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144-41 94<sup>th</sup> AVENUE, JAMAICA, NEW YORK 11435

**CONTRACT DOCUMENTS**

**FOR**

**CONTRACT NO. 6340**

**GENERAL ENGINEERING CONSULTANTS 2020 - 2024**

**CONTRACT TERMS AND CONDITIONS**

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**CONTRACT TERMS AND CONDITIONS****SECTION I – GENERAL TERMS AND CONDITIONS****I – 1.0 ENTIRE AGREEMENT**

The Contract Documents set forth the entire agreement between LIRR and the Consultant, and supersedes all prior or other agreements and understandings, whether written or oral, and may not be altered or modified except in writing and signed by LIRR's Procurement Officer.

**I – 2.0 DEFINITIONS**

- A. Acceptance: A written determination by the Railroad that the Work is complete and meets the requirements of the Contract including the Technical Specifications.
- B. Addenda or Addendum: Any additional contract provisions, revisions, or clarifications issued in writing by LIRR prior to the receipt of proposals.
- C. Award Date: The date of the Notice of Award for each task order release issued by LIRR.
- D. Change Order/Modification: A written change or modification to the Contract authorized and executed by LIRR's Procurement Officer directing the Consultant to perform revised work as described therein.
- E. Change Request (CR): A request by the Consultant either in response to a LIRR request or at the suggestion of the Consultant, which seeks modification to the Work and/or the Contract but does not become a Contract requirement until a Change Order is issued by LIRR.
- F. Consultant's Project Manager: A duly authorized employee of the Consultant approved by LIRR and responsible for overall project management.
- G. Contract: The agreement between the Consultant and LIRR pursuant to which the Consultant is obligated to perform the Work in accordance with the Contract Documents.
- H. Consultant: The individual or entity including any joint venture or other teaming arrangement that enters into the Contract to perform the Work.
- I. Consultant's Proposal: The Consultant's offer to perform the Work in response to LIRR's Request(s) for Proposals for specific Work under the Contract.
- J. Consultant's Project Manager: The individual, duly authorized representative of the Consultant responsible for overall project management.
- K. Contract Documents: Consists of the following: LIRR's Request(s) for Proposals; Instructions to Proposers for each Release issued by LIRR; Contract Terms and Conditions; Technical Specifications including the Contract Drawings, if any; Reference Documents; all addenda issued prior to the receipt of proposals; the Notice of Award of the Contract and the Notices of Award for each Release issued by LIRR; Notices to Proceed, if any; all Modifications/Change Orders authorized and issued by LIRR subsequent to the Award Date(s); and any other documents which were included in or referenced in the Contract Documents.
- L. Contract Drawings: Those drawings included in the Technical Specifications.
- M. Contract Schedule: The schedule for the Work identified by LIRR in a Release.

- N. Contracting Officer: The designated LIRR employee who is authorized to administer the Contract on behalf of LIRR or his/her designee.
- O. Days: Unless otherwise noted, the word "days" shall mean calendar days.
- P. Deliverable: A Submittal, the receipt and approval of which is a precondition to Acceptance.
- Q. Delivery: The words "delivery", "delivering", or "delivered" and words of like import shall mean respectively, the delivery of, delivering of or delivered items required to be provided by the Consultant under the Contract Terms and Conditions of the Contract.
- R. Final Completion: Shall be deemed to have occurred, in the sole discretion of the Railroad, subsequent to (a) the Consultant's furnishing of all required submittals/deliverables items including final design documents, (b) the resolution of all disputes, claims, liens, charges and backcharges and (c) the receipt of all releases, affidavits, certifications, bonds, warranties and guarantees as required by the Contract.
- S. Final Payment: LIRR's release of the last remaining payment of the price of the Work under the Contract to the Consultant including retainage.
- T. FTA: The Federal Transit Administration of the United States Department of Transportation.
- U. LIRR/Railroad: The Long Island Rail Road Company, a public benefit corporation organized and existing under the laws of the State of New York and a wholly owned subsidiary of the Metropolitan Transportation Authority.
- V. MTA: The Metropolitan Transportation Authority, a public benefit corporation organized and existing under the laws of the State of New York.
- W. Notice of Award: Written notice from LIRR's Procurement Officer to the Consultant notifying the Consultant that LIRR has accepted the Consultant's Proposal and instructing the Consultant to provide specified documentation in accordance with the Contract Documents.
- X. Notice to Proceed: Written notice from the Contracting Officer to the Consultant that the documentation required by the Contract Documents following receipt of the Notice of Award have been received and found satisfactory to LIRR and accordingly Work shall commence.
- Y. Procurement Officer: LIRR's Chief Procurement & Logistics Officer who is authorized to administer, interpret and modify the Contract on behalf of LIRR or his/her designee.
- Z. Project: The applicable scope of work identified in each Release issued in accordance with the Contract.
- AA. Project Manager: The duly authorized representative of LIRR who is responsible for overall project management.
- BB. Proposal Deadline: The date set forth in each LIRR Request for Proposal (RFP) indicating the final date for submission of proposals for the particular task work set forth in the RFP.
- CC. Release: Specific task order for work to be performed under the Contract issued by LIRR.
- DD. Subcontractor: The word "subcontractor" shall include any person, firm or corporation including any subconsultant or supplier, other than employees of the Consultant, who contracts to furnish

labor, material and/or other items in connection with the Work, whether directly or indirectly on behalf of the Consultant and whether or not in privity with the Consultant.

- EE. Submittal: A document, product or material that is delivered to LIRR for review and approval.
- FF. Technical Specifications: The Technical Scope of Work and any other technical specifications identified in the Contract Documents.
- GG. Work: The furnishing of all labor, design, materials, equipment, tools, supervision, and other incidentals required by the Contract and the performance of all services, duties and obligations imposed by the Contract, including work performed pursuant to the warranty provisions of the Contract.

**I – 3.0 ALL REQUIRED PROVISIONS DEEMED INCLUDED**

Each and every provision required to be inserted in this Contract by any applicable treaty, convention, Federal or New York State law, regulation or procedure is deemed 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 or revision in form so as to comply strictly with the applicable treaty, convention, law, regulation or procedure and without prejudice to the rights of either party hereunder.

**I – 4.0 NOTICES AND APPROVALS**

All notices, correspondence, reports, and schedules which are required by, refers to or relates to the Contract Documents shall be in writing and submitted to the Procurement Officer and to the Project Manager. The Consultant shall reference the Contract and Release numbers and consecutively number all such documents. All other information, including but not limited to submittals, samples, plans, and the like shall be accompanied by a standard Letter of Transmittal Form and submitted only to the Project Manager. Each such form shall be completed, dated and consecutively numbered independent of the correspondence numbering. All of the foregoing shall be deemed sufficiently served or delivered if sent or delivered as follows:

- (a) The Long Island Rail Road Company  
Attn: [Person Designated in Notice of Award], Project Manager  
[Address Designated in Notice of Award]  
Contract No. 6340– General Engineering Consultants
- (b) The Long Island Rail Road Company  
Attn: Chief Procurement & Logistics Officer  
[Address Designated in Notice of Award]  
Contract No. 6340– General Engineering Consultants

**I – 5.0 LAWS, PERMITS, CODES AND STANDARDS**

- A. The Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect Work if it were being performed for a private corporation, except where different requirements are specifically set forth in the Contract Documents. If the Work requires the Consultant to open, alter, remove, damage or otherwise affect property owned by federal, state, municipal or local governments, the Consultant shall obtain in its own name any permits or licenses required to allow such property to be so affected. However, the Consultant shall not apply for any permits or licenses in the name of or in behalf of LIRR, or take any other actions which would subject LIRR to local or departmental laws, ordinances, rules, regulations and orders from which it is exempt.
- B. The Consultant shall comply with all applicable New York State Law including but not limited to



New York State Uniform Fire Prevention and Building Code. The more stringent State or Local ordinances, regulations and codes shall apply in performing the Work. When there is a difference between State and Local Codes, and one is not more stringent than the other, the State Code shall apply.

- C. The Consultant shall, at its own expense, secure and pay for all permits and licenses if and when required. The Consultant shall obtain prior written approval by the Project Manager for any submission the Consultant proposes to make to any municipality, state or local agency or utility.
- D. All material, equipment, apparatus, processes and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date of the Proposal Deadline, except where a particular issue level is specified. Accepted industry practice, utility and Railroad standards shall govern, except in case of conflict between the Technical Specification and the practice or standard, in which case the more stringent shall govern.
- E. The applicable revision level and/or date of all the above, shall be the issue in effect at the date of Proposal Deadline. The Consultant must immediately advise the Railroad of any subsequent revision and its impact on price or any other contract items, and request approval from the Railroad to implement such subsequent revisions to the Work.

#### **I – 6.0 NOTICE OF ANY GOVERNMENTAL ACTION OR THIRD PARTY SUIT**

The Consultant shall advise the Railroad in writing of all actions or proceedings, including third party actions, commenced in any judicial or other forum, wherever such forum may be located, within or outside the United States or settlements or judgments thereof for any claim arising out of or related to the Work, or any claims based on the theories of professional liability, negligence, product liability, design defect, breach of contract, or with respect to professional discipline and or licensing compliance within a two-year period immediately preceding the date of this Contract and at any time thereafter until expiration or termination of the Contract, whichever occurs first. The Consultant must furnish the Railroad with a list of such actions or proceedings, which includes the full caption or title of each matter, index number or other identifying number, the name, address and telephone number of the tribunal before which the matter was brought, status of each matter and, if pending, the amount of exposure to liability, the amount of any settlement or judgment. The Railroad may elect to deem failure to comply with this provision as a material breach of the Contract.

#### **I – 7.0 INTERPRETATION**

- A. Anything mentioned in the Technical Specifications and not shown in the drawings, or shown in the drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. In the event of any other discrepancy, or ambiguity between the drawings and the specifications, the Technical Specifications shall take precedence over the drawings. Drawings are not satisfactory for and shall not be scaled. However, in actual performance of the Work, if requirements of design or material, including dimensions, are not clearly defined in the Technical Specifications or Contract Drawings, the Consultant shall immediately submit in writing the question(s) to the Railroad for a written clarification. Any adjustment by the Consultant without such clarification shall be at its own risk and expense.
- B. Wherever in the Contract Documents the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirements", "order", "designation", or "prescription" of the Railroad is intended and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Railroad. The word "conforms" or words of like import, shall be understood to mean "conformance with the specifications and drawings".

- C. Where "as shown", "as indicated", "as detailed" or words of like import are used, it shall be understood that the reference is to the Technical Specifications or Contract Drawings.
- D. All references to articles or sections include all sub-articles or subsections under the article or section referenced. Similarly, all references to sub-articles and subsections similarly include references to sub-sub-articles and sub-subsections. A reference to any particular article or section in no way waives the responsibility of adhering to other associated requirements.
- E. Words in the singular number shall be deemed to include the plural and words in the plural shall be deemed to include the singular. Words of the neuter gender 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.
- F. The table of contents and captions of these Contract Documents are for convenience of reference only and in no way define, limit or describe the scope or intent or in any way affect these Contract Documents.

**I – 8.0 REFERENCE DOCUMENTS**

Any reference documents indicated in the Contract Documents are for informational purposes only. The Railroad will not be responsible for the completeness or accuracy of the reference documents provided or cited, and the Consultant shall be responsible to obtain any additional data as required, to satisfy itself as to the actual conditions or requirements. Any variance of the actual overall conditions or requirements from those represented by the reference documents shall not constitute the basis for a claim.

