEBARMENT**

In accordance with Public Authorities Law §1279-h, the Contractor will be debarred and will not be permitted to bid on future MTA contracts for a period of five years if, pursuant to regulation established by the MTA for the debarment of contractors a final determination is made by the MTA that the Contractor failed to substantially complete all work within the time frame set forth in the contract, including any subsequently executed change order, by more than ten percent of the contract term, or that the Contractor's claimed costs exceeds ten percent or more of the total contract cost, including costs associated with any subsequently executed change orders, and where such claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process.

## CHAPTER 13 - **DISADVANTAGED BUSINESS ENTERPRISE CONTRACT PROVISIONS**

### **ARTICLE 13.01 - POLICY**

It is the policy of the Metropolitan Transportation Authority (“MTA”) and its subsidiary and affiliated agencies that Disadvantaged Business Enterprises (“DBEs”) are provided the opportunity to participate in the performance of this Contract. Each Bidder shall take all necessary and reasonable steps to ensure that DBEs participate and perform work on this Contract. A copy of the applicable United States Department of Transportation (“USDOT”) Regulation, 49 C.F.R. Part 26, is available upon written request to the MTA Agency Manager.

For this Contract, the MTA Agency Manager’s name, telephone number and address are:

**RAMZI BASHJAWISH**

**(212) 340-3125 (OFFICE) : (917) 658-2394 (CELL)**

Procurement and Material Management Department  
420 Lexington Avenue 12<sup>th</sup> Fl, New York, NY 10170

### **ARTICLE 13.02 - GOAL**

The MTA Department of Diversity and Civil Rights has established a goal for DBE participation on this Contract, which the Bidder will be encouraged to meet. This goal, expressed as a percentage of the total Contract price, including change orders issued pursuant to the changes provision of the Contract is:

DBE Participation Goal: **22.5 %**

In the event the apparent low Bidder’s proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the apparent low Bidder must satisfy the good faith efforts requirements set forth in paragraph K (3) below.

The MTA Department of Diversity and Civil Rights is responsible for determining compliance by the Bidder with DBE Program requirements established in this Contract. The successful Bidder shall make all DBE Program submissions required by this Contract to the MTA Agency Manager with a copy to the MTA Department of Diversity and Civil Rights, to the following address:

Contract Number: **142486**  
Metropolitan Transportation Authority  
Department of Diversity and Civil Rights  
2 Broadway, 16th Floor  
New York, NY 10004

## **ARTICLE 13.03 - DEFINITIONS**

- (1) Certification means the process by which a business demonstrates to MTA Department of Diversity and Civil Rights or to a New York State Unified Certification Program Certifying Partner (“NYSUCP”), that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part 26.
- (2) Disadvantaged Business Enterprise or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (3) MTA Agency means the MTA Agency awarding this Contract.
- (4) New York State Unified Certification Program Certifying Partners include the Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority, the New York State Department of Transportation, and the Port Authority of New York & New Jersey.
- (5) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
  - a. Any individual the MTA Department of Diversity and Civil Rights or a NYSUCP Certifying Partner finds to be a socially and economically disadvantaged individual on a case-by-case basis.
  - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - i. Black Americans which includes persons having origins in any of the Black racial groups of Africa;
    - ii. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;
    - iii. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
    - iv. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea),

Thailand, Malaysia, Indonesia, the Philippines, Brunei,

Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- v. Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. Women
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (“SBA”), at such time as the SBA designation becomes effective.

#### **ARTICLE 13.04 - THE DBE PROGRAM**

In accordance with 49 C.F.R. Part 26, the MTA has established a DBE Program that applies to all of its subsidiary and affiliated agencies, except MTA Bridges and Tunnels, which is not subject to DBE regulations. Prospective Bidders may review a copy of the program and obtain a copy of a current list of certified DBEs from the MTA Department of Diversity and Civil Rights, 2 Broadway, 16th Floor, New York, New York 10004 or by calling (646) 252-1378. The NYUCP Directory may also be accessed on the Internet at: <https://nysucp.newnycontracts.com>.

Any business seeking to participate as a DBE on this Contract must be certified by the MTA Department of Diversity and Civil Rights or a NYSUCP Certifying Partner at the time the Bidder submits its bid. If a business is not certified, it must complete a NYSUCP DBE Certification Application, which may be obtained from the MTA Department of Diversity and Civil Rights. Certification of a business as a DBE by the MTA Department of Diversity and Civil Rights or a NYSUCP Certifying Partner means only that the business meets the DBE requirements set forth in 49 C.F.R. Part 26 and does not constitute a representation or warranty by the MTA that the business is qualified to perform the portion of the work required by its contractual arrangement with the Bidder. Prior to contract award, after and during the performance of a contract, the MTA reserves the right to re-evaluate the DBE status of previously certified businesses.

In the event the MTA Department of Diversity and Civil Rights determines that a firm identified by the Bidder or Contractor as a DBE Subcontractor on the Schedule of DBE Participation (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture (Form B) is not a certified DBE, the Bidder or Contractor shall be informed and will be provided with an opportunity to substitute a certified DBE for consideration by the MTA Department of Diversity and Civil Rights consistent with applicable provisions of 49 C.F.R. Part 26.

#### **ARTICLE 13.05 - DBE OBLIGATION**



The Bidder agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract. If the total Contract price is increased as a result of change orders, the Bidder shall make a good faith effort to achieve a commensurate increase in DBE participation. Submission of the bid constitutes a certification and representation by the Bidder that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B.

Furthermore, the Bidder agrees that the following clause applies to this Contract:

“The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the MTA Agency or MTA deems appropriate.”

The Bidder also agrees to ensure that the above clause is placed in every contract or subcontract resulting from this project.

#### **ARTICLE 13.06 - REMEDIES FOR BIDDER’S DEFAULT PRIOR TO CONTRACT AWARD**

A Bidder’s failure to make good faith efforts to satisfy the DBE goal and to comply with paragraph K below shall constitute a default by the Bidder of its obligation under the Bidder’s bid. Such a default may result in a forfeiture of the Bidder’s bid deposit or other security as provided in the Bidder’s bid, in addition to any other available remedy.

#### **ARTICLE 13.07 - PROMPT PAYMENT OF RETAINAGE AND PROGRESS PAYMENTS TO SUBCONTRACTORS**

The Contractor agrees to include in all subcontracts a provision that the full amount of retainage owed to any Subcontractor which is attributable to such subcontract will be paid by the Contractor within thirty (30) days of the date when all tasks called for in the subcontract have been accomplished and documented as required by the MTA Agency and in accordance with 49 CFR 26.29.

In addition to the other conditions precedent to the issuance of payment set forth in the Contract, the Contractor shall also certify as a condition precedent to the issuance of payment by the MTA Agency that:

- (1) all retainage owed to any Subcontractor was paid within thirty (30) days of the date when all tasks called for in the subcontract have been accomplished and documented as required by the MTA Agency and in accordance with 49 CFR 26.29; and

- (2) all Subcontractors have been paid, within thirty (30) days of the MTA Agency's payment to the Contractor, the amount due to them for the work performed which was encompassed by any previous progress payments made to the Contractor.

Any delay or postponement of the return of retainage by the Contractor to Subcontractors from the time frame set forth in subsection 1 above of this paragraph, may occur only for good cause following written approval of the MTA Agency.

Any failure by the Contractor to comply with this paragraph deemed by the MTA Agency to be material will be considered a material breach of the Contract.

The requirements of this paragraph apply to subcontracts.

#### **ARTICLE 13.08 - RETURN OF SUBCONTRACT RETAINAGE TO CONTRACTOR**

When all tasks called for in a subcontract, including Subcontractor punch list work and deliverables, have been completed in a manner satisfactory to the Contractor, and have been accomplished and documented as required by the MTA Agency (see also paragraph G above), the Contractor may request that the MTA Agency inspect the corresponding work attributable to such subcontract so as to determine its acceptability to the MTA Agency. In the event that the MTA Agency accepts such corresponding work attributable to such subcontract and after the Contractor has returned the full amount of retainage attributable to such subcontract to the Subcontractor (see paragraph G above), the Contractor may submit a written request for payment of such full amount of retainage so returned to the Subcontractor from the monies being retained by the MTA Agency pursuant to its contract provisions pertaining to retainage. The Contractor's request must be accompanied by the Contractor's certification that the full amount of retainage held by the Contractor with respect to the completed subcontract has been returned to the Subcontractor, which certification must indicate the dollar value of retainage so returned to the Subcontractor.