**I – 9.0 SUBMITTALS**

- A. The review of submittals by the Railroad is solely for the Railroad's information and/or approval and shall not relieve the Consultant of its obligation to perform the Work in conformance with the requirements of the Contract Documents.
- B. LIRR shall review submittals for general conformance with the specified standards. Approval of submittals for conformance with the Technical Specifications shall be the responsibility of the Consultant.
- C. For approval of alternate services, products or items (approved equals or substitutions), the Consultant shall notify the Project Manager in writing of the proposed alternate services and/or names of products, items or manufacturers. The Project Manager may reject services, products or items not in conformance with the Contract Documents. The Consultant shall properly submit complete identifying information, note whether the services, products or items are included in the Technical Specifications and state Technical Specifications section and paragraph. All requests for approval of alternate services, products and items (approved equals or substitutions) shall comply with the Contract Terms and Conditions.

**I – 10.0 PATENTS, COPYRIGHTS AND ROYALTIES**

- A. The Consultant shall avoid infringement of patents and copyrights in the performance of the Work.
- B. LIRR shall own any patents or copyright to, and the right to patent or copyright, any plan, drawing, design, specification, report, software, study, survey, data, compositions of matter, apparatus, appliances, processes of manufacture or types of construction or materials regardless of medium (hereafter "Material") prepared by or for the Consultant, any subcontractor or by their respective consultants, agents, officers or employees in connection with the Work, whether prior or subsequent to execution of this Contract. Upon completion of the Work or upon termination of this

Contract, the Consultant shall deliver to LIRR all Material, including such documentation, certifications and executed forms, assignments and agreements as may be necessary to enable LIRR to fully comprehend, apply and change the knowledge and information contained in such Material and to patent or copyright same.

- C. Where the process or equipment employed in performing the Work relates to the Consultant's or subcontractor's design, selection, or fabrication, then the Consultant will assume liability for infringement, and shall hold harmless, indemnify, and defend LIRR and the Metropolitan Transportation Authority (MTA) from and against all claims, suits and proceedings for infringement of patents or copyrights arising from such employment.
- D. At the request of LIRR, and in any instance in which the use of the material, equipment, devices or processes or any part thereof has been enjoined, the Consultant shall promptly and at its own expense: (a) obtain for LIRR the right to continue using said materials, equipment, devices or processes; or (b) replace same with noninfringing materials, equipment, devices or processes satisfactory to LIRR; or (c) modify the materials, equipment, devices or processes in a way satisfactory to LIRR, so that such items become noninfringing.
- E. In the event such Material or portions thereof utilized in the performance of the Work have been or may be patented or copyrighted by the Consultant or by others, or are subject to other protection from use or disclosure, then LIRR shall have a royalty-free perpetual license, to use the same for any purpose provided that if the Consultant does not have the right to grant such a license, the Consultant shall obtain for LIRR such rights of use as LIRR may request without separate or additional compensation, whether such Material or portions thereof are patented or copyrighted or become subject to such other protection from use before, during, or after the performance of the Work.

**I – 11.0 AUDIT AND INSPECTION OF WORK AND RECORDS AND MAINTENANCE OF RECORDS**

- A. The Consultant shall permit, and also shall require its subcontractors and suppliers to permit representatives of LIRR, MTA, Federal Government, and the Comptroller of the State of New York to inspect all records and documents related to the Work and to audit the books, records and accounts of the Consultant and its subcontractors(s) including any suppliers pertaining to the Work. Such records shall be made available, upon request, at the Consultant's place of business during normal working hours during the time the Work is performed and for a period of six (6) years after expiration of the Contract or termination, whichever occurs first.
- B. The Consultant's and its subcontractor's records shall be maintained in accordance with generally accepted accounting principles or LIRR approved system and show actual costs of all items of labor, material, supplies, services and all other expenditures for which compensation is payable. Preservation of such records and documents shall be at the expense of the Consultant, subcontractors.

**I - 12.0 NEW YORK STATE AND LOCAL TAXES**

- A. The Consultant shall not pay any State of New York sales or compensating use taxes on the sale or transfer of any personal property, which will become an integral component part of the Work. If any claim is made against the Consultant by the State of New York or any municipality or other political subdivision thereof for sales or compensating use taxes in connection with such sale or transfer, LIRR will reimburse the Consultant in an amount equal to the amount of such tax required to be paid and actually paid by Consultant in accordance with the requirements of law, provided that:

1. LIRR is afforded the opportunity, before any payment of tax is made, to contest and to settle or satisfy said claim in any manner, and such attorney as LIRR may designate is authorized to act in the name of the Consultant for the purpose of contesting, settling and satisfying said claim; and
2. The Consultant gives immediate notice to LIRR of any such claim, cooperates with LIRR and its designated attorney in contesting said claim and furnishes promptly to LIRR and said attorney all information and documents relevant to said claim, said information and documents to be preserved for six years after the date of Final Payment hereunder or longer if such a claim is pending or threatened at the end of six years. If LIRR elects to contest any such claim, it will bear the expense of such contest.

**I - 13.0 CONFIDENTIALITY**

- A. The Consultant, its officers, agents, employees and subconsultants shall not, either during or after the term of this Contract, disclose to any third party, any information relative to the business of LIRR obtained while rendering such services, without the written consent of LIRR's Procurement Officer.
- B. All reports, studies, recommendations, computer programs, documentation and other products of the Work by the Consultant, its officer, employee, subconsultant or agent hereunder shall become the property of LIRR. All computer programs, documentation, reports, studies, recommendations, data and other products of the Work by the Consultant shall be deemed made for hire under the Federal Copyright Law, and shall be delivered to LIRR with sufficient detail and clarity and with sufficient explanations to enable LIRR to understand, apply, and modify such products without further assistance. The Consultant shall cause all rights to patent and or copyright such material to be assigned to LIRR.
- C. At the end of the term of the Contract, or upon earlier termination, the Consultant shall deliver to LIRR, at its request, all books, writings, records, documents, drawings or other reproductions, special data, tables and calculations, plans, designs, specifications, reports, studies, surveys, maps, models or other work products and/or information pertaining to LIRR which may be in its possession or in the possession of its subconsultants and lower tier subconsultants.

**I - 14.0 SEVERABILITY**

In the event any section, article, sub-article, paragraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, the other sections, articles, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, shall remain in full force and effect.

**I - 15.0 CONTRACTOR REPRESENTATIONS AND WARRANTIES**

- A. The Consultant, by submission of the Consultant's Proposal, represents to the Railroad that it possesses the skills, experience, facilities and financial resources to perform the Work required by the Contract in a satisfactory manner and within the time frames(s) specified, and that the Consultant possesses all the legally required permits and/or licenses to perform the nature of the Work, which shall be kept current and valid throughout the entire period of performance under this Contract.
- B. The Consultant and any of its subconsultants agree that in accordance with their status as independent contractors, they and each of them are and shall remain private and independent contractors and that they will neither hold themselves out as, nor claim to be an officer or employee of the Railroad or of the State of New York by reason hereof, that they will not make any claim,

demand or application to or for any right or privilege applicable to an officer or employee of the Railroad or of the State of New York, including but not limited to, payment of salaries, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security Coverage or Retirement membership or credit, all of which amounts shall be paid out of their own funds for all persons engaged in the performance of the Work. Such persons shall be and remain solely their employees and subject solely to their authority, supervision, direction and control.

C. In order to induce LIRR to enter into and perform this Contract, the Consultant represent and warrants to LIRR that:

1. Existence: Compliance with Law The Consultant (i) is duly incorporated, organized, validly existing and in good standing as a corporation under the laws of the jurisdiction of its incorporation and is duly qualified and in good standing under the laws of each jurisdiction where this ownership, lease, or operation of property in the conduct of its property or business requires, and (ii) has the power and authority and the legal right to conduct the business in which it is currently engaged and to enter into this Contract.

2. Authority The Consultant has full power, authority and legal right to execute, deliver and perform the Contract to which it is a party. The Consultant has taken all necessary action to authorize the execution, delivery and performance of the Contract.

3. No Legal Bar The execution, delivery and performance of the Contract do not and will not violate and provision of any existing law, regulation, or of any order, judgment, award or decree of any court or government or of the charter or by-laws of the Consultant or of any mortgage, indenture, lease, contract, or other agreement or undertaking to which the Consultant is a party or by which the Consultant or any of its properties or assets may be bound, and will not result in the creation or imposition of any lien or any of its respective properties or assets pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement or undertaking.

4. No Litigation Except as specifically disclosed to LIRR in writing prior to the date hereof, no claim, litigation, investigation or proceeding of or before any court, arbitrator or governmental authority is currently pending nor, to the knowledge of the Consultant, is any claim, litigation or proceeding threatening against the Consultant or against its properties or revenues (i) which involve a claim of defective design or workmanship in connection with any contract entered into by the Consultant or (ii) which, if adversely determined, would have an adverse effect on the business, operations, property or financial or other condition of the Consultant. For purposes of this paragraph, a claim, litigation, investigation or proceeding may be deemed disclosed to LIRR if LIRR has received in writing, prior to the date hereof, detailed information concerning the nature of the matter involved, the relief requested, and a description of the intention of the Consultant to controvert or respond to such matter.

5. No Default The Consultant is not in default in any respect in the payment or performance of any of its obligations or in the performance of any mortgage, indenture, lease, contract or other agreement or undertaking to which it is a party or by which it or any of its properties or assets may be bound, and no such default or Event of Default (as defined in any such mortgage, indenture, lease, contract, or other agreement or undertaking) has occurred and is continuing or would occur solely as a result of the execution and performance of this Contract. The Consultant is not in default under any order, award, or decree of any court, arbitrator, or government binding upon or affecting it or by which any of its properties or assets may be bound or affected, and no such order, award or decree would affect the ability of the Consultant to carry on its business as presently conducted or

the ability of the Consultant to perform its obligations under this Contract or any of the other financing to which it is a party.

6. No Inducement or Gratuities

a. Consultant warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business.

b. Additionally, Consultant warrants that no gratuities or other inducements have been offered or given or will be offered or given (in the form of entertainment, gifts, offers of employment, or any other thing of value) to any official or employee of LIRR. The Consultant further warrants that during the term of the contract it shall not make any offers of employment to any LIRR employee, or solicit or interview therefore, without obtaining the written approval of the employee's Department Head.

c. For breach or violation of the foregoing warranties, LIRR shall have the right to cancel the Contract without liability or, at its discretion, to deduct from the Total Contract Price, or otherwise to recover, the full amount of such commission, percentage, brokerage or contingent fee, or gratuities, and to include the occurrence of such a breach or violation in assessments of the Consultant's responsibility in future proposals.

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**SECTION II – PERFORMANCE OF THE WORK****II – 1.0 CONSULTANT REPRESENTATION**

- A. The Consultant, by submission of the Consultant's Proposal, represents to LIRR that it possesses the skills, experience, facilities and financial resources to perform the Work required by the Contract in a satisfactory manner and within the time frames(s) specified, and that the Consultant possesses all the legally required permits and/or licenses to perform the Work, which shall be kept current and valid throughout the entire period of performance under this Contract.
- B. The Consultant and any of its subcontractors agree that in accordance with their status as independent Consultants, they and each of them are and shall remain private and independent Consultants and that they will neither hold themselves out as, nor claim to be an officer or employee of LIRR or of the State of New York by reason hereof, that they will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of LIRR or of the State of New York, including but not limited to, payment of salaries, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security Coverage or Retirement membership or credit, all of which amounts shall be paid out of their own funds for all persons engaged in the performance of the Work. Such persons shall be and remain solely their employees and subject solely to their authority, supervision, direction and control.