Unless the MTA Agency elects to return less than the dollar value of retainage certified by the Contractor to have been returned to the Subcontractor, as provided below in this subsection, upon the Contractor's submission of the written request for payment as set forth above, the MTA Agency will return to the Contractor the amount of retainage set forth in the Contractor's certification required by subsection 1 above, of this paragraph, such payment to be made within thirty (30) days from the date of the MTA Agency's receipt of such written request in accordance with MTA's Prompt Payment Rules. The required supporting documentation for the Contractor's entitlement to such payment shall be the Contractor's certification described in subsection 1 above, of this paragraph. Notwithstanding the foregoing, in lieu of returning the full amount of retainage set forth in such Contractor's certification, the MTA Agency, at its sole discretion, may elect to return an amount equal to five percent (5%) of the MTA Agency's estimate of the value of the work encompassed

within the completed subcontract.

Any acceptance of work by the MTA Agency under this paragraph shall not be deemed to constitute findings by the MTA Agency that the work of the entire Contract is complete, or is fit for its intended purpose, or that the Contractor's performance has been in compliance with the Contract.

The requirements of this paragraph do not apply to subcontracts.

#### **ARTICLE 13.09 - SUBMISSION OF DBE UTILIZATION PLAN**

Unless otherwise provided in the Information for Bidders, the apparent low Bidder shall, by close of business on the 7th calendar day after the public bid opening date, submit a completed Schedule of DBE Participation (Form A) and Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture (Form B) (both of which are included in Schedule G) for each DBE firm identified on the Form A, to the MTA Agency Manager . The Schedule of DBE Participation must demonstrate that the level of DBE participation will satisfy the DBE goal in paragraph B of this document. If the level of DBE participation is less than the DBE goal, the Bidder must submit evidence of its good faith efforts to satisfy the DBE goal as provided in paragraph K herein. Upon request of the MTA Agency Manager, any other Bidder shall, within seven (7) calendar days of such request, submit its completed Form A and Form B, and, if appropriate, the required evidence of good faith efforts. Bidders have been furnished with these forms in the solicitation document. Additional forms may be obtained from the MTA Agency Manager. The MTA Agency, in its sole discretion, may extend the submission period for a reasonable time.

By listing a firm on its Schedule of DBE Participation (Form A) and the accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture (Form B), the Bidder is representing the following:

- (1) It intends to use the firm for the work specified in the Schedule of DBE Participation Form (Form A) and the accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B), including any change order work required to perform the work specified;
- (2) On the basis of information known to it and after reasonable inquiry, it believes such firm is a certified DBE and is technically and financially qualified to perform the work specified and that the firm is available to perform the work;
- (3) If it is awarded the Contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this Contract and provided that the DBE is certified by the MTA Department of Diversity and Civil Rights or a NYSUCP Certifying Partner, for the work described and at the price set forth in the Schedule of DBE Participation  
(Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B);

- (4) It will not substitute a DBE firm listed in its Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B), unless the MTA Agency provides prior written approval in accordance with paragraph L below; and
- (5) If Bidder is a DBE and lists itself on the Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B), that it will perform the work specified therein with its own workforce.

#### **ARTICLE 13.10 - CREDIT TOWARD DBE GOAL**

No credit toward meeting the DBE goal will be allowed unless the MTA Department of Diversity and Civil Rights or a NYSUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The MTA Department of Diversity and Civil Rights will use the following guidelines to determine the amount to be counted toward the DBE goal:

- (1) The MTA Department of Diversity and Civil Rights will credit the entire amount of that portion of a construction contract (or other contract not covered by subsection 3 of this paragraph) that is performed by the DBE's own forces. The MTA Department of Diversity and Civil Rights will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subcontractor purchases or leases from the prime Contractor or its affiliates).
- (2) The MTA Department of Diversity and Civil Rights will credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the MTA Department of Diversity and Civil Rights determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's Subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (4) When a DBE performs as a participant in a joint venture, the MTA Department of Diversity and Civil Rights will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (5) The MTA Department of Diversity and Civil Rights will credit expenditures

to a DBE Subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the Contract.

(6) Commercially Useful Function (For DBEs Other Than Trucking Companies)

- a. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the MTA Department of Diversity and Civil Rights will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the MTA Department of Diversity and Civil Rights will examine similar transactions, particularly those in which DBEs do not participate.
- c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the MTA Department of Diversity and Civil Rights will presume that it is not performing a commercially useful function.
- d. When a DBE is presumed not to be performing a commercially useful function as provided in subsection (6) (c) of this paragraph, the DBE may present evidence to rebut this presumption.

(7) Commercially Useful Function (For DBE Trucking Companies)

The MTA Department of Diversity and Civil Rights will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
  - c. The DBE will receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
  - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE, which leases trucks from another DBE, will receive credit for the total value of the transportation services the lessee DBE provides on the Contract.
  - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE, which leases trucks from a non-DBE, is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of transportation services provided by the lessees, since these services are not provided by a DBE.
  - f. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- (8) The MTA Department of Diversity and Civil Rights will credit toward DBE goals expenditures with DBEs for materials or supplies as provided in the following:
- a. If the materials or supplies are obtained from a DBE manufacturer, the MTA Department of Diversity and Civil Rights will credit 100 percent of the cost of the materials or supplies toward DBE goals. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
  - b. If the materials or supplies are purchased from a DBE regular dealer, the MTA Department of Diversity and Civil Rights will credit 60 percent of the cost of the materials or supplies toward DBE goals. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement,

gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealer's own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

- c. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the MTA Department of Diversity and Civil Rights will credit toward the DBE goal the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided that the MTA Department of Diversity and Civil Rights determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The MTA Department of Diversity and Civil Rights will not credit any portion of the cost of the materials and supplies themselves toward DBE goals.
- (9) If a firm is not currently certified as a DBE in accordance with 49 C.F.R. Part 26 at the time of the execution of the Contract, the MTA Department of Diversity and Civil Rights will not credit the firm's participation toward any DBE goals, except as provided for in 49 C.F.R. Section 26.87(i).
  - (10) When a firm loses its DBE certification, the MTA Department of Diversity and Civil Rights will follow the applicable regulations in 49 C.F.R. Section 26.87(i).
    - a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the Contract or overall goal. The MTA Agency will direct the prime Contractor to meet the Contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.
    - b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the prime Contractor may continue to receive credit toward its DBE goal for the firm's work.
    - c. The Contractor shall not include any provision in its subcontract(s) which is inconsistent with this article.
  - (11) The MTA Department of Diversity and Civil Rights will not credit toward the DBE goal the participation of a DBE Subcontractor until the amount being counted toward the goal has actually been paid to the DBE.

#### **ARTICLE 13.11 - CONTRACT AWARD**

- (1) Only Bidders who meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract. If a Bidder's proposed percentage of DBE participation does not equate to a whole number, the figure will be rounded to the nearest whole number.
- (2) If the apparent low Bidder does not reach the DBE goal, the Bidder shall nevertheless remain eligible for award of the Contract if it can demonstrate to the satisfaction of the MTA Department of Diversity and Civil Rights that it has made a good faith effort to meet the DBE goal. In making such a determination, the MTA Department of Diversity and Civil Rights shall consider, among other things, the criteria set out in subsection 3 below of this paragraph.
- (3) Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE Contract goal, a Bidder shall submit with the Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B), a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

- a. That the Bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the MTA Agency to inform DBEs of contracting and subcontracting opportunities;
- b. That the Bidder advertised in general circulation, trade association, and minority-focus media, at least 15 days before bid opening, to request DBE subcontract performance on the specific project;
- c. That the Bidder provided written notice to a reasonable number of specific DBEs that their interest in the Contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- d. That the Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;
- e. That the Bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- f. That the Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the Contract;
- g. That the Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. Documented efforts of



negotiations with DBEs must include at a minimum:

- i. The names, addresses and telephone numbers of DBEs that were considered;
  - ii. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
  - iii. A statement explaining why agreements with the DBEs could not be reached.
- h. That the Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the MTA Agency or Contractor;
  - i. That the Bidder made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  - j. That the Bidder effectively used the services of available minority/women community organizations; minority/women Contractors' groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

(4) **Reconsideration of Good Faith Efforts Determination**

In determining whether a Bidder has demonstrated good faith efforts, the MTA Department of Diversity and Civil Rights will look at all efforts that the Bidder has made. If the MTA Department of Diversity and Civil Rights determines that the apparent low Bidder has failed to make good faith efforts to meet the DBE goal, the MTA Department of Diversity and Civil Rights will promptly notify the MTA Agency which will before awarding the Contract, provide the Bidder an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder will have the opportunity to provide written documentation or argument and to meet with a designated MTA Agency representative concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision will be sent to the Bidder explaining the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so.

**ARTICLE 13.12 - DBE MODIFICATIONS**

In the event that a Bidder wishes to modify its Schedule of DBE Participation (Form A) after its submission or after a contract is awarded, then the Bidder must request approval for the modification from the MTA Agency Manager, in writing, with a copy mailed to the MTA Department of Diversity and Civil Rights. If a Bidder

intends to terminate and/or substitute a DBE firm, it must also provide written notice to the DBE Subcontractor, with a copy to the MTA Agency Manager, of Bidder's intent to terminate and/or substitute the firm. A prime Contractor may not, without the MTA Agency's and the MTA Department of Civil Rights' prior consent, terminate for convenience a DBE Subcontractor approved under this Contract and then perform the work of the Contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved Schedule of DBE Participation. When a DBE Subcontractor is terminated or fails to complete its work for any reason, the prime Contractor must make good faith efforts to find another DBE Subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the Contract as the former DBE to the extent needed to meet the Contract goal. The prime Contractor must provide the MTA Agency Manager, with a copy mailed to the MTA Department of Diversity and Civil Rights, with any and all documents and information as may be requested with respect to the modification. If the MTA Department of Diversity and Civil Rights determines that the prime Contractor failed to make good faith efforts, the MTA Agency may consider such failure a breach of contract, entitling the MTA Agency to remedies provided herein, in addition to any other available remedy.

#### **ARTICLE 13.13 - EEO/NON-DISCRIMINATION**

- (1) During the performance of this Contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that all applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. The Contractor further agrees to comply with all provisions of Executive Order 11246 and applicable regulations, 41 C.F.R. Parts 60-4.

- (2) EEO Submission Requirements

The apparent low Bidder will be required to submit an EEO-1 Form and EEO Policy Statement within seven (7) calendar days after it receives verbal notification of its apparent low Bidder status from the MTA Agency Manager. All other Bidders must submit the document within two (2) business days of the verbal request. The MTA Agency Manager will confirm, in writing, any verbal notification. However, the timeframe for the Bidder's response is based upon the date of the verbal notification. Upon written request, the MTA Agency Manager may extend the deadline for submission of an EEO1 Form or an EEO Policy Statement. If a Bidder does not submit an EEO-1 Form or an EEO Policy Statement, the bid may be rejected unless reasonable justification for such failure is provided in writing or a commitment is made to provide such document within the timeframe established by the MTA Agency.

## **ARTICLE 13.14 - INTEGRITY MONITORING**

MTA Department of Diversity and Civil Rights is responsible for monitoring compliance by the Contractors, Subcontractors and others with all relevant laws, rules, regulations, and contract provisions governing the DBE program. MTA Department of Diversity and Civil Rights monitors contracts to detect and deter fraud, especially as it relates to the use of DBE firms.

MTA Department of Diversity and Civil Rights will perform on-site investigations and payment verifications; review relevant Contractor and Subcontractor documents, including but not limited to financial records, certificates and licenses, certified payroll reports, employee sign-in sheets. Representatives from MTA Department of Diversity and Civil Rights will interview Contractors and Subcontractors' employees either on-site, at our offices, or at any other location MTA Department of Diversity and Civil Rights determines is in the best interest of the MTA Agencies.

Contractors and Subcontractors shall cooperate fully with MTA Department of Diversity and Civil Rights staff and shall provide all requested documents immediately upon request. The MTA Agency may consider failure to cooperate a breach of contract, entitling the MTA Agency to remedies provided herein, in addition to any other available remedy.

## **ARTICLE 13.15 - REPORTING AND RECORDKEEPING**

- (1) The Contractor shall submit documentation concerning its performance in meeting the DBE goal during the term of the Contract.
  - a. If the duration of this Contract is less than one (1) year, within 60 days of execution of this Contract, unless extended by the MTA Agency in writing, the Contractor must enter into written subcontract agreements with the DBEs listed in its Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a Subcontractor/Subconsultant/Joint Venture Form (Form B) or with substitutes approved by the MTA Department of Diversity and Civil Rights.
  - b. If the duration of this Contract is one (1) year or more, not later than 30 days before a Subcontractor commences work on the Contract, unless extended by the MTA Agency in writing, the Contractor must enter into written subcontract agreements with the DBEs listed in its Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a Subcontractor/Subconsultant/Joint Venture Form (Form B) or with substitutes approved by the MTA Department of Diversity and Civil Rights.
  - c. The Contractor immediately upon execution shall provide copies of the Contractor's executed subcontract agreements with DBEs to the MTA Agency Manager, and upon request to the MTA Department of Diversity and Civil Rights.

- d. The Contractor must submit subcontract agreement modifications with DBEs any time a significant change in any items of work, material, services, or subcontract value is agreed upon.
- (2) The Contractor must submit a work schedule outlining when the DBE Subcontractors will commence and complete work on the project.
- (3) The Design-Builder must submit monthly reports on progress towards meeting its DBE goal. As of October 2016, the DBE Monthly Utilization Report Form E has been replaced with a web based system. Hard copy Form E are no longer accepted. All contractors/consultants are required to report monthly utilization data on-line using the New York State Contract System ("NYSCS"). By the 10th of each month, the contractor/consultant must enter required DBE goal attainment progress into the New York State Contract System. To access the NYSCS visit <http://ny.newnycontracts.com> input the requested information and follow the instructions. The MTA Agency Manager will issue a job aid to assist with identifying your MTA/MNR contracts in the system. Technical support is also available via email at [ny@newnycontracts.com](mailto:ny@newnycontracts.com) for assistance with (a) account access, (b) password reset, (c) new users, (d) user deactivations.
- (4) The Contractor must promptly notify the MTA Agency Manager of any situation in which any regularly scheduled progress payment is not made to a DBE.
- (5) The Contractor must promptly inform in writing, the MTA Agency Manager when it has reason to believe its attainment of the DBE participation goal is in jeopardy. In this regard, the Contractor must inform the MTA Agency Manager, in writing with supporting documentation, immediately upon learning that a DBE firm is unable or unwilling to perform the subcontracted services.
- (6) The willful making of false statements or submission to MTA or any of its Agencies of incorrect information shall constitute a breach of the Contract.

#### **ARTICLE 13.16 - REMEDIES FOR CONTRACTOR'S DEFAULT AFTER AWARD AND EXECUTION**

A Contractor's material failure to satisfy the requirements of the DBE provisions set forth above shall constitute a material breach of the Contract. A default under these obligations, including but not limited to a failure to meet the goal set forth in the Schedule of DBE Participation Form (Form A), or to demonstrate good faith efforts to meet the goal, may result in one or more of the following:

- (1) A finding that the Contractor is not a responsible Contractor for purposes of future contract awards.
- (2) Assessment of damages;
- (3) Issuance of stop work or payment order;

- (4) Termination of the Contract;
- (5) Any other available remedy.

**ARTICLE 13.17 - PROHIBITION OF AGREEMENTS TO RESTRICT  
COMPETITION**

Agreements between a Bidder and a DBE in which the DBE agrees not to provide subcontracting quotations to any other Bidders are prohibited.