**II – 2.0 CONSULTANT RESPONSIBILITY**

- A. The Consultant is responsible for the professional quality, technical accuracy and the performance and coordination of the Work required under the Contract, within the specified time period and not to exceed the maximum dollar obligation for each Release as designated by LIRR. The Consultant is responsible for, and warrants that, the Work conforms to LIRR's requirements as set forth in the Contract. The Consultant shall be and remain liable to LIRR for all damages to LIRR caused by the Consultant's errors, omissions or negligent acts in the performance of the Work.
- B. The Consultant shall promptly notify LIRR in writing of any conflicts or omissions in the Contract Documents including any misdescription(s) of the Work and shall promptly submit a written request to LIRR for clarification. Conflicts or omissions arising from the Contract or the misdescription of details of Work that are necessary to carry out the Work and the intent of the Contract, or which are customarily performed, shall not relieve the Consultant from performing such omitted or misdescribed details of Work, and the Consultant shall perform such Work as if fully and correctly set forth and described in the Contract Documents without additional compensation. If the Consultant proceeds with any part of the Work affected by a conflict, omission or misdescription of the Work, without the written approval of the Contract Manager, it does so at its own risk and the Work so done shall be deemed Work done under and in performance of the Contract unless and until approved by the Contract Manager and accepted by LIRR.
- C. Neither LIRR's review, approval nor acceptance of, nor payment for, any of the Work required under the Contract shall constitute a waiver of any of LIRR's rights under the Contract or of any cause of action arising out of the performance of the Contract Work. This includes the requirement that the Consultant shall, without additional compensation, correct or revise any errors, omissions or deficiencies, in its final design(s), drawings, specifications and other services, and any other item(s) of the Work.
- D. For the duration of the Contract, the Consultant shall ensure that it and each of its subcontractors (a) possess the necessary training and experience including without limitation, all required licenses, permits and certificates required for performing the Work described in the Contract; (b) have full knowledge of all applicable federal, state and local laws and regulations, and (c) shall

perform the Work required under the Contract in accordance with all applicable federal, state and local laws and regulations.

- E. The Consultant shall perform all Work in a competent, efficient manner and consistently with all recognized industry standards and practices. In no event shall the Consultant (a) be reimbursed as Allowable Costs any costs or expenses for Work inefficiently, unnecessarily or inaccurately performed by the Consultant including but not limited to its employees and subcontractors or (b) receive any fee associated with same.
- F. Absent a Change Order issued by the Procurement Officer increasing the Amount Obligated (as defined in Section IV) as set forth in LIRR's Notice of Award of the Release(s), the Consultant's inability to perform the Work within the Amount Obligated shall be presumed to be due to the Consultant's inefficiency and costs exceeding the Amount Obligated shall not be deemed to be Allowable Costs pursuant to Section IV hereof and shall not be paid to the Consultant.

### **II – 3.0 COOPERATION**

The Consultant shall not use any labor, materials or means which may in any way cause or contribute to a strike or work stoppage by LIRR employees without LIRR's written approval.

### **II – 4.0 PERSONNEL**

- A. The Consultant and each subcontractor shall assign and require a representative who has the authority to act on its behalf and commit to decisions that shall be binding upon each of them at all times until Acceptance of the Work by LIRR. All notices, communications and directions given to these representatives shall be as binding as if given to the Consultant or subcontractor per the section of the Contract Terms and Conditions entitled "Notices and Approvals".
- B. All personnel furnished by the Consultant shall be qualified, licensed if necessary, and approved by LIRR. LIRR shall have the right to prohibit any Consultant personnel from working on the Contract and such personnel shall be promptly replaced by the Consultant unless otherwise directed by LIRR. The Consultant shall not remove any personnel previously approved by LIRR without the prior written approval of LIRR.
- C. The Consultant shall submit the names and business telephone numbers of its representative and the representative of each subcontractor to LIRR's Project Manager within ten (10) days of the date of LIRR's Notice of Award for each Release.
- D. This shall not be construed as a waiver to the requirement that the Consultant and its subcontractors and all of their employees are independent contractors/consultants and shall not be considered employees of LIRR.

### **II – 5.0 INTEREST IN CONTRACT**

The Consultant shall not employ any such individual for the Work for a period of two (2) years after such individual's employment with LIRR or MTA has terminated. Pursuant to New York's Public Officer's Law, the Consultant may not employ any individual to work on this Contract who, at any time during the term of his/her employment with LIRR or MTA, such person was directly involved with the Work under the Contract, personally participated in the Work under the Contract or had the Work under the Contract under his/her active consideration. The Consultant shall insert this provision in all of its subcontracts.



**II – 6.0 SUBCONTRACTING**

- A. Except as to subcontracts identified in the Consultant’s Proposal and approved by LIRR, the Consultant shall not subcontract any portion of the Work without the prior written approval of LIRR. The Consultant must submit for each new subcontract, including a subcontract for any subconsultant, a request for approval of the subcontract to LIRR including the Contract number, description of the Work to be subcontracted, commencement and completion dates, subcontract value, subcontractor's name, address, phone number, resume of similar work performed by the subcontractor, client contacts and telephone numbers.
- B. If the Work under a particular Release issued by LIRR is federally funded and the subcontract exceeds \$25,000, a subcontractor certification entitled “Certification of Potential Subcontractor Debarment and Suspension and Other Responsibility Matters” shall be completed by the proposed subcontractor and submitted to LIRR.
- C. The Consultant's request for approval of each subcontractor must specify whether it intends to apply the proposed subcontractor and subcontract amount towards the applicable MBW/WBE or DBE goal specified in the Contract including any amendments thereto.
- D. In the event permission is granted by LIRR to subcontract a portion of the Work, the provisions of the Contract shall apply to each subcontractor. Approval of any subcontractor by LIRR shall not operate as a waiver of any right against the Consultant or third parties, nor shall it relieve the Consultant of any of its obligations to perform the Work as herein set forth.
- E. The Consultant shall insert into every subcontract, and require the insertion into all lower tier subcontracts, all provisions required by law, regulation, rule or by the Contract.
- F. LIRR shall have the right to audit the records of subcontractors including any suppliers in the same manner as the Consultant.

**II – 7.0 CONSULTING SERVICES**

- A. In the performance of the Work, the Consultant will coordinate the Work with, and conform to the Contract Documents under the direction of the Procurement Officer and shall perform the contractually specified work to the approval of LIRR’s Project Manager. LIRR’s Project Manager shall determine the quality, acceptability and fitness of the work, all in accordance with the requirements of the Contract Documents. Upon request of the Consultant, the Project Manager will promptly confirm in writing any oral order, direction, requirement or determination made by LIRR pursuant to this section. Any approval required to be given by the Project Manager pursuant to any other provision of the Contract Documents shall be made or given in conformance with the Contract Documents.
- B. Any approval given by the Consultant or LIRR pursuant to any provision of the Contract shall be construed merely to mean that at that time the Consultant or LIRR had no reason for objecting; and no such approval shall release the Consultant from its full responsibility for the accurate and complete performance of the Work in accordance with the Contract Documents or any duty, obligation or liability imposed upon it by the Contract or from responsibility for injuries to persons or damage to property.

**II – 8.0 PROGRESS REPORTING**

The Consultant shall keep LIRR fully informed as to the progress of the Work at all times by, among other things issuing monthly progress and cost reports and minutes to the Project Manager. The Consultant shall also submit to the Project Manager with a copy to the Procurement Officer minutes of all meetings relating to the

Work, within five (5) days following such meetings. The Consultant shall receive prior approval from LIRR's Project Manager before conducting any liaison with any entity outside of LIRR.

**II – 9.0 ENVIRONMENTAL PROTECTION**

- A. The Consultant shall, in its performance of the Work, comply with all applicable Federal and New York State environmental statutes, regulations and codes.
- B. The Consultant shall notify LIRR of the receipt of any communication from EPA, the New York State Department of Environmental Conservation, or any other Federal, State or local authority, indicating that a facility to be or being used in its performance under this Contract is under consideration for listing on the EPA list of Violating Facilities or any equivalent Federal, state or local list of such facilities or sites.

**II – 10.0 SAFETY**

- A. All Work performed under the Contract must be designed, planned, scheduled, and executed in accordance with LIRR Safety and Operating Rules, the requirements imposed by the movement of its trains, and in conformance with the safety and health standards of the Occupational Safety and Health Act (OSHA) of 1970, as amended, and or rules, regulations and interpretations thereunder and all state, local or project standards.
- B. The Consultant shall appoint a Safety Representative, who shall be responsible to ensure the safe operation of the Consultant's work.
- C. The Consultant shall prohibit gambling and the use of intoxicants, and shall provide sufficient safety training to instruct each employee and subcontractor.
- D. Any LIRR representative shall be allowed to investigate and observe the Consultant's Work under the Contract for compliance with the foregoing. Any such action on the part of LIRR shall not relieve the Consultant of its obligation to comply with these standards including OSHA requirements and Consultant's failure to do so may be considered as grounds for default.
- E. The Consultant shall report all accidents occurring on LIRR property and arising out of or related to the performance of the Work giving full details and statements of witnesses. The Consultant shall immediately notify LIRR of any such accident and, within forty-eight (48) hours of such an occurrence, file a complete written report using NYS Employer's Report of Injury Form (C-2). The original must be sent to the Worker's Compensation Board, in accordance with the Board's instructions, with a copy to LIRR, in accordance with the section entitled "Notices and Approvals" in the Contract Terms and Conditions.
- F. If any claim is made by any third party against the Consultant or any subcontractor on account of any accident arising out of or related to the Work, the Consultant shall, within forty-eight (48) hours, report that fact, in writing, to LIRR, giving full details of the claim. All notices given to LIRR shall be in accordance with the section entitled "Notices and Approvals" in the Contract Terms and Conditions with an additional copy to:

MTA Risk & Insurance Management  
Metropolitan Transportation Authority  
347 Madison Avenue (Mail Code 431-18)  
New York, New York 10017

- G. Any Work that is performed on or adjacent to operating tracks shall be scheduled so it will not interfere with LIRR's operations. No changes in LIRR's operating schedules will be made to

accommodate the Consultant's operations. Whenever any part of the Work may affect the safety or the movement of trains, the method of doing the same shall first be submitted to LIRR for approval, and shall not be performed without LIRR's written approval. The Consultant shall conduct its Work in a safe and orderly manner and shall safeguard LIRR from being damaged in any way whatsoever.

- H. An operating track or power, signal or communication line will be considered fouled when any part of a piece of equipment or material is closer, or through improper operation or accident may be brought closer, than fifteen (15) feet from the center line of any operating track or any such line. If the Consultant determines that an operation cannot be performed without fouling an operating track or line, the Consultant shall obtain flagging protection from LIRR. The Consultant shall submit a schedule of its operations to LIRR a minimum of two (2) working days before the Work is to commence, so that LIRR may arrange to furnish special supervisory and protective personnel. The Work shall not commence until:
1. LIRR notifies the Consultant that the necessary protective personnel will be available; and
  2. LIRR and the Consultant each verify and confirm that the necessary protective personnel are in position.
- I. LIRR will furnish to the Consultant, the necessary services of all flagmen, watchmen, and similar protective personnel as required by LIRR to protect the operation and safety of railroad traffic and facilities during the Consultant's operations under the Contract. When protective personnel are required by LIRR, that portion of the Work shall not be permitted until flag protection is furnished.
- J. The Consultant shall be responsible for any operating delays, disruptions, damages and all associated costs resulting from the Consultant's failure to adhere to the Contract Terms and Conditions.
- K. All Consultant personnel who will perform services on LIRR property shall be required to attend a LIRR Safety Orientation Class. This orientation will be conducted in the English language. The scheduling of this orientation will be coordinated through LIRR.
- L. Safety Orientations will be presented as required during the course of the Contract. The Consultant shall not permit any personnel to work at the site until they have received the Safety Orientation. The Consultant shall give ten (10) days' notice to LIRR when Consultant's personnel will be made available to attend LIRR Safety Orientation.
- M. The Consultant shall have a written Safety Program specifically applicable to the Work, which program meets the requirements of these contract documents and all applicable LIRR standards, Federal, State and local law as may be further defined in the Technical Specifications, LIRR review of such program shall not relieve the Consultant of this responsibility for safety, nor shall such review be construed as limiting in any manner the Consultant's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions regarding his work at the project site. LIRR reserves the right to require the Consultant to modify any portion of its Safety Program not in conformance with this Contract.
- N. The Consultant shall immediately correct any unsafe conditions. In the event the Consultant fails to immediately correct such unsafe conditions, even when so directed by LIRR, LIRR may either (1) have the unsafe conditions corrected by others at the Consultant's expense, or (2) direct that the Work be stopped in the area of the unsafe condition, and, if the violation continues, LIRR may terminate the Contract for default.

- O. The Consultant waives the right to bring any claims for damages against LIRR for any action taken or not taken by LIRR in accordance with this section.

**II – 11.0 QUALITY MANAGEMENT**

**PART 1 – GENERAL**

**1.01 SECTION INCLUDES:**

- A. Requirements for the Consultant Quality Management System including:
  - 1. Consultant Quality Management System Manual
  - 2. Consultant Quality Representative
  - 3. Consultant Quality Plan
  - 4. Consultant Software Quality Assurance Plan, (if applicable)

**1.02 REFERENCED SECTIONS:** (None)

**1.03 CITED STANDARDS:**

- A. American National Standards Institute/International Standard Organization/ American Society for Quality (ANSI/ISO/ASQ):
  - 9001:2015 ISO Quality Management Systems—Requirements (replaces 2008 version)
  - 9001:2008 Quality Management Systems – Requirements (replaces the 2000 version)
  - 9001:2000 Quality Management Systems – Requirements (replaces the 1994 versions of ISO 9001, ISO 9002 and ISO 9003)
  - 9001:1994 Quality Systems – Model for Quality Assurance in Design, Development, Production, Installation, and Servicing
  - 10012-2003 Measurement management systems — Requirements for measurement processes and measuring equipment
- B. Institute of Electrical and Electronics Engineering (IEEE) latest revision at RFP:
  - 1558 Standard for Software Documentation for Rail Equipment and Systems including the additional IEEE Standards as cited in Section 5 of IEEE STD 1558-2004.
  - 730:2002 Standard for Software Assurance Plans

**1.04 NOTED RESTRICTIONS:**

- A. Personnel shall not engage in the performance of the Work until qualified to perform assigned tasks based on appropriate education, training, and experience.
- B. Consultant invoices will not be deemed proper and therefore not payable until the Consultant Quality Plan is approved by the Railroad.
- C. When work-scope involves software related activities, the Consultant shall:
  - 1. have in place a documented system that conforms to IEEE Standard 1558-2004 including the additional IEEE Standards as cited in Section 5 of IEEE STD 1558-2004. Comments, procedures, plans and other specified documentation associated

with software design, coding, and maintenance shall be in English and available to the LIRR upon request.

2. have mature processes implemented for all phases of software life cycle including concept, design, development, test, system integration and maintenance as well as acquisition of software intensive systems demonstrating implementation such as Capability Maturity Model Integration (CMMI) - Level 2 minimum, or other industry criteria acceptable to the Railroad.

**1.05 QUALITY CONTROL:**

- A. The Consultant Quality Management System shall be implemented and maintained throughout the term of the Contract.
- B. The Independent Testing Agency (ITA) where retained by the Consultant to perform the ITA tests and inspections, shall conform to the requirements of ISO 10012.

**1.06 SUBMITTALS:**

- A. Consultant Quality Management System Manual within 5 days of Notice of Award of the Contract.
- B. Resume of designated Consultant Quality Representative with the proposal.
- C. Consultant Quality Plan within 30 days of Notice of Award of a Release or such other time as designated by the Railroad.
- D. Written description of Consultant Software Quality Assurance System with the proposal (if applicable).
- E. Consultant Software Quality Plan within 30 days of Notice of Award, (if applicable).
- F. Independent Testing Agency (ITA) documents of qualifications, within 45 days of Notice of Award, and statement of capability for each ITA test identified in the Technical Specifications and Quality Plan.

**1.07 DELIVERABLES:** (as applicable)

- A. Specific Consultant Quality Management System Procedures within 5 working days of request by the Railroad.
- B. Nonconformance Report (NCR), documenting the disposition of product (for Material: Repair, Rework, Re-grade, Reject, Accept-as-is; for Procedure/Process: Follow, Revise, or Develop), for each nonconforming condition, within 5 working days of discovery.
- C. Nonconformance disposition identified as “Accept-as-is” or “Repair” shall be subject to LIRR prior written acceptance.

**PART 2 – PRODUCTS**

**2.01 CONSULTANT QUALITY MANAGEMENT SYSTEM MANUAL:**

- A. Consultant Quality Management System Manual shall be in compliance with the applicable ANSI/ISO/ASQ Quality Standard, and include:
  1. Scope of the Consultant Quality Management System, including details of and justification for any exclusion.
  2. Documented procedures established for the Consultant Quality Management System, or

reference to them.

3. Description of the interaction between associated processes of the Consultant Quality Management System.

**2.02 CONSULTANT QUALITY MANAGEMENT SYSTEM PROCEDURES:**

- A. The Quality System Procedures shall be included or referenced in the Quality Manual and shall outline the structure of the documentation used in the Consultant's Quality System. The included or referenced set of procedures shall document:
  1. Standard operating procedures for defining the methods, instructions, and responsibilities of technical and administrative personnel who carry out activities of the Consultant Quality Plan.
  2. Administrative procedures for ensuring and showing compliance with the requirements of this Contract Document and the Consultant Quality Plan.

**2.03 CONSULTANT QUALITY REPRESENTATIVE:**

- A. Quality Representative qualifications:
  1. Five (5) years of relevant experience in a quality-related field, with minimum of one-year experience as an employee to the Consultant, with demonstrated knowledge of quality principles, techniques and controls, specific to the project work-scope.
- B. Quality Representative shall:
  1. be responsible for developing and monitoring processes, procedures, and documentation to ensure the Work meets the Contract.
  2. have organizational independence from project execution activities and shall, irrespective of other responsibilities, have the responsibility and authority to ensure that quality-related processes are established, implemented, and maintained.
  3. be available for and provide consultations during meetings with the Railroad and proactively participate in project quality management addressing and communicating quality issues in a timely manner.

**2.04 CONSULTANT QUALITY PLAN:**

- A. Consultant Quality Plan shall detail the identification, scheduling, and performance of task-specific quality-related activities for the specified requirements. Specifically, the Consultant Quality Plan shall describe the controls for the quality of the Work, and specify:
  1. Quality objectives and requirements for the Work (the product realization processes and resulting product).
  2. Processes, documents, and resources specific and necessary to perform the Work.
    - a. including an organizational chart identifying personnel (by name and project title) assigned to the project that will be responsible for the project and the quality assurance/ quality control functions for the project.
  3. Required verification, validation, monitoring, inspection and test activities specific to the Work, including their identification, sequencing, and scheduling; as well as the criteria for product acceptance at appropriate stages of the Work, including:

- a. responsible parties, key activities, documentation, and the manner of control over these activities.
  - b. responsibilities, authority, and interrelations for each person who performs verification activities.
  - c. each activity required by the Contract, and/or applicable Codes and Standards to demonstrate that performance and function of the systems and structures meet acceptance criteria.
  - d. quality review and signature approval process for all submittals and deliverables transmitted to the Railroad.
- 4. Collection of forms or sample formats to be used to document and control the Work, sufficient to outline the structure of the documentation to be used to control of the quality of the Work.
  - 5. Records needed to provide evidence that the Work meets requirements.
- B. When the work scope involves software related activities, a Software Quality Assurance Plan (SQAP) conforming to IEEE 730 shall be submitted in addition to the Consultant Quality Plan
- 1. When standardized software is included as part of standard Commercial-Off-The-Shelf (COTS) equipment, software documentation shall conform to the requirements of IEEE-1558 for Type 1 procurement, with the addition of validation test procedure for installed software and a Software Configuration Management Plan.
  - 2. When work includes design or development of new or modified software to fit an application specific to the Railroad, software documentation shall conform to the format and level of detail required by IEEE-1558-2004, Type 5 procurement and the requirements in the applicable technical section of this Contract, including the additional IEEE Standards as cited in Section 5 of IEEE Std 1558-2004

**PART 3 – EXECUTION**

**3.01 PREPARATION:**

- A. Transmit submittals and deliverables required by this Section.

**3.02 PERFORMANCE:**

- A. Perform the Work in accordance with the Contract Documents, the Consultant Quality Management System Manual, the Consultant Quality Plan and Software Quality Assurance Plan (if applicable).
- B. Revise Consultant Quality Plan, and Software Quality Assurance Plan (if applicable) to keep current throughout the term of the Contract.

**II – 12.0 LIRR HOLIDAY RESTRICTIONS**

- A. The Consultant shall not schedule or perform any activities that require any oversight, inspection or support of any kind by LIRR, or interferences 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:

- |                                      |                            |
|--------------------------------------|----------------------------|
| 1. New Year's Day                    | 7. Independence Day        |
| 2. Martin Luther King Day (observed) | 8. Labor Day               |
| 3. Lincoln's Birthday                | 9. Columbus Day (observed) |
| 4. Washington's Birthday (observed)  | 10. Election Day           |
| 5. Good Friday                       | 11. Thanksgiving Day       |
| 6. Memorial Day (observed)           | 12. Day after Thanksgiving |
|                                      | 13. Christmas Day          |

- B. In addition, the Consultant shall not schedule or 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 Hashana, the eve of Yom Kippur, the eve of Passover, the day of Passover, December 23rd, and on the Friday before July 4th.

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**SECTION III – PROVISIONS RELATING TO TIME****III – 1.0 PROGRESS OF WORK**

- A. The Consultant agrees that it will at all times employ, maintain and assign to the performance of the Work, a sufficient number of competent and qualified personnel to ensure timely completion of the Work.
- B. The Consultant is obligated to monitor the progress of the Work against budget and schedule and to bring to the attention of LIRR any work elements which require corrective action.
- C. The Consultant shall update the Project Management Plan and the Work Plan for each Release awarded hereunder.

**III – 2.0 COMMENCEMENT AND COMPLETION DATES**

- A. The Consultant shall commence the Work beginning on the date of the Notice of Award of each Release and shall plan, schedule and progress the Work so as to achieve completion of the interim, if any, and final milestones and the schedule for the Work as set forth in the Release and Technical Specifications.
- B. Within ten (10) days after submission by the Consultant of satisfactory insurance certificates (if not previously submitted to the Railroad), schedules, and other required documents, LIRR will issue a Notice to Proceed for the Work under a Release, permitting the Consultant to commence the Work. If the required submissions are unacceptable, LIRR will advise the Consultant and the Work shall not be permitted to start work until the submittals are satisfactory. Any schedule impact due to unsatisfactory submittals shall be the responsibility of the Consultant.
- C. The Consultant is firmly obligated to complete the Work within the durations specified. An extension of time will be granted if the Consultant has been necessarily delayed, at the determination of LIRR, by a cause which: (1) is beyond the Consultant's reasonable control; (2) arises after the issuance of the Notice of Award and neither was, nor could have been anticipated by reasonable investigation before such issuance; (3) the completion of the Work is actually and necessarily delayed; and (4) the effect of such causes could not be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay.
- D. Notwithstanding the foregoing, delays caused by strikes, acts of God, acts or requirements of government authorities, war or other hostilities, riot or civil commotion, embargo, and lockout shall be considered to have met all the qualifying conditions set forth above.