# MONTHLY WORK FORCE UTILIZATION REPORT WF-257 - CONSTRUCTION

Agency _____ /Code _____		Reporting Period _____	
Contractor Firm Name _____		Address _____	
		City _____	State _____ Zip _____
Federal ID/Payee ID No. _____ Contract No. _____		Location Of Work _____	
Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor		County _____ Zip _____	
Contract Amount \$ _____		Contract Start Date _____ Percent of Job Completed _____	

**F=Foreman/Supervisor J=Journeyman A=Apprentice/Trainee		Total Hours Worked During Reporting Period												Total Number of Employees		Total Number of Minority Employees	
Job or Trade Category	**	Total Hours Worked All Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native		Minority %	Female %				
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
Field Office Staff:																	
Professionals																	
Office/Clerical																	
Laborers	F																
	J																
	A																
Equipment Operators	F																
	J																
	A																
Surveyors	F																
	J																
	A																
Truck Drivers	F																
	J																
	A																
Iron Workers	F																
	J																
	A																
Carpenters	F																
	J																
	A																
Cement Masons	F																
	J																
	A																
Painters	F																
	J																
	A																
Electricians	F																
	J																
	A																
Plumbers	F																
	J																
	A																
Other:	F																
	J																
	A																
GRAND																	

Company Official's Name _____	Title _____
Company's Official Signature _____	Date _____
Telephone Number (       ) _____	

**MONTHLY WORK FORCE UTILIZATION REPORT - CONSTRUCTION**  
**INSTRUCTIONS FOR COMPLETION FORM WF-257 (CONS.257)**

**PURPOSE:** The Monthly Work Force Utilization Report is prepared by all construction contractors and subcontractors to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government (e.g. U.S. Department of Labor) for reporting equal employment opportunity data. The report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professional and office clerical field office staff working on the contract shall also be reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

**GENERAL INFORMATION:**

1. Name of contracting state agency and state agency code (five digit code).
2. Reporting period covered by report (month/year).
3. Contractor or subcontractor firm name (prime contractor on summary report submitted to agency) and address (including city name, state and zip code).
4. Contractor or subcontractor Federal Employer Identification number or payee identification number (prime contractor i.d. on summary report); check to indicate prime or subcontractor report.
5. Contract Amount is dollar amount based on terms of the contract.
6. Contract number is the agency assigned number given to the contract (seven digits).
7. Location of work including county and zip code where work is performed.
8. Contract start date is month/day/year work on contract actually began.
9. Contractor's estimate of the percentage of work completed at the end of this reporting period.

**JOB OR TRADE CATEGORIES:** A field office staff category plus ten job categories are printed on the form. These are trades commonly used in construction. The categories are intended to be general in nature, and may include several occupational job titles. If trades other than those identified are required to perform work on the contract, this work should be combined and reported in the "Other" category. Work level designations of foreman/supervisor (F), journeyworker (J), and apprentice/trainee (A) are included as separate entries for each standard job category; hours worked must be recorded opposite the appropriate work level for each.

**TOTAL HOURS WORKED DURING REPORTING PERIOD:** Report the total hours worked by all employees during the reporting period, regardless of ethnicity, under each job category in column (1) for males (M) and column (2) for females (F). In columns (3) thru (10) report the total hours worked by male and female minority group members of one of the following defined groups:

- Black (not of Hispanic origin): all persons having origins in any of the Black African racial groups;
- Hispanic: all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- Asian or Pacific Islander: all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- Native American or Alaskan Native: all persons having origins in any of the original peoples of North America.

**TOTAL % MINORITY =** sum of all employment of minority group members (M and F) in the job category divided by the total hours worked by all employees in that job category (column 1 + column 2).

**TOTAL % FEMALE =** total hours worked by all female employees in the job category (column 2) divided by the total hours worked by all employees in that job category (column 1 + column 2).

**TOTAL NUMBER OF EMPLOYEES:** record the total number of all persons employed during the reporting period, regardless of ethnicity; report the numbers of male (M) and female (F) employees separately.

**TOTAL NUMBER OF MINORITY EMPLOYEES:** record the total number of minority persons employed during the reporting period; report the numbers of minority male (M) and minority female (F) employees separately.

**GRAND TOTALS:** column totals should be calculated for all job categories combined. Total minority and female percentages should be calculated as shown above, based on the column grand totals.

**SUBMISSION:** The monthly work force utilization report is to be completed by both prime and subcontractors and signed and dated by an authorized representative before submission. This Company Official's name, official title and telephone number should be printed or typed where indicated on the bottom of the form.

The prime contractor shall complete a report for its own work force, collect reports completed by each subcontractor, and prepare a summary report for the entire combined contract work force. The reports shall include the total work hours for all employees in each work category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by Part 142 of Title 5 of the NYCRR pursuant to Article 15-A of the Executive Law.

## CHAPTER 14 - SUBMITTALS

### ARTICLE 14.01 - SUBMITTALS

#### A. SUBMITTAL SCHEDULES

- (1) The Contractor shall submit a schedule within 30 calendar days after the award of the Contract showing dates for submission, review, approval and required late finish date for approval of all documents required to be submitted by the Contract. This schedule will be reviewed by the Project CEO and any and all changes required by the Project CEO shall be made by the Contractor. The final schedule shall be approved by the Project CEO. The schedule shall take into account the sequence of Work and the time required to prepare and approve the various submissions. The allotments shall be reasonable within the time set for completion of the Contract.
- (2) In scheduling, allow fifteen (15) working days for review by the Project CEO of design drawings and design data and fifteen (15) working days for review by the Project CEO of shop drawings, CPM Baseline and other submittals. For any submittal or combination of submittals totaling more than twenty (20) drawings and/or other submissions in any three (3) consecutive working days, the schedule shall allow one additional day of Project CEO's review time for each total of two (2) drawings and/or other submissions in excess of twenty (20).
- (3) Delays caused by the Contractor's untimely submissions will not be accepted as a basis for extension of the Contract completion date.
- (4) The Contractor shall take responsibility for, and bear all cost or damages which may result from the ordering of any material or from proceeding with any part of the Work prior to the review and approval by the Project CEO of required submittals.

#### B. IDENTIFICATION OF SUBMITTALS

- (1) All submittals must be consecutively numbered. Each submittal must be accompanied by a letter of transmittal containing all pertinent information required for identification, checking and/or review of submittals, including the specification section, transmitted with that letter.
- (2) On at least the first page of each copy of each submittal, and elsewhere as required for positive identification, clearly indicate the submittal number in which the item was included.
- (3) When material is resubmitted for any reason, forward such resubmittals with a new letter of transmittal. Clearly indicate the status of the resubmittal with applicable reference to previous submittals, as specified in the Project Document Control System.
- (4) Maintain an accurate submittal log for the duration of the Contract, showing current status of all submittals at all times. Make the submittal log available for the Project CEO's review upon request. Each resubmittal requires new activities which shall be added to the CPM schedule.

#### C. DESIGN DRAWINGS AND DESIGN DATA

- (1) The Contractor shall submit one mylar reproducible and five (5) prints each of the engineering drawings of that portion of the Work consisting of the design, and of such other engineering and design data and drawings as are prescribed in the Technical Provisions or are necessary to



demonstrate compliance with the requirements of the Technical Provisions, to the Project CEO for review. The Contractor shall furnish one mylar reproducible and five (5) prints each of the outline and arrangement drawings of the major items of apparatus that the Contractor is required to furnish as a part of the Work to the Project CEO for review and comments. It shall be the Contractor's responsibility to coordinate drawing submittal with its construction schedule. The maximum size of drawings shall be 22"x34".

- (2) The Project CEO will examine said engineering drawings and engineering and design data, make modification when necessary and return one print to the Contractor. Such modifications, upon acceptance by the Contractor, will not relieve the Contractor of any of its responsibilities hereunder. The Contractor shall not proceed with procurement or manufacture of its apparatus, or with construction, until engineering drawings and engineering and design data have been reviewed and approved, unless specifically authorized to do so by the Project CEO.
- (3) Revised drawings, if required, shall be submitted by the Contractor within fifteen (15) calendar days after receipt of the Project CEO's comments.

#### D. SHOP DRAWINGS

- (1) Shop drawings submitted by Subcontractors shall be sent directly to the Contractor for checking. The Contractor shall be responsible for their submission to the Project CEO at the proper time to prevent delays in the delivery of materials. The Contractor shall thoroughly check all Subcontractors' shop drawings to satisfy itself that they conform to the intent of the Contract Drawings and the Technical Provisions. Drawings found to be inaccurate or otherwise in error shall be returned to the Subcontractors by the Contractor for correction before submitting them to the Project CEO.
- (2) All details on shop drawings submitted for review shall clearly show the relation of the various parts, and where the Work depends on field measurements, shall be obtained by the Contractor and noted on the shop drawings before being submitted for review to the Project CEO.
- (3) All shop drawings submissions shall be properly referenced to indicate clearly the location, service and function of each particular item included thereon, and shall include proper reference to the appropriate Technical Provision Section and/or Drawing number and detail.

Where manufacturer's publications in the form of catalogs, pamphlets, or other data sheets are submitted in lieu of prepared shop drawings, such submissions shall specifically indicate the item for which approval is requested. Identification of items shall be made in ink. Submissions showing only general information will not be accepted.

- (4) If the shop drawings contain any departure from the Contract requirements, specific mention thereof shall be made in the letter of transmittal. Where such departures require revisions to layouts or structural changes to the Work as shown, the Contractor shall, at his own expense prepare and submit revised layout and structural drawings for approval. Such drawings shall be the same size as the Contract Drawings, unless otherwise approved by the Project CEO.