**III – 3.0 PROJECT MANAGEMENT PLAN**

- A. The Consultant shall maintain, for the duration of the Work, a Project Management Plan. The plan shall contain the following:
  - 1. An organization chart of the Consultant and each subcontractor, detailing the names, titles, levels of authority and functions of the key management personnel and technical personnel directly employed in the performance of the Work.
  - 2. A current resume of Key Personnel describing the individual's qualifications in terms of experience and education.
  - 3. An organizational plan specifying responsibilities for the various areas of the Work to ensure

the expedient and proper resolution to the various types of problems typically experienced during the type of Work required under the Release.

4. A description of specific responsibilities, interfaces and channels of communication between the Consultant, subcontractors, other agencies or entities, and LIRR.

**III – 4.0 WORK PLAN**

A. The Consultant shall maintain a current, complete and specific plan to accomplish the individual work efforts within the established limits, parameters, guidelines, schedule and budget. The Work Plan shall consist of two (2) complementary and mutually consistent efforts, which shall be referred to as the "Written Work Plan" (WWP) and the "Work Plan" (WP).

1. The Written Work Plan shall contain specific details of each task and subtask included in the scope of the Work. The plan shall address each task and subtask in terms of commencement and completion dates, methods of accomplishment, Consultant and LIRR responsibilities, concerns, problems and a full list of activities required to complete the effort and the responsible personnel.
2. The Work Plan shall parallel the Written Work Plan and represent the incurred and anticipated expenditure of hours and all associated costs necessary to perform the Work in accordance with the Written Work Plan. The Work Plan forecast shall have sufficient detail to monitor the progress and cost performance ratios and meet with LIRR's approval. In no event shall the distribution of the forecast be of less detail than by firm, by task, by month, by discipline. The Work Plan shall emphasize all tasks, subtasks and activities anticipated during the upcoming calendar month, and shall detail the Work, sufficient for positive control and management of all aspects of the Work.

B. The Written Work Plan and Work Plan shall be revised as required to reflect changes in the specified Work and the Work progress; the impact of changed conditions shall be updated on a regular monthly basis. Each monthly submittal of the plans must be sent to LIRR for review and comment.

C. Monthly Report

The Consultant shall submit within ten (10) days following the end of the preceding calendar month, five (5) copies of the Monthly Report summarizing activity status for the preceding month as well as cumulative to-date in accordance with the Work Plan Task breakdown for the Work and shall include as a minimum, the following:

1. Accomplishments and progress by task.
2. The Contract Work cost outline by task, including authorizations, changes, and requests for extras to date and showing the incurred cost to date for each task.
3. Action items required by the Consultant including significant anticipated interface problems, which could potentially delay the Work if not resolved.
4. The Consultant's summary and professional evaluation of the technical concerns, progress and budget of the Contract Work.
5. A copy of the Consultants MBE/WBE or DBE Form for the reporting month.
6. All other reporting requirements as delineated in the Technical Specifications.

**III – 5.0 FINAL COMPLETION**

Final Completion shall occur, as determined in the sole discretion of the Railroad, subsequent to (a) the Consultant's furnishing of all required submittals/deliverables items including final design documents, (b) resolution of all disputes, claims, liens, charges, backcharges, change orders and (c) receipt of all releases, affidavits, certifications, bonds, warranties and guarantees as required by the Contract. LIRR will notify the Consultant that it has achieved Final Completion.

**III – 6.0 TIME IS OF THE ESSENCE**

- A. Time is of the essence in the Contract and the Consultant is firmly obligated to meet the stipulated milestone and completion dates, except as any such date(s) may be extended in writing, by LIRR's Procurement Officer. Requests for extensions of time must be submitted in writing to LIRR's Procurement Officer and state with specificity the reason for the requested extension. LIRR reserves the right in its sole discretion to rescind or modify any extension previously granted.
- B. The Consultant shall give written notice to LIRR, including an explanation and anticipated schedule impact, within five (5) days after the time the Consultant knows or should have known of any cause which might under reasonably foreseeable circumstances result in delay for which it may claim an extension of time, including those causes for which LIRR has knowledge. The Consultant understands and acknowledges that the Consultant's failure to give written notice shall be deemed a waiver of an extension of time for the cause of delay in question.

**III – 7.0 TEMPORARY SUSPENSION**

LIRR reserves the right to temporarily suspend the execution of the whole or any part of the Work at any time and for any reason. LIRR may, in its sole discretion, make an equitable adjustment to cost and/or schedule as a result of such temporary suspension.

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**SECTION IV – PRICE AND PAYMENTS****IV – 1.0 BASIS OF COST DETERMINATION**

As full compensation for the Work, LIRR will pay the Consultant's direct wages, overheads, other direct costs, subconsultant charges, and fixed fee as set forth herein. The provisions of the Federal Acquisition Regulations Part 31.2 *et seq.* shall be the guide for the determination of the allowability and allocability of the costs except that State and local taxes on net income shall not be allowed.

1. The reimbursement of direct wages for technical and clerical personnel, provided the Consultant's accounting procedures specify such clerical personnel to be a direct charge, shall be limited to the actual time such personnel are employed directly in performing the Work and shall not include any partner, principal, or officer of the Consultant unless such partner, principal, or officer is engaged directly in performing such services in a non-supervisory capacity and in such event such direct effort shall be reimbursed at a rate not-to-exceed that paid to the highest paid professional employed directly in performing such services. For purposes of overhead calculations all the principal, partner and officers actual direct labor charges to all jobs shall be included in the direct labor base at the actual amount paid the partner, principal, and officers without consideration to the out-of-pocket expense invoiced.

For the purpose of determining allowable direct wages, the salaries of allowable personnel shall be reduced to a negotiated hourly rate, based upon payroll documentation, effective at the time of Task Release award. Principal rates, if applicable, shall not exceed the highest professional rate utilized within the specific task assignment. Annual increases shall be approved by the LIRR's Chief Procurement Officer or his/her designee and shall not exceed 3% without specific approval of same. Employees subject to any law requiring the payment of premium pay for overtime will be paid at the hourly wage rate fixed by the Consultant. The hourly rate of employees not subject to any such law shall be determined by dividing base weekly salary by forty (40) or as may otherwise be applicable to the Consultant's standard work week. Chargeable hours will include hours actually worked under the Contract in any week, except that in no case shall the number of hours in any one week be more than forty (40) without the specific approval of LIRR. Premium pay shall be added to the hourly wage rate for all overtime hours per published personnel policies of the Consultant, but only to the extent actually paid and only when previously authorized, in writing, by LIRR. Overhead charges shall not be applied to overtime premium invoiced charges. All the labor charges are subject to adjustment based on LIRR audit.

2. The Consultant's applicable actual overhead costs, payroll taxes, pension and retirement, and fringe benefit expenses, including vacation, holiday and sick leave allowances, all as verified by post audit and limited by both the negotiated overhead cap and the most favored customer rates, will be reimbursed by LIRR as an overhead rate allowable on direct wages exclusive of the premium portion of overtime pay.
3. Other Direct Costs shall include the following expenses incurred by the Consultant, in connection with the performance of the Work, provided these costs meet the criteria established in the Federal Acquisition Regulations Part 31.2 *et seq.*, relating to reasonableness, allowability and allocability and as may be further limited herein. The Other Direct Costs which are eligible for reimbursement shall be limited to (unless otherwise approved):
  - (a) Long distance telephone, telegram and cable charges;
  - (b) Charges for outside reproduction and printing of contracts, reports, documents, specifications, and plans at the actual costs to the Consultant, except that LIRR's prior written approval is required for any expenditure of \$1,000 or higher for printing

costs;

(c) Purchase of office supplies, equipment, and postage, express mail, and freight charges, any of which are directly applicable to the Work; except that any expense over \$500 per month must have prior written approval by LIRR;

(d) Travel expenses including railroad (coach), airplane (coach), bus, rented automobile, taxi, or other fares, or 58 cents per mile plus tolls and parking fees for private automobile travel; actual, necessary, and reasonable charges for hotel accommodations and meals while away from the home office or other offices to which the employee involved is assigned except that commutation cost of usual travel from home to office shall not be an acceptable charge. All travel shall be pre-approved by LIRR and the Consultant's Project Manager. These costs shall not exceed those, which are acceptable under the Consultant's corporate policy;

(e) Cost of rental, operation, maintenance or repair of any equipment or tools used specifically in connection with the Work, except that no costs shall be charged to LIRR without prior written approval of LIRR;

(f) Net premiums for policies of insurance procured by the Consultant solely in accordance with the section entitled "Insurance", and only to the extent that such premiums would not otherwise be incurred;

(g) Cost of required licenses, permits, and fees obtained in connection with the performance of the Work and only to the extent that such costs would not otherwise be incurred;

(h) Cost of required software and hardware to the extent that such software and hardware would not otherwise be available and would not otherwise be incurred, and subject to the prior written approval of LIRR.

4. Allowable subcontractor charges shall be determined on the same basis as allowable Consultant costs except that each subcontractor shall have an overhead rate and fixed fee separately determined and agreed to by LIRR.
5. The fixed fee for the Work shall be determined during negotiations ("Fixed Fee"). The fixed fee for the Work, or any portion of the Work, shall not exceed eight percent (8%) of the estimated direct labor plus applicable overhead as agreed to by LIRR and the Consultant. In addition, the Consultant may be allowed a fixed G&A fee on subcontractors which amount shall be negotiated and shall not exceed five percent (5%) of the subcontractor costs.
6. The applicable maximum Amount Obligated (as defined below), fixed fee, provisional and capped overhead amounts, and other charges will be specified in the Notice of Award, all based on negotiations.

#### **IV – 2.0 PAYMENTS**

- A. Amounts billable under the provisions of the section entitled "Basis of Cost Determination" ("Allowable Costs") may be billed to LIRR periodically, but not more than once each month, upon invoices certified by the Consultant. Separate invoices must be submitted for each Release. The cost elements comprising the invoice shall be delineated as follows: direct labor; negotiated provisional billing overhead; other direct costs; subcontractor charges, and Fixed Fee. All invoices shall be taken from the books and records of account kept by the Consultant and shall be supported by copies of payroll distribution, bills and receipts, or other such documents as required

by LIRR. Invoice documentation for each subcontract shall be in the same detail as that of the Consultant. The amount payable under the provisions of the Contract as Fixed Fee shall be billed to LIRR in installments simultaneously with the invoices until such fee has been fully paid. The amount of the invoiced Fixed Fee installment shall be a percentage of the labor and overhead being invoiced, which percentage shall be the ratio of the total price of the Work as provided in the Release divided by the estimated labor and overhead costs incurred for the billing period. However, the total invoiced Fixed Fee shall be limited by the amount of the stated Fixed Fee set forth in the Release. The Fixed Fee is subject to upward or downward adjustment in the event of upward or downward changes to the Technical Specifications or termination as set forth elsewhere in the Contract; provided however, that if the Technical Specifications remains the same, the Fixed Fee shall also remain the same despite a determination by LIRR, in its sole discretion, to reimburse the Consultant for Allowable Costs.

- B. The Consultant shall transmit an original invoice and two (2) copies on or about the fifth of each month to:

Long Island Rail Road  
Capital Accounting Department  
146-01 Archer Avenue  
Mail Code 1425  
Jamaica, New York 11435

Two (2) additional copies shall be sent to LIRR's Project Manager pursuant to section entitled "Notices and Approvals" in the Contract Terms and Conditions.

- C. Payment will be made by check and in accordance with Section 2880 of New York's Public Authorities Law as follows:

1. LIRR will pay *proper invoices* within thirty (30) days of receiving either an invoice accompanied by the proper supporting documents, or where the invoice involves goods provided under the Contract, the goods covered by it, whichever is later.
2. LIRR shall within fifteen (15) days after receiving the invoice and accompanying supporting documentation, or goods, notify the Consultant of an improper invoice.
3. Payments made after thirty (30) days of receipt of a proper invoice will be subject to an interest payment as required by law.

- D. In order to ensure LIRR's ability to pay invoices promptly, the following information must be furnished on all invoices:

- Company Name
- Invoice Number
- Invoice Date
- Contract Number
- Description of Services/Goods

LIRR will review the invoice, verify that the charges are proper, are in accordance with the terms of this Contract, that the indicated work effort completed is commensurate with the requested charges and that all necessary submissions for the time period have been promptly received from the Consultant prior to payment. LIRR reserves the right to withhold payments for failure to timely submit any submissions required by the Contract. In the event all satisfactory submissions

have not been promptly submitted, LIRR, in its sole discretion, may elect to make a partial or full payment to the Consultant, which payment does not release the Consultant from fulfillment of its duties and obligations under this Contract.

- E. Within fifteen (15) calendar days of the receipt of any payment from LIRR, the Consultant shall pay each of its subcontractors the proceeds from the payment representing the Work performed by the subcontractors less any retained amount as agreed to by the parties to the subcontract. Within fifteen (15) calendar days of the receipt of payment from the Consultant, the subcontractors shall pay each of its subcontractors in the same manner. Nothing provided herein will create any obligation on the part of LIRR or MTA to pay or to see to the payment of any monies to the subcontractors from the Consultant, nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractors and LIRR.
- F. Provisional Overhead Billing Rate. The Consultant shall invoice LIRR using the negotiated provisional overhead billing rate as specified in the Notice of Award of the Release(s). LIRR will allow an adjustment in this provisional overhead billing rate annually if an audit or other objective evidence furnished by the Consultant indicates to LIRR's satisfaction that an adjustment is appropriate.
- G. Retainage. After LIRR's approval of a Consultant's invoice, ninety-nine (99%) of such approved invoice amount will be paid to the Consultant. Notwithstanding anything herein to the contrary, the one percent (1%) retained by LIRR will be held pending LIRR's final Acceptance of the Work and final audit, if any, of costs incurred and receipt and approval of the Consultant's final invoice for retainage.
- H. Substitution of Bonds. The Consultant may, from time to time, withdraw the whole or any portion of the amount withheld from payments to it upon depositing with MTA: (1) United States Treasury Certificates of Indebtedness or United States Treasury Bills; (2) Bonds or notes of the State of New York; (3) Bonds of any political subdivision in the State of New York; or (4) Bonds of the New York State Housing Finance Agency, of a market value not exceeding par (at the time of deposit) equal to the amount so withdrawn. MTA may from time to time (but not more than once a month) direct the Consultant to deposit with LIRR additional obligations of the kind enumerated above to make up any difference between the market value of obligations so deposited as of the time of such deposit and subsequent decline in market value of such obligations. MTA will, from time to time, collect all interest or income on the obligations so deposited, and will pay the same, when and as collected, to the Consultant. If the deposit be in the form of coupon bonds, the coupons as they respectively become due will be delivered to the Consultant.

There is an annual service charge of \$900 (amount subject to change) to implement the above withdrawal of retainage. Payment shall be made by check payable to the Metropolitan Transportation Authority and mailed or delivered to MTA Comptroller's Office, Attention Deputy Comptroller, 347 Madison Avenue, New York, NY 10017. This service charge is not a reimbursable expense.

- I. Amount Obligated. The maximum amount obligated under the Contract is as specified in the Release(s) issued pursuant to the Contract or as subsequently increased or decreased pursuant to the provisions of the Contract ("Amount Obligated"). The Consultant may not claim and will not be paid otherwise Allowable Costs to the extent that they exceed the Amount Obligated unless and until it shall have been increased by written modification authorized by LIRR's Procurement Officer. If, at any time, the Consultant has reason to believe that the total cost to LIRR for the performance of the Work will be greater or substantially less than the Amount Obligated (the "Variance"), the Consultant shall notify LIRR in writing within five (5) days of the time that the Consultant knows or should have known of the Variance, giving the revised estimate of such total

cost for the performance of the Work. If the Consultant fails to notify LIRR of the Variance within the time and in the manner required herein and/or incurs otherwise Allowable Costs exceeding the Amount Obligated in the absence of a modification authorized by LIRR's Procurement Officer, the Consultant shall not at law or in equity be entitled to reimbursement of otherwise Allowable Costs to the extent they exceed the Amount Obligated.

#### **IV – 3.0 MOST FAVORED CUSTOMER (Non-Federally Funded Task Awards)**

In no event shall any labor or overhead rate that the Consultant charges LIRR exceed the lowest labor and/or overhead rates currently charged to the State of New York, MTA (including all affiliated and subsidiary agencies thereof), or to other New York State agencies, public benefit corporations, authorities, or municipal corporations (collectively, the "Consultant Customers"). In the event that the Consultant charges any of the Consultant Customers a lower labor or overhead rate than it charges LIRR, the rate charged to LIRR shall be reduced to the lowest charged by the Consultant to any of its Consultant Customers.

#### **IV – 4.0 FINAL PAYMENT**

The Consultant understands, acknowledges and agrees that the Consultant's acceptance of Final Payment from LIRR shall constitute a waiver by the Consultant of all claims for Work performed under this Contract. Final Payment shall mean LIRR's release of the remaining payment of the price of the Work under the Contract to the Consultant. The Consultant shall place, execute and have notarized the following statement on its final invoice submitted to LIRR:

*"In consideration for LIRR paying the above invoice together with other invoices on this Contract previously submitted by the Consultant to LIRR, the aggregate amount totaling (Insert Amount)*

*\$\_\_\_\_\_, the undersigned agrees to release and discharge LIRR of and from all claims and demands arising out of said Contract, or related to including all claims and demands for extra labor or material furnished for or in connection with the Work which is the subject matter of said Contract; and also agrees to save harmless and indemnify LIRR from and against any and all delay claims, claims of mechanics or material suppliers and from and against any and all delay claims of other contractors or consultants, and any and all liens, claims and demands for material furnished and provided, and work and labor done and performed upon or about the Work which is the subject matter of said Contract."*

#### **IV – 5.0 NON-WAIVER**

Failure by LIRR to take any action in regard to any breach by Consultant under this Contract shall not be deemed a waiver of LIRR's rights as to that breach or any other prior or subsequent breach by the Consultant. LIRR's review, approval to pay, or payment for any of the Work shall not effect a waiver by LIRR of any breach by the Consultant.

#### **IV – 6.0 PAYROLL CONTRIBUTIONS**

The Consultant accepts full and exclusive responsibility for the payment of any and all contributions or taxes, or both, or any other benefits whatsoever, now or hereafter imposed under any law of the United States or of the State of New York or any of its political subdivisions. The Consultant shall comply with all legislation, regulations and rulings thereunder respecting any of the aforesaid contributions or taxes.

#### **IV – 7.0 CERTIFICATE OF CURRENT COST OR PRICING DATA**



The following Certificate of Current Cost or Pricing Data is required for all contracts, subcontracts and/or modifications over \$50,000 (i.e. negotiated procurement, single bid response, sole source and change orders). Only one certificate shall be required. The Consultant shall submit the certificate as soon as practicable after price agreement is reached.

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of .....\* are accurate, complete, and current as of .....\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and LIRR that are part of the proposal.

\*(Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., order no.).

\*\*\*(Insert the day, month, and year when price negotiations were concluded and price agreement was reached.)

\*\*\*\*(Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.)

Firm: \_\_\_\_\_

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

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

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

(Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.)

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**IV – 8.0 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

- A. If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (1) the Consultant or a subcontractor furnished cost or pricing data that was not complete, accurate, and current as certified in its Certificate or Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Consultant cost or pricing data that were not complete, accurate, and current as certified in the Consultant's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- B. Any reduction in the Contract price under paragraph A above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Consultant, if there was no subcontract was less than the prospective subcontract cost estimate submitted by the prospective subcontract cost estimate submitted by the Consultant; provided, however, that the actual subcontract price was not itself affected by defective cost or pricing data.
- C. (1) If the Procurement Officer determines under paragraph A of this section that a price or cost reduction should be made, the Consultant agrees not to raise the following matters as a defense –
- (i) The Consultant or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete and current cost or pricing data had been submitted;
  - (ii) The Procurement Officer should have known that the cost or pricing data in issue were defective even though the Consultant or subcontractor took no affirmative action to bring the character of the data to the attention of the Procurement Officer;
  - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract; or
  - (iv) The Consultant or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited in subdivision (C) (2) (ii) of this section, an offset in an amount determined appropriate by the Procurement Officer based upon the facts shall be allowed against the amount of a Contract price reduction if –
- (A) The Consultant certifies to the Procurement Officer that, to the best of the Consultant's knowledge and belief, the Consultant is entitled to the offset in the amount requested; and
  - (B) The Consultant proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if –
- (A) The understated data was known by the Consultant to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  - (B) The Railroad proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

**IV – 9.0 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA– MODIFICATIONS**

- A. This section shall become operative only for any modification to this Contract involving a pricing adjustment expected to exceed \$100,000, except for which the price is –
- (1) Based on adequate price competition;
  - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  - (3) Set by law or regulation.
- B. If any price, including profit or fee, negotiated in connection with any modification under this section, or any cost reimbursable under this Contract, was increased by any significant amount because (1) The Consultant or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Consultant cost or pricing data that were not complete, accurate, and current as certified in the Consultant's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that was not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this section becomes operative under paragraph A. above.
- C. Any reduction in the contract price under paragraph B. above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Consultant, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Consultant; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- D. (1) If the Procurement Officer determines under paragraph B. of this section that a price or cost reduction should be made, the Consultant agrees not to raise the following matters as a defense –
- (i) The Consultant or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost of pricing data had been submitted;
  - (ii) The Procurement Officer should have known that the cost or pricing data in issue were defective even though the Consultant or subcontractor took no affirmative action to bring the character of the data to the attention of the Procurement Officer;
  - (iii) The Contract was based on an agreement about the cost of each item procured under the contract; or
  - (iv) The Consultant or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (D) (2) (ii) of this section, an offset in an amount determined appropriate by the Procurement Officer based upon the facts shall be allowed against the amount of a Contract price reduction if –
- (A) The Consultant certifies to the Procurement Officer that, to the best of the Consultant's knowledge and belief, the Consultant is entitled to offset in the amount requested; and
  - (B) The Consultant proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the

data were not submitted before such date.

- (ii) An offset shall not be allowed if –
  - (A) The understated data was known by the Consultant to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  - (B) The Railroad proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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**SECTION V – WARRANTY****V – 1.0 WARRANTY**

- A. The Consultant hereby unconditionally warrants and guarantees to the Railroad that all Work, including but not limited to workmanship and other items furnished under the Contract comply with the Contract requirements including the Technical Specifications, and to generally accepted standards, and to be fit for its intended purpose, and to be free of any defects of workmanship or items required to be provided under the Contract.
- B. Upon written notice from LIRR, the Consultant shall promptly remedy any Work that does not conform to the Technical Specification, the Contract Documents, and/or to generally accepted standards; or that is not fit for its intended purpose, for a period of one (1) year from the date of Acceptance of the Work by LIRR.
- C. Any review, approval or acceptance of the Consultant’s Work, or payments by the Railroad for services performed by the Consultant or its subcontractors, shall not be deemed to diminish the Consultant’s warranty or otherwise relieve the Consultant of any professional liability.
- D. Neither the Railroad’s review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver of any rights available to the Railroad under this Contract or under law or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the Railroad in accordance with applicable law for all damages to the Railroad caused by the Consultant or its subcontractors, in whole or part, by performance of any of the services furnished under this Contract.