#### E. PRODUCT DATA

Submit six (6) copies of each item of product data such as catalog cuts, pamphlets and manufacturers' literature where required by the Technical Provisions. Modify product data by deleting information which

is not applicable to the Contract or by marking each copy to identify pertinent products. Identification of items shall be made in ink. Submissions showing only general information will not be accepted. Supplement standard information, if necessary, to provide additional information applicable to the Contract. Submit three (3) samples of each item when specified.

#### F. REVIEW OF SHOP DRAWINGS AND PRODUCT DATA

- (1) The Project CEO will review all shop drawing and product data submittals, make modifications when necessary, and return one copy to the Contractor within the time specified in Paragraph A.(2). Except as otherwise provided in the Technical Provisions, submitted samples will not be returned to the Contractor. Such modifications, upon acceptance by the Contractor, shall not relieve the Contractor of any of its responsibilities for performance of the Work as required hereunder. The Contractor shall not proceed with procurement, manufacture or fabrication of items submitted for review, until such submittals have been reviewed, unless specifically authorized to do so by the Project CEO.
- (2) If submittals show variations from the Contract requirements because of standard shop practice or for other reasons, the Project CEO may accept any or all such variations. Variations accepted by the Project CEO shall be at no additional cost to Metro-North. Notwithstanding that such drawings have been reviewed and accepted by the Project CEO, failure to describe such variations in the letter of transmittal shall not relieve the Contractor of the responsibility for executing the Work in accordance with the Contract requirements.

#### G. FINAL SHOP DRAWINGS

Two prints and one mylar reproducible of final shop drawings shall be mailed to the Project CEO within ten (10) days of receipt of the Project CEO's approval. All copies shall be marked "This drawing was approved by the Project CEO on [DATE]." The reproducibles shall include space for Metro-North's drawing numbers and title blocks. Reproducibles must be forwarded in mailing tubes. Folded reproducibles will not be accepted.

#### H. "AS-BUILT" DRAWINGS

The Contractor shall keep an accurate record of all deviations from the approved design drawings and the Technical Provisions which may occur in the Work as actually constructed and shall submit to the Project CEO on or before the tenth day of every month marked prints showing complete information as required for the correction of the drawings to the "as-built" condition. Any such deviation must be approved by the Project CEO.

Metro-North will make available to the Contractor reproducible contract design drawings or AutoCAD drawing files and Technical Provisions in Microsoft Word file format on a CD. Upon completion of the Work, the Contractor shall add the aforementioned "as-built" changes to the reproducible drawings and computer aided design (CAD) contract drawings. The Contractor shall furnish additional drawings where the "as-built" changes cannot readily or completely be shown on the Contract drawings. The Contractor shall also provide Metro-North with the as-built drawings both on CAD Disc (CD) of AutoCAD drawings and PDF files.

As-Built Drawings requirements shall include updated Contract Drawings reviewed and approved by Metro-North, all unmodified drawings, Metro-North approved shop drawings, and specifications with revisions highlighted. The submission shall include one (1) set of full sized drawings using

monochromatic lines and shades on Mylar (24" x 36"), one (1) set of full sized drawings on bond paper using only if necessary polychromatic lines and shades, and two (2) CD's containing the approved As-Built Drawings in DWG and PDF format, Technical Provisions and Reports. If reproducible drawings were made available to the Contractor for revisions, then same drawings shall be submitted with the "as-built" revisions.

The following requirements shall apply to the As-Built Drawing submittals:

1. A CSV (Comma Separated Value) file shall be populated for the following fields:
  - a. Line Description –
  - b. Structure - Drop Down Choice
  - c. Milepost – Data base pull based on Structure (Line-specific numeral to the nearest hundredth of a mile, e.g. HA 29.54)
  - d. Contract Number - default "0000" bottom right – need to manually enter – may repeat
  - e. Contract Title – manually enter – may repeat
  - f. Date – Only the Year – the latest date noted in bottom right
  - g. As-Built Drawings (Yes/No) – Default is No – if see "As Built" then code Yes – stamp on cover sheet or all the sheets
  - h. U Number– bottom right – Sheet Number
  - i. GCT Number will match a database pull
  - j. Longitude and Latitude in accordance with Article 14.02 - GIS
  - k. Comments 1
  - l. Comments 2
  - m. Comments 3
2. A final set of Drawings including any and all addenda and the above mentioned index file in CSV format shall be submitted to Capital Programs Technical Services Department, 420 Lexington Ave, 11<sup>th</sup> Floor, New York, NY 10017.
3. Multiple drawings on one electronic drawing file shall not be permitted.
4. Names for electronic drawing files shall match drawing number and title as shown on the list of drawings.
5. All drawings of the Bid Documents shall be included in the As-Built drawings, with deleted details clearly crossed out.
6. Additional As-Built Drawings can be added to the Bid Documents set as required, and shall be of similar size with similar borders and title block.
7. Specifications, and reports, if any, shall be in Microsoft Word file format.
8. A CD of the final specification and reports including any and all addenda shall be provided in Microsoft Word and in pdf format to the Capital Programs Technical Services Department, 420 Lexington Avenue, 11th floor, New York, New York 10170.

As-Built Drawings Signature Stamp: The Contractor shall affix the As-Built Drawings Signature Stamp to each drawing on the AutoCAD drawings and each drawing shall be signed by the representative of the responsible party. The As-Built Drawings Signature Stamp shall have a border measuring four (4) by two

(2) inches and contain the following information:

1. The title "AS-BUILT" in one-half inch lettering, centered across the top,
2. The title "CERTIFIED BY" followed by a signature line on the same line. The following line shall contain the company name of the Contractor.
3. The title "ACCEPTED BY" followed by a signature line on the same line. The following line shall contain the company name of the Construction Manager.
4. The title "DATE" followed by the date of the As-Built drawings submission.

The Contractor shall include the As-Built Drawings signature stamp on a separate layer of each drawing of the AutoCAD drawing files.

As-Built drawings shall also show, but not be limited to, the location (coordinates x,y) of underground or embedded pipelines, electrical, communication and instrumentation conduits and other utilities not readily discernable from the surface, and indicate actual depths or inverted elevations (coordinate z).

#### I. CAD DISKS

Upon completion of the Work, the Contractor shall supply Metro-North with computer assisted drawing (CAD) disks of the as-built issues of all approved drawings, which are submitted to the Project CEO as herein provided, in accordance with the Technical Provisions that follow.

CAD drawings shall be guaranteed as fully compatible with Autocad, Release 14 only, by Autodesk, Inc.

CAD Drawings shall be submitted on CD Rom.

The Contractor shall submit for Metro-North's approval the descriptive "layers" he proposes to use, and the information contained on each of these layers. Metro-North may make changes in the layer names and contents, to make the files conform to Metro-North's standards.

#### J. APPARATUS FACTORY TESTS

In the event that apparatus factory tests are required, certified copies of the test reports shall be furnished as follows: Three copies to the Project CEO and one copy to the Project CEO of Procurement and Material Management. The Contractor shall notify the Project CEO at least one week in advance of the time and location of factory tests so that the Project CEO's representatives may observe the tests.

#### K. USE OF ENGLISH LANGUAGE

Without exception all technical information, drawings, instruction books, name plates, etc., shall be written in the English language. For all means of communications, e.g., letters, cables, telephone conversations, meetings, etc., the English language shall be used. The United States System of Units shall be used unless otherwise approved by the Project CEO.

#### L. MANUALS

The Contractor shall prepare manuals for all equipment, systems, materials and finishes furnished as part of the Work. Operating and maintenance instruction manuals, and renewal parts list manuals, including all

manufacturer's data, bound in fiberboard covers, shall be prepared for Contractor-supplied apparatus and forwarded as soon as possible, but in no event delivered later than ninety (90) days before project completion. A draft copy of the entire manual shall be sent to the Project CEO for review and approval at least thirty (30) calendar days prior to delivery.

Failure to submit such manuals within the time prescribed may result in the delay of progress payment for such equipment, system, material or finish. The instruction manuals shall provide an overall description of the item or system being furnished (complete with reduced size drawings), including its operating theory or principals, a detailed description of each sub-item or subsystem any required assembly instructions, detailed start up, operating, trouble shooting, and maintenance procedures. The renewal parts list manuals shall fully identify all parts of the apparatus furnished by the Contractor, whether manufactured or purchased by him. The renewal parts shall be identified not only with part numbers assigned by the Contractor but also with the identification or part number assigned by the original equipment manufacturer of each purchased part. The Contractor shall also furnish specification control drawings (or equivalent documentation as approved by the Project CEO) of each purchased part so that Metro-North can purchase spare parts directly from the original equipment manufacturer. One copy of each such drawing shall be transmitted to the Project CEO and six copies of each to the Project CEO.