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**SECTION VI – CHANGES TO THE CONTRACT****VI – 1.0 CHANGES**

- A. LIRR reserves the right to make changes to the Work. The Consultant shall diligently perform all such work without delay even if the Consultant does not agree with any schedule or cost decision of LIRR related to changed Work. The Consultant must issue any related claim to LIRR within five (5) days of LIRR's request to perform the change. The claim will be considered by LIRR. If accepted, in whole or part, LIRR will issue a Change Order. The provisions of the Contract relating to the Work and its performance shall apply without exception to any changed or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between LIRR and the Consultant. LIRR's Procurement Officer must authorize in writing the changed or additional Work and/or any change to the Amount Obligated under the Contract before it is performed and before the Consultant can be reimbursed for such Work.
- B. The Consultant shall immediately notify LIRR, in writing, of any change in the scope of work either requested by LIRR or desired by the Consultant. Such notice shall be in the form of Change Request and shall include the estimated hours by element of work and the applicable hourly rates, overhead, other direct charges, subcontractor charges in the same detail as cost elements for the Consultant, and Fixed Fee, if any, all in accordance with the section entitled "Basis of Cost Determination" as well as any proposed schedule adjustments arising from the proposed change to the Technical Specifications, if any. The parties shall negotiate in good faith the proposed changes to the Technical Specifications identified in the Consultant's Change Request. The amounts that the parties agree upon shall be incorporated into the Contract by issuance of a Change Order.
- C. The issuance of a Change Order by LIRR shall constitute a final determination with respect to the changed Work identified in the Consultant's Change Request and shall constitute a waiver by the Consultant of any additional claims related to such changed Work unless at the time of LIRR's issuance of the change Order, the Consultant specifically reserves its rights related thereto in a writing signed by the Consultant and provided to LIRR's Procurement Officer at the address identified in the Notice of Award.
- D. LIRR reserves the right to delete any item of the Work in whole or in part. Any deletion of Work must be authorized in writing by LIRR's Procurement Officer. If an item of Work is deleted, the Fixed Fee, as set forth in the section entitled "Basis of Cost Determination", shall be reduced by an amount equal to the product obtained by multiplying the Fixed Fee by a fraction, the numerator of which is the sum of the estimated direct wages and the overhead associated with the deleted Work and the denominator of which is the sum of the direct wages and the overhead associated with the Work prior to deletions.

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**SECTION VII – TERMINATION****VII – 1.0 TERMINATION FOR CONVENIENCE**

- A. LIRR shall have the right to terminate the Contract in whole or in part at any time for any reason, irrespective of whether the Consultant is in default, by giving the Consultant written notice to such effect, which notice shall specify the termination date. Upon any such termination, the Consultant shall waive any associated claims for damages, including loss of anticipated profits. As the sole right and remedy of the Consultant, LIRR shall pay the Consultant in accordance with subparagraph B below. Those provisions of the Contract which by their nature continue beyond LIRR's final Acceptance of the Work under the Contract shall remain in full force and effect after such termination.
- B. Upon receipt of any such notice from the Procurement Officer, unless the notice provides otherwise, the Consultant and all its subcontractors shall:
1. Immediately discontinue Work, which can be discontinued without creating a hazardous condition, on the date and to the extent specified in the notice;
  2. Cancel all outstanding commitments for services, materials, equipment, and apparatus which may be canceled without undue cost. The Consultant shall notify LIRR of any commitment which cannot be canceled without undue cost and LIRR shall have the right to accept performance and/or delivery or to reject performance and/or delivery and pay the agreed upon costs;
  3. Place no further orders or subcontracts for services, materials or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated or as may be required by Item "1" above;
  4. Assist LIRR, as specifically requested in writing, in the maintenance and protection of the property used for the Work under the Contract.
  5. Subject to compliance with the foregoing and any other applicable provision of the Contract, LIRR, upon any such termination, may pay the Consultant the following:
    - a. All amounts due, including retentions, and not previously paid to the Consultant for Work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice;
    - b. The reasonable costs incurred pursuant to subparagraphs 1 through 4 above; and
    - c. Any other reasonable costs incidental to such termination of the Work.
- C. The Consultant shall submit to LIRR a statement for the aforesaid amount in such reasonable detail as LIRR will request, within three (3) months after such date of termination and LIRR, subject to verification thereof, will remit such amounts due and costs following the receipt and verification of such statement. LIRR will not be liable to the Consultant for any damages resulting from such termination or for loss of anticipated profits with respect to the remainder of the Work.
- D. If requested by LIRR, the Consultant shall immediately assign those subcontracts, which LIRR designates, to LIRR.

**VII – 2.0 TERMINATION FOR CONSULTANT'S DEFAULT**

- A. LIRR shall have the right to terminate the Contract, in whole or in part, based on the Consultant's default in performance including any of the following:

- (1) The Consultant's failure to begin the Work or abandon the Work;
- (2) The Consultant's refusal to perform any part of the Work as defined in the Contract or any Change Order issued by LIRR;
- (3) The Consultant's failure to perform or comply with any provisions or implied covenants contained in the Contract;
- (4) The Consultant's performance is unnecessarily or unreasonable delayed at any time; or
- (5) LIRR's determination, in its sole discretion, that the Work is unacceptable.

B. In the event of a default by the Consultant:

- A. The Procurement Officer may notify the Consultant in writing not to begin or not to resume or to discontinue all Work or any part thereof.
- B. LIRR will have the right to contract for the completion of the Work or any part thereof or to place persons as it may determine advisable by contract or otherwise, to perform and complete the Work. The Consultant shall in any and every such case in which LIRR shall complete the Work or any part thereof pay to LIRR the extra cost of such completion, including the cost of resoliciting this Contract. In case such expense shall be less than the amount which would have been payable under this Contract for the same work and materials as if this Contract had been completed by the Consultant, the Consultant shall forfeit all claim to the difference.
- C. LIRR may also bring any action or proceeding to enforce its rights under the Contract. LIRR reserves and shall retain all rights and remedies it has under this Contract to their fullest extent notwithstanding any specific provision contained herein. The Consultant agrees to pay the costs, disbursements and reasonable attorneys' fees incurred by LIRR in such action or proceeding.
- D. At LIRR's discretion, or in the event that a court of competent jurisdiction determines that LIRR incorrectly terminated the Work or any part thereof pursuant to this section, LIRR reserves the right to deem the termination for default a termination for convenience, pursuant the section entitled, "Termination for Convenience" hereof.

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**SECTION VIII – CONSULTANT'S LIABILITY, RISK OF LOSS AND INSURANCE****VIII – 1.0 INDEMNITY**

- A. The Consultant shall defend, indemnify, and hold harmless LIRR and MTA, their officers, agents and employees from and against any and all claims, suits, loss or liability, or expenses, including reasonable attorneys' fees by reason of any allegations of acts or omissions of any nature, by the Consultant or damage to any property whatsoever, including but not limited to property owned by or in the care, custody or control of LIRR, MTA, or the Consultant or any subcontractor or any other person or entity, or by reason of bodily injury or death of any person whatsoever, including but not limited to employees or agents of LIRR, MTA, the Consultant or any subcontractor as well as any other person, or any fines or penalties, arising out of or related to the Work under the Contract, including but not limited to the operations or presence of the Consultant, its subcontractor, officers, agents, employees, equipment or materials on or about the premises of LIRR and MTA, or while en-route to or from such premises, irrespective of the actual cause of the bodily injury, death or property damage and irrespective of whether it shall have been due, in whole or in part, to the negligence, fault, failure or omission of the Consultant, except that the Consultant shall not be responsible for indemnifying, defending or holding harmless LIRR and MTA for that portion of damages arising out of bodily injury, death or property damage caused by or resulting from negligence of LIRR and/or MTA.
- B. The Consultant's liability under the foregoing paragraph shall be deemed to include, but shall not be limited to, liability for the payment of worker's compensation under the Workers' Compensation Law of the State of New York, liability under the Federal Employers' Liability Act or liability based on any theory and or upon the breach of any statute now in existence and or which may exist at the time the claim accrues.
- C. The liability of the Consultant under this section is not dependent upon any question of negligence on its part or on the part of its officers, agents, or employees. The approval by LIRR or MTA of the methods of doing the Work, or the failure of LIRR or MTA to call attention to improper or inadequate methods, or to require a change in methods, or to direct the Consultant to do any particular thing shall not excuse the Consultant in case of any such injury to person or damage to property or claim of any nature, and shall not relieve the Consultant of its responsibilities under this section.
- D. The Consultant's obligation to indemnify under this section shall survive termination of the Contract or Final Payment.

**VIII – 2.0 RISK OF LOSS**

The Consultant assumes all risk of loss and/or damage to the Work, including all documentation and deliverables prepared under this Contract until all Work has been delivered to and has been finally accepted by LIRR.

**VIII – 3.0 INSURANCE****SECTION A. INSURANCE SCHEDULE:**

The term “Contractor” as used in this document shall refer to any third party entering into a contract (“Contract”) with the LIRR/MTA. As such, the term may encompass manufacturers, vendors, lessors, service providers and others. The term “Work” as used in this document shall refer to all work, services or other performance of the Contractor in connection with such Contract. The Contractor shall procure the following types of insurance and limits as indicated by the checked box(s) set forth below and in Section B:

*[Note: The Procurement Representative will check all that apply and insert appropriate*

amounts.]

<u>AMOUNTS</u>	<u>INSURANCE</u>	<u>MINIMUM</u>
<input checked="" type="checkbox"/>	Workers' Compensation	\$ Statutory Limits
<input checked="" type="checkbox"/>	- Employer's Liability	\$ 1,000,000 – NYS; 2,000,000 CT
<input type="checkbox"/>	- Longshore & Harbor Workers' Endorsement	\$
<input type="checkbox"/>	- Maritime Coverage Endorsement (Jones Act)	\$
<input checked="" type="checkbox"/>	Commercial General Liability (per occurrence)	\$ 1,000,000
<input checked="" type="checkbox"/>	- General Aggregate	\$ 2,000,000
<input checked="" type="checkbox"/>	- Products and Completed Operation	\$ 2,000,000
<input checked="" type="checkbox"/>	Business Automobile Liability (amount is each accident)	\$ 1,000,000
<input type="checkbox"/>	- MCS-90 Endorsement	\$
<input type="checkbox"/>	- CA 9948 Endorsement	\$
<input checked="" type="checkbox"/>	Umbrella/Excess Liability	\$ 2,000,000
<input checked="" type="checkbox"/>	- Aggregate (amount is each occurrence)	\$ 2,000,000
<input checked="" type="checkbox"/>	Railroad Protective Liability ( <b>for Non-Capital</b> )	\$ 2,000,000/\$6,000,000
<input checked="" type="checkbox"/>	Contractor's Pollution Liability	\$ 5,000,000
<input type="checkbox"/>	Builder's Risk/Installation Floater	\$
<input type="checkbox"/>	Cyber Professional Liability	\$
<input checked="" type="checkbox"/>	Professional Liability	\$ 2,000,000
<input type="checkbox"/>	Property Insurance	\$
<input type="checkbox"/>	Crime	\$
<input checked="" type="checkbox"/>	Valuable Papers	\$ 500,000
<input type="checkbox"/>	Garage Liability/ Garage Keepers Legal Liability	\$
	Other:	\$

**SECTION B. INSURANCE REQUIREMENTS**

The Contractor shall procure, at its sole cost and expense, and shall maintain at all times during the term of this Contract, and for such longer period of time if specified, such policies of insurance as herein set forth. Contractor shall furnish to LIRR/MTA satisfactory proof that Contractor has in force continuously for the entire period the following classes of insurance in the form and with the limits specified below and as outlined in Section A Insurance Schedule.

**i. Workers' Compensation Insurance** as required by statute in the State in which the contract work will be performed.

1. If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure

worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability.