All manuals furnished shall be non-proprietary or shall be licensed for Metro-North use by copyright owners. When copyrighted material is used, source credit shall be provided by footnote.

#### M. MONTHLY PROGRESS REPORT

The Contractor shall prepare a monthly progress report and schedule update and submit it no later than the tenth calendar day of each following month. Four copies shall be sent to the Project CEO and two copies to the Project CEO. The report shall summarize Work accomplished and the reason why other scheduled work was not accomplished during the report month and shall forecast Work expected to be accomplished in the next month. The report shall review problem areas, delays, status of submittals, and any other relevant factors affecting the progress of the Work. Disadvantaged Business Enterprise, Affirmative Action, and any other reports or data required to be submitted under the Contract shall be included in the report.

#### N. CORRESPONDENCE

All correspondence shall be submitted in accordance with the PDCS noted in Paragraph P. of this Article.

#### O. SUMMARY

The monthly submittals shall include, but shall not be limited to the following:

- (1) WF-257 Report (see "DISADVANTAGED BUSINESS ENTERPRISE PROGRAM").
- (2) DBE Form E (see "DISADVANTAGED BUSINESS ENTERPRISE PROGRAM").
- (3) Progress Photos (see "PROGRESS PHOTOGRAPHS").
- (4) Progress Report (see Paragraph M.).
- (5) Certified Payroll Reports (see "FEDERAL PROVISIONS") and/or payroll affidavit.
- (6) CPM Update and narrative report (see "Contractor's Detailed Schedule of Work.")

All monthly submittals should be made by the 10th of the month following the report month, except if otherwise noted on the form or the report.

**P. PROJECT DOCUMENT CONTROL SYSTEM (PDCS)**

The Contractor is required to use Metro-North's PDCS, which is a method of coding, numbering and tracking all documents. The Contract file index (a listing of codes) will be given to the Contractor at the commencement of the Contract.

**Q. NOTICES**

The Contractor shall promptly respond to all notices from Metro-North when the notice requests a response from the Contractor.

**ARTICLE 14.02 - GIS SUBMISSION REQUIREMENTS FOR CAPITAL WORK**

The following general Geographic Information Systems (GIS) data interchange and submittal requirements apply to the following types of contracts ("Covered Types of Contract"):

- Design or Capital Construction contracts for the submittal of surveys, final design drawings, and as-built drawings
- Technical Services, Operating, or Consulting contracts for the submittal of data deliverables (e.g. spreadsheets, databases, lists, tables, reports, logs, or other data), and graphic deliverables (e.g. charts, drawings, sketches, maps, photos, display boards, etc.)
- Equipment Purchase or Leasing contracts for equipment that is capable of producing output data with GPS coordinates (e.g. measurement, engineering, and testing devices, work vehicles or work trains)

These requirements apply whether the data deliverable or the data produced by the device is in electronic or paper formats.

The requirements for CAD drawings are designed to allow seamless import from popular CAD programs (e.g., AutoCAD) into GIS. The requirements for data deliverables are designed to allow seamless import of datasets generated by consulting projects and equipment purchased for use on the Railroad into the Metro-North or MN Enterprise GIS system and to allow interoperability with other systems requiring GPS coordinates.

These requirements are also designed to ensure that any geographic data captured as part of consulting projects or generated by equipment in use on the Railroad can be properly updated in future projects or as part of routine business processes. It does not, by itself, guarantee that the data shall remain live; it is the responsibility of the data owner to ensure that it remains so by developing procedures for periodically updating the data.

**A. Metro-North General Requirements and Standards for Geo-Referencing**

This Section A defines georeferencing requirements and standards generally for the Covered Types of Contract. The specific requirements for conformance are defined under subsequent Sections B thru E for different types of project deliverables.

- (1) All "Georeferenced Deliverables" concerning areas outside of the confines of Grand Central Terminal (GCT) and the Trainshed (north to 59 Street—does not include the Park Avenue Tunnels between Mileposts 0.9 and 3.0) shall be properly geo-referenced to a reasonable datum and coordinate

system standard. Georeferencing based on this Section A, Paragraph (1) shall be termed “Georeferencing by Latitude/Longitude”. Acceptable standards are as illustrated in subparagraphs (a) through (d):

- a. Acceptable standards include but are not limited to: World Geodetic System 1984 (WGS84), New York State Plane East, North American Datum 1983, Feet (FIPS 3101), Connecticut State Plane, North American Datum 1983, Feet (FIPS 0600), and/or any subsequent readjustments by the NGS, National Geodetic Survey).
- b. MN has historically used NAD83 NYS East, but in special circumstances for certain projects NAD83 NYS Long Island (FIPS 3104) may be used instead upon approval from MN Project Manager and GIS Manager.
- c. WGS84 is the default setting on most consumer Global Positioning System (GPS) receiver devices.
- d. The datum and coordinate system chosen for the project shall be specified in the metadata.

- (2) All “Georeferenced Deliverables” concerning areas inside of the confines of GCT and the Trainshed shall be properly geo-referenced to a reasonable datum and coordinate system standard per Section A, Paragraph (1) above, or alternatively the GCT “Grid” system (a special stationing system for precisely defining locations within GCT and the Trainshed, west-to-east letters “A” thru “L” and south-to-north numbers “0” thru “64”) could be used.

Georeferencing based on the GCT Grid system per Section A, Paragraph (2) shall be termed “Georeferencing by GCT Grid”. The GCT Grid system is described below in subparagraphs (a) through (e):

- a. Typically, locations within GCT and the Trainshed are defined in terms of a GCT Grid.
- b. A reference drawing showing this GCT Grid in relation to existing GCT fixed infrastructure can be obtained from the Office of the Chief Architect.
- c. A set of permanent survey control points with published GPS coordinates have been installed in GCT and parts of the Trainshed. Contractors may use this set of survey control points as reference when performing work. Please refer to the Metro-North Maintenance of Way Structural Engineer for details.
- d. It is the contractor’s responsibility to obtain clarification from the MN Project Manager for projects involving locations within GCT and the Trainshed and utilize the appropriate georeferencing/stationing methods and reference points as directed by the MN Project Manager.
- e. All GIS datasets provided based on the GCT stationing system shall properly indicate, in the metadata, the reference point used for that dataset. This should correspond to either NY Central station zero at the corner of 42 St. and Park Ave., or the Metro-North permanent survey control points with published coordinates within GCT Or the Trainshed.

- (3) Alternate “Georeferenced Deliverables” which are “Georeferenced by Milepost” shall contain line

name (Hudson, Harlem, Beacon, etc.), milepost, number of feet past the milepost along the right-of-way (ROW) centerline, and height. Georeferencing based on this Section A, Paragraph (3) shall be termed “Georeferencing by Milepost”.

- a. If the location being identified is not on the ROW centerline, the number of feet to the left or right of the ROW centerline shall be specified. For the purposes of determining left or right, the direction of increasing milepost shall be deemed the “top”.
  - b. Questions regarding accuracy of milepost and request for verification of milepost locations should be directed to Metro-North Maintenance of Way Track Engineer. Generally, milepost locations are shown on Railroad Valuation Plans which are available on request.
- (4) All “Georeferenced Deliverables” based on Section A, Paragraphs (1) thru (3) for which vertical elevation (altitude) is an important consideration shall be properly referenced to a reasonable vertical datum (e.g., North American Vertical Datum of 1988 (NAVD88), Feet, and subsequent adjustments). If the location being identified is at ground level, elevation specified as “ground level” shall be acceptable. Elevation can be specified relative to ground, mean sea level, or other appropriate vertical datum.
- (5) MN Project Manager at his or her sole discretion shall make the final determination of geo-referencing datum and projection where necessary, e.g. the reasonableness of the use of a certain datum or standard. If the appropriate geo-referencing datum and projection is not clear, it is the contractor’s responsibility to contact the MN Project Manager and clarify the appropriate choice of geodetic datum and projection for a specific deliverable prior to commencing any work on surveying, georeferencing, or otherwise generating GIS/GPS data.
- (6) A digital copy of any “georeferenced deliverable” shall be delivered to the Metro-North GIS Manager, Capital Planning and Programming, 420 Lexington Avenue, 12<sup>th</sup> floor, New York, N.Y. 10170-1200. Acceptable means of delivery include optical disc, hard drives, solid state drives, and electronic mail attachments. Other means of electronic transfer such as FTP, cloud, and other on-line file transfer systems are not acceptable.

#### B. Specific Requirements for CAD Drawings

The following specific requirements apply to design contracts where the primary deliverable is a set of design CAD drawings and apply to construction projects where a key part of the submittal is a set of as-built CAD drawings. These requirements also apply incidentally to other contracts where CAD drawings of fixed infrastructure are delivered as any part of the project deliverable.

- (1) All scale CAD drawings depicting Metro-North equipment, infrastructure, actual or proposed work outside of the confines of GCT and the Trainshed shall be a “georeferenced deliverable” subject to Section A, Paragraph (1).
- (2) All scale CAD drawings depicting Metro-North equipment, infrastructure, actual or proposed work inside of the confines of GCT and the Trainshed shall be a “georeferenced deliverable” subject to Section A, Paragraph (2).
- (3) All scale CAD drawings for which vertical elevation is an important consideration shall be a “georeferenced deliverable” subject to Section A, Paragraph (4).



- (4) The following types of drawings shall not be deemed a “georeferenced deliverable” and shall be exempt from the provisions of Section B, Paragraphs (1) thru (3):
- a. Drawings that show a typical detail present or duplicated at multiple locations (e.g., architectural, mechanical, electrical details).
  - b. Schematic diagrams, circuit diagrams, condensed vertical rail profiles, or other non-scale drawings that are not readily relatable to a specific location.
  - c. Legend pages or pages containing only text information.
  - d. Drawings of movable assets, such as rolling stock, that are not readily geo-referenceable. A movable bridge is a non-exclusive example of not a movable asset.
- (5) Layering Requirements contained in this Section (B), Paragraph (5) apply only to reference drawings (100% design) and as-built drawings. CAD drawings that depict intermediate project stages such as staging plan, temporary structures, etc. are not subject to these requirements outlined in subparagraphs (a) through (c) below:
- a. Layers shall be organized to contain only the objects which pertain to the layer, with no extraneous objects or stray elements.  
  
Layers for annotations (e.g. Asset labels, Description, or Dimensions) shall be separated from layers containing Points, Lines, or Polygons.
  - b. The drawings shall be purged thoroughly of unused layers, blocks, line types, and other material.
  - c. CAD drawings shall be layered such that work performed on different asset classes (corresponding to GIS feature class) shall be shown in different layers. The asset classes shall be based on the current Metro-North asset registration hierarchies. It is the contractor’s responsibility to obtain a copy of the MN asset register and to clarify asset classification with the MN Project Manager if the contractor is unable to determine correct classification based on MN asset registration hierarchies. Questions regarding asset hierarchies should be directed to the Metro-North Director of Enterprise Asset Management, 420 Lexington Avenue, New York, New York 10170.
- (6) Metadata and Attribute Requirements contained in this Section (B), Paragraph (6) apply only to as-built drawings. Drawings that depict intermediate project stages are not subject to the requirements outlined herein.
- a. Objects within CAD drawings shall have an attribute indicating asset disposition at project completion.
  - b. The metadata attached to the object shall be appropriate to the object. Metadata shall serve to identify the object, provide useful information about the asset, and provide data helpful to the maintenance and eventual replacement of the asset to the extent this is known at the time of design and construction. It is the contractor’s responsibility to obtain specific guidance from

the MN Project Manager to determine minimum attribute requirements.

- c. Attributes shall contain the following elements to the extent applicable:
  - i. Build date
  - ii. Install date
  - iii. Rebuilt date (if asset is being rebuilt in-situ)
  - iv. Estimated design life
  - v. Original cost of the part or asset
  - vi. Manufacturer
  - vii. Manufacturer's part number
  - viii. Asset specific identifier, as appropriate (e.g., catenary and signal poles shall have pole numbers; insulated joints shall have identity of associated track circuits, railroad telephones shall be specifically identified, etc.)
  - ix. If a standard Metro-North part or a part built per standard Metro-North specification, the metadata and/or attribute shall refer to the Metro-North part number or the relevant Metro-North specification.
  - x. If not a standard part, the key specification details should be included as appropriate to the asset within the metadata or as an attribute, e.g., electrical consumption, light output, ballast type, etc. for lighting fixtures; interfacing requirements for data communication devices; key dimensions for escalators, elevators, stairs, etc.
- d. Metadata shall contain the following elements to the extent applicable:
  - i. Identity of the organization changing the geographic information; if contractor, must include name of the firm and the MN contract number; if MN, must identify department and force account charge number if appropriate.
  - ii. Spatial reference information including geographic coordinate reference and projections that are used to generate the data.
- e. Information shown on the drawings as a "note" or as text with an arrow pointing to an object shall be included as metadata and/or attribute if the note continues to be relevant to the asset upon completion of the project. Incidental notes concerning the installation or construction process need not be included as metadata.
- f. To the extent applicable, and as directed by the MN Project Manager, metadata delivered shall conform as closely as reasonably practicable to the Federal Geographic Data Committee Metadata Standards.

(7) Requirements regarding Appropriate Level of Detail and/or Scale for GIS contained in this Section (B), Paragraph (7) apply only to reference drawings (100% design) and as-built drawings.

- a. Some drawings may contain levels of detail not appropriate for a GIS system. In general, the MN Project Manager shall at his or her sole discretion make the final determination of the level of detail required in a GIS submission. If the appropriate level of detail or scale required for GIS is not clear, it is the contractor's responsibility to contact the MN Project Manager and clarify the appropriate level of detail and/or scale. The remainder of this section provides guidelines which shall form the basis of discussion between the MN Project Manager and the contractor.
- b. As an example, it is typical for CAD drawings to show representatively the individual branches of a tree; architectural drawings may show individual stones in the track ballast, or individual ties. This type of representative diagrammatic detail shall be drawn in a separate layer and clearly labeled as a layer not to be used for GIS import.
- c. For objects that need to be shown on the drawing at a level of detail inappropriate for GIS, another appropriate/reasonable depiction of that object shall be provided in a separate layer that is an appropriate scale for GIS import. As an example, the tree mentioned in the paragraph above may be shown in a separate layer as a circle depicting the extent of shade, or a point representing the center of the tree trunk.
- d. Drawings of track and special work shall generally show track center lines, the third rail if applicable, and geometry of switches, crossings, yard track, and hand throws as appropriate. Other hardware, such as switch heaters, switch machines, etc. shall be shown separately and appropriately labeled with metadata and/or attributes.
- e. Drawings of signal and electrical work shall generally show physical infrastructure (e.g., signal cabinets, signal masts, substations), conduits, cable runs, specialty equipment (e.g., insulated joints, impedance bonds, neutral sections in overhead line equipment, etc.) as appropriate to the drawing and work being conducted, and appropriately labeled with metadata and/or attributes.
- f. All linework that represent outlines of buildings or objects shall be closed polyline entities (P-line vectors) created in model space with seamless edges preventing overlapping or crossing vector features, to allow for transfer to polygons in GIS.

### C. Specific Requirements for Data Deliverables

The following specific requirements in this Section (C) apply to technical services, operating, or consulting contracts for the submittal of Deliverable Datasets (e.g. spreadsheets, databases, lists, tables, reports, logs, or other data).

- (1) All spreadsheets, databases, lists, outputs, tables, reports, logs, printouts, information, recorded video stream, photo sequences, or other data generated by a technical services consulting project (hereinafter "Deliverable Datasets") where an MN location or geographic feature (hereinafter "Location") is identified shall be a "Georeferenced Deliverable" subject to Section A, Paragraph (1) thru (3).

- (2) The Deliverable Datasets shall contain at least one set of following “Georeferencing Fields” for Location identification on the GIS system:  
Latitude/Longitude (per Section A, Paragraph (1)), GCT Grid reference (per Section A, Paragraph (2)), or Milepost (per Section A, Paragraph (3)). The MN Project Manager at his or her sole discretion shall make the final determination of which georeferencing field(s) shall be included. At least one type of georeferencing field(s) must be included. The MN Project Manager shall have the authority to require multiple georeferencing fields to be included, if necessitated by the project circumstance.
- (3) Each record of the Deliverable Dataset shall contain a Georeferencing Field. If sample data collected at multiple Locations, each sample Location shall contain a Georeferencing Field. If sample data is collected while in motion, Location data shall be collected at the same time as sampling (e.g. via a portable GPS receiver) and both data streams reported together.
- (4) Where the Location being identified is large (e.g. a parking lot) and no specific Location information is required for the purposes of a project, a single geocode of the centroid location shall be acceptable in a Deliverable Dataset with specific approval from Metro-North.
- (5) Station names, street names, cross-streets, landmarks, interlocking names, or other named locations shall not be deemed acceptable Georeferencing Field for defining Locations due to insufficient precision.
- (6) All delivered data resulting from field measurements (e.g., voltages, strain gauge readings, etc.) shall be tagged in each data record with a date and time of observation, and a properly georeferenced Location (i.e. with Georeferencing Field) as per the standard defined in Section A, Paragraphs (1) thru (3), unless a special exemption is obtained from the MN Project Manager.

#### D. Specific Requirements for Equipment Purchases or Leases

The following specific requirements apply to equipment purchase contracts for equipment that is capable of producing output data with GPS coordinates (e.g. measurement, engineering, and testing devices, work vehicles or work trains)

- (1) All spreadsheets, databases, lists, outputs, tables, reports, logs, printouts, information, recorded video stream, photo sequences, or other data produced by equipment purchased for use on the railroad (hereinafter “Equipment Data Outputs”) where a Location is identified shall be a Georeferenced Deliverable subject to Section A, Paragraph (1) thru (3).
- (2) MN Project Manager at his or her sole discretion shall make the final determination of which Georeferencing Field(s) shall be included, per Section A, Paragraph (1) thru (3). At least one set of Georeferencing Field(s) must be included in the Equipment Data Outputs.
- (3) Where GPS based location is not possible (e.g. within confines of GCT and the Trainshed and Park Avenue Tunnels), the equipment purchased shall be capable of providing Location data via alternate technologies (e.g. inertial navigation systems, RFID tags, beacons, or manual input based on magnetic compass direction and distance from a known point) unless otherwise waived by the MN Project Manager. Such proposed alternate technologies shall be subject to Approval by the MN Project Manager.

- (4) Each record of the produced data shall contain a set of Georeferencing Field(s). It is not acceptable to provide Georeferencing Fields separately from the Equipment Data Outputs. The GPS data and equipment measurement/output data must be matched together allowing the Location of each measured value to be specifically known.
- (5) All data produced by the purchased or leased equipment shall be tagged in each data record with a date and time of observation, and a properly georeferenced Location as per the standard defined in Section A, Paragraphs (1) thru (3), unless a special exemption is obtained from the MN Project Manager.
- (6) Each instrument or equipment purchased or leased for use on the Railroad shall be capable of outputting raw measurement data and any computed/inferred results in an open or non-proprietary industry standard data interchange format. (Section F, Paragraphs (4) thru (5) may also apply.)

E. Specific Requirements for Graphic Deliverables

The following specific requirements apply to technical services, operating, or consulting contracts for the submittal of graphic deliverables (e.g. charts, drawings, sketches, maps, photos, display boards, etc.)

- (1) All charts, drawings, sketches, photos, display boards, printouts, or other graphics other than a CAD drawing generated by a technical services consulting project (hereinafter "Graphic Deliverable") where an MN location or geographic feature (hereinafter "Location") is shown or identified shall be a "Georeferenced Deliverable" subject to Section A, Paragraph (1) thru (3). Please note that CAD drawings are covered separately under Section B.
- (2) To the extent the Graphic Deliverable is intended to communicate data (measured, forecast, modeled, or otherwise), the raw data used to produce the graphic deliverable shall be provided, and the provided raw data itself shall meet the requirements outlined in Section C (on Data Deliverables).
- (3) Where the graphic is not intended to communicate data but is a visual rendition of field conditions (e.g. sketches, photos, etc.), a single geocode at or near the centroid location, or the camera location, shall be provided to indicate the Location or intended Location (if a proposed sketch) depicted by the Graphic Deliverable.
- (4) Where the Graphic Deliverable is a map, all underlying GIS/AutoCAD data used to produce it shall be made available to MN. The provided GIS data shall meet the Georeferencing Requirements outlined in Section A, Paragraph (1). Map deliverables are subject to the following additional requirements:
  - a. Source of data used to plot the map shall be noted on the map graphic itself. If the data is field collected, it shall be so noted.
  - b. Pertinent dates or year of the source dataset shall be included.
  - c. An appropriate scale bar shall be provided (or the words "Not to Scale".) The numerical scale/reference fraction shall be recited below the scale bar.
  - d. The direction "North" shall be clearly indicated on the map.

e. Map key shall be included.

f. Horizontal and vertical coordinate systems for the source data shall be noted on the map.

#### F. Metro-North General Requirements Regarding Digital Data

This Section F defines general housekeeping requirements for the submittal of digital project data to Metro-North, including specific geospatial data referenced in Sections B thru E (Georeferenced Deliverables, Deliverable Datasets, Graphic Deliverables, Equipment Data Outputs, etc.), and other electronic data being generated in the Covered Types of Contracts.

- (1) Each Deliverable Dataset shall be provided in an open or non-proprietary industry standard data interchange format (e.g. Comma Separated Values (CSV) or Extensible Markup Language (XML)).
- (2) If a Covered Contract requires generation of data in a format other than CAD, GIS, and PDF, the contractor must provide the data to MN in a nonproprietary open format, or a common industry standard data interchange format. The data format shall be subject to the MN Project Manager's approval. It is the contractor's responsibility to contact the MN Project Manager for clarification on data delivery and data exchange formats.
- (3) If a Covered Contract requires generation of 3D point cloud models, this data shall be provided in the LAS format. (This is an open binary file exchange format defined by the American Society for Photogrammetry and Remote Sensing—the imaging and geospatial information society.)
- (4) All Deliverable Dataset (including results from field measurements, shown in drawings, or outputs from purchased equipment) shall have units properly defined. Units shall be customary and appropriate to the discipline (e.g., voltages in volts, current in amps, length in feet, yards, or miles, etc.)
- (5) Where no industry standard format is available for the data, a proprietary data format may be defined and utilized subject to the MN Project Manager's approval. The contractor shall provide a data dictionary providing sufficient information such that the raw data can be interpreted by MN personnel without using any contractor provided software tools. At a minimum, the data dictionary must define file name, file purpose, field name within each file, table name, table purpose, field name within each table, field purpose, keys within each table (including primary and foreign keys), and relationship between tables, as appropriate.
- (6) The Contractor shall contact the MN Project Manager for clarification and seek final approval on data output specifications and data exchange formats prior to finalizing design of the data collection equipment, performing surveying, generating metadata for drawings, or otherwise conducting data collection. The MN Project Manager, with concurrence from the MN GIS Manager, shall make the final determination on whether a proposed format of deliverable dataset is acceptable.
- (7) It is the contractor's responsibility to contact the MN Project Manager or the MN GIS Manager for clarification if the applicability or interpretation of this standard is not clear. The MN Project Manager, in consultation with the MN GIS Manager, shall make the final determination on applicability or interpretation of this standard in specific circumstances.

**SAMPLE NOTICE OF AWARD**

**MTA CONSTRUCTION & DEVELOPMENT COMPANY  
METRO-NORTH COMMUTER RAILROAD COMPANY  
420 LEXINGTON AVENUE  
NEW YORK, NY 10170**

Re: Contract No. 142486

**STRATEGIC FACILITIES PROGRAM: CROTON FALLS PARKING LOT  
(PACKAGE NO. 2)**

To:

, Contractor  
, 20

Contractor:

We hereby accept your Proposal dated\_\_\_\_\_, 20\_to perform the Work specified in the captioned Contract for the amount of \$\_\_\_\_\_. The terms and conditions of the Contract shall be as set forth in that Proposal and in the other Contract Documents referred to therein. Please evidence your receipt of this award by endorsing and returning to MTA Construction & Development Company within the time limited therefor the enclosed original of this Notice of Award together with the required Performance and Payment Bonds and evidence of required insurance using the attached Insurance Certificate. You are reminded that you have a continuing obligation to update and correct the information you have provided as a part of the "Contractor Responsibility Form". Any new information so received will be taken into account in the management and administration of this Contract.

The Project CEO for this Contract is [ ] who may be reached by phone at ( ) and by email at [ ]@mnr.org.

Very truly yours,

MTA CONSTRUCTION & DEVELOPMENT COMPANY

By \_\_\_\_\_  
Authorized Officer

Received:

\_\_\_\_\_  
CONTRACTOR

By \_\_\_\_\_  
Authorized Officer