- ii. **Employer's Liability Insurance** with limits of not less than the amount set forth in Section A Insurance Schedule bodily injury by accident; \$1,000,000 bodily injury by disease; and \$1,000,000 annual aggregate. Employer's Liability Limits for Work conducted outside the State of NY require limits of at least \$2,000,000 bodily injury by accident, \$2,000,000 bodily injury by disease; and \$2,000,000 annual aggregate.
- iii. **Commercial General Liability ("CGL") Insurance** covering claims for personal and advertising injury, bodily injury and property damage arising out of the Work and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall be issued on an occurrence basis to provide coverage for all operations including the products-completed operations hazard, and shall be maintained for the entire term of the contract, including any warranty period, if applicable, and for such longer period of time if specified, such policies of insurance as herein set forth. The limits of such insurance shall renew annually and not be less than:
  1. \$1,000,000 each Occurrence
  2. \$2,000,000 aggregate for products-completed operations;
  3. \$2,000,000 general aggregate limit, on a per project basis., and;
  4. Additionally:
    - Primary General Liability limits may **not** be satisfied by Umbrella / Excess insurance.
    - The policy shall not contain any contractual exclusion relative to Labor Laws or any other exclusions or limitations directed toward any types of projects, materials or processes involved in the Work.
    - The policy shall not contain any of the following exclusions: subcontractor's exclusion; construction defect exclusion; leased worker exclusion; cross liability exclusion; crane exclusion; and demolition exclusion or "explosion, collapse and underground" exclusion.
    - The policy shall include independent contractor and contractual liability coverages.
    - **Work on Railroad Premises.** Construction Contracts involving construction work taking place within 50 feet of a railroad must include evidence that General Liability endorsement CG 24 17 is in effect. Endorsement "Schedule" shall designate the Railroad Name and Designated Job Site with reference to this Contract number.
      - Coverage for claims for bodily injury asserted by a railroad employee of an additional insured and any Employer's Liability Exclusion which may otherwise operate to exclude such coverage shall be removed (**applicable to LIRR/MNR contracts**).

- iv. **Business Automobile Liability Insurance** covering any owned, non-owned, and hired vehicles on and off-site for claims arising out of the ownership, maintenance or use of any such vehicle. Such insurance shall provide coverage not less than the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 0020), with limits not less than the amount set forth in Section A Insurance Schedule. If the Work involves transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor shall provide pollution auto coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48), and the Motor Carrier Act endorsement (MCS 90). Any statutorily required “No-Fault” benefits and uninsured/underinsured motorist coverage shall be included.
- v. **Umbrella/Excess Liability Insurance** as specified in Section A Insurance Schedule, written on an occurrence basis in excess of the limits indicated for Commercial General Liability, Employer’s Liability, and Business Automobile Liability Insurance identified above, *and which is at least as broad as each and every one of the underlying policies.* The umbrella/excess liability policies shall be written on a “drop-down” and “following form” basis, with only such exceptions expressly approved in writing by LIRR/MTA. The products-completed operations hazard, and shall be maintained for the entire term of the contract, including any warranty period if applicable and for such longer period of time if specified, such policies of insurance as herein set forth.
- vi. In the event the work (Non-Capital) to be performed by the Consultant is within fifty feet (50) of the Railroad tracks or is otherwise deemed to be of nature that could foul the tracks, or work requires flag protection, the Consultant shall also be required to provide **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form) covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured’s own property and conforming to the following:
- The policy shall be issued to the “Named Insureds” listed under Section D.
  - The limit of liability shall be not less than \$2,000,000 per occurrence, subject to a \$6,000,000 annual aggregate;
  - Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer’s Liability Act (FELA), when applicable.
  - Indicate the Name and address of the designated Contractor, location of the Work the Contract description and Contract Number, if applicable.
- vii. **Professional Liability Insurance** insuring against professional errors and omissions arising from the Work on the Project by the Contractor and by any partner, subcontractor or consultant of the Contractor providing professional services, including but not limited to, construction management, architectural, engineering, and/or surveying services, and/or any party whose Work involves the preparation of plans or drawings, with limits not less than the amount set forth in Section A Insurance Schedule per claim and annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. The retroactive date for coverage will be no later than the commencement of professional services on the project and be maintained for at least five (5) years after final completion of the professional services, subject to the limitation of any applicable statute. In the event of cancellation or non-renewal the discovery period for insurance claims will be at least five (5) years or

otherwise as by agreement with LIRR/MTA. Coverage shall include, but not be limited to:

- Insured's interest in joint ventures, if applicable;
- Technology Services must be listed as a covered service with respect to Building Information Modeling (BIM) hosting and management responsibilities (for Projects utilizing BIM); and
- Limited contractual liability and defense costs for LIRR/MTA

viii. **Contractors Pollution Liability Insurance** with coverage for environmental damage resulting from pollution conditions that arise from the operations of the Contractor described under the scope of services of this contract:

- a) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring;
- b) Physical injury to or destruction of tangible property of parties other than the Insured including the resulting loss of use and diminution in value thereof; Loss of use, but not diminution in value, of tangible property of parties other than the Insured that has not been physically injured or destroyed;
- c) Natural Resource Damages;
- d) Cleanup Costs
- e) Transportation and Non-Owned Disposal Site coverage (with no sunset clause/restricted coverage term) if Contractor is disposing of contaminated material (s);
- f) No exclusions for asbestos, lead paint, silica or mold/fungus/legionella.
- g) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, silt or sediment into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

- **Minimum Limits of Insurance**  
Contractor shall maintain limits not less than \$5,000,000 per occurrence/\$5,000,000 aggregate for the term of the contract.
- **Policy Term**  
If meeting requirement with a Project Specific Policy: *Term of contract plus Completed Operations term of at least five (5) years after Final Completion;*

If meeting requirement with Contractor's Practice Policy, Completed Operations shall be *maintained for at least five (5) years after Final Completion.*

- ix. **Valuable Papers and Records** at cost to repair or replace with like kind and quality including the cost of gathering and/or assembling information, subject to a minimum limit of liability of not less than the amount in Section A Insurance Schedule. The LIRR and the MTA shall be named as loss payees as their interests may appear and all rights of subrogation against the LIRR and the MTA, their agents or assigns shall be waived.

### Section C. GENERAL INSURANCE REQUIREMENTS.

The following requirements are applicable to all insurance coverages required under this Contract, except to the extent otherwise indicated.

- i **Insurer Requirements.** All policies of insurance shall be placed with insurers acceptable to LIRR/MTA. The insurance underwriter(s) must be duly licensed or approved Surplus Lines insurer to do business in the state where the Work is to be performed and must have a financial ratings of A-/VII or better in the most recent edition of Best's Key Rating Guide or otherwise satisfactory to LIRR/MTA.
- ii **Right to Request.** Contractor shall increase required insurance amounts upon direction by LIRR/MTA.
- iii **Additional Insureds.** *Except with regard to Workers' Compensation and Professional liability insurance (unless otherwise noted), all insurance required under Section B shall name the parties listed in Section D as Additional Insureds, and shall include their respective subsidiary and affiliated companies, and their Boards of Directors, officers, employees, representatives, and agents (hereinafter, collectively the "Additional Insureds").* For the Commercial General Liability insurance, additional insured status must be provided on ISO forms or their equivalent at least as broad as CG 20 26. **[ISO forms CG 2010 with CG 2037 is required where applicable.]** No other General Liability Additional Insured endorsement will be accepted unless approved by LIRR/MTA.

**See page 6 for link to the MTA Landing Page for general instructions and the lists of indemnitees which should be copied directly to the ACORD COI and Additional Insured endorsements.**

- iv. **Primary and Non-Contributory.** Each policy required in this Section, including primary, excess, and/or umbrella, shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by LIRR/MTA shall be called upon to contribute to a loss covered by insurance for the named insured.
- v. **Waiver of Subrogation.** To the fullest extent permitted by law, Contractor will require all insurance policies required by this Section to include clauses stating each insurer will waive all rights of recovery. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, or (b) did not pay the insurance premium directly or indirectly, and whether or not such individual or entity has an insurable interest in any property damaged.
- vi. **Self-Insured Retentions.** None of the insurance required of this Section shall be

subject to any self-insured retention greater than \$500,000 without LIRR/MTA written approval.

- vii. **Subcontract Agreements.** Contractor shall by appropriate written agreements flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this Section to all tiers of subcontractors, for all insurance required of such subcontractors by Contractor for the Work.
- viii. **No Limitation.** Nothing in this Section shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages resulting from their operations. Contractor's obligations to procure insurance are separate and independent of, and shall not limit Contractor's contractual indemnity and defense obligations. LIRR/MTA does not represent that coverages and limits required in this Contract will necessarily be adequate to protect Contractor.
- ix. **Notice of Cancellation or Non-Renewal.** The Contractor agrees to notify LIRR/MTA thirty days prior to any cancellation, non-renewal or change to any insurance policies required in Section B. Notice shall be sent electronically to the *contract-specific email address* provided to Contractor via MTA Certificate of Insurance Management System (CIMS), Complianz™.
- x. **Notice of Occurrence.** The Contractor shall file the following with the Long Island Rail Road Claims Department, Attention: Director of Claims, with a copy to the Engineer: (1) a notice of any occurrence likely to result in a claim against the LIRR, which shall be filed immediately; and (2) a detailed, sworn proof of interest and loss, which shall be filed within sixty (60) days from the date of loss.
- xi. **Insurance Not In Effect.** If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to LIRR/MTA, then LIRR/MTA shall have the option to: (i) direct the Contractor to suspend work with no additional cost or extension of time on account thereof; or (ii) treat such failure as an Event of Default.
- xii. **Conformance to Law.** If applicable law limits the enforceability of any of the foregoing requirements, then Contractor shall be required to comply with the foregoing requirements to the fullest extent of coverage and limits allowed by applicable law and the provisions of insurance shall be limited only to the extent required to conform to applicable law.
- xiii. **Certificates of Insurance.**
1. Contractor shall furnish LIRR/MTA with Certificates of Insurance ("COI") utilizing ACORD 25 and ACORD 101, if applicable, completed by a duly authorized representative evidencing coverage required under **Section B**. Such Certificates of Insurance shall be delivered to LIRR/MTA before any Work hereunder is commenced by Contractor and annually thereafter on or before the policy effective dates of the Contractor's policies based on the instructions stated herein. You may go to the MTA website for samples and instructions for completing the forms: <http://www.mta.info/vendor-insurance>.

Evidence of Railroad Protective Liability and/or Builder's Risk Insurance requires submission of a policy and is not acceptable on a certificate of insurance. A binder is acceptable pending issuance of the policy. The binder must indicate the contract

number, description and location of Work and the designated Contractor and must be signed by the authorized producer or insurance carrier.

2. Insurance Confirmation. In addition to the foregoing certificates of insurance, the Contractor or its insurance broker shall submit a copy of the following endorsements with reference to: the contract number, description and location of Work and designated Contractor, where applicable.
  - a. CGL per Project Aggregate Endorsement applicable to the work to be performed under this Contract;
  - b. Additional Insured endorsements specifically naming the LIRR/MTA per requirements of this Contract shall be provided as indicated in Section C(iii) – General Insurance Requirements.
  - c. Primary and non-contributory endorsement(s) CG 2001 or equivalent naming the LIRR/MTA per requirements of this Contract.
  - d. Waiver of Subrogation endorsements (most recent NCCI/ISO or equivalent as applicable) in favor of the LIRR/MTA per requirements of this Contract.)
  - e. Other coverage endorsements may be requested depending on the scope of Work to be performed by the Contractor.

The Contractor shall submit evidence of compliance of all insurance requirements before any Work is started to the LIRR/MTA as follows:

**1. Initial Evidence of Insurance**

Agency Name: Long Island Railroad (LIRR)

Agency Address: (per solicitation documents)

Attention: (per solicitation documents)

Email Address: (per solicitation documents)

2. **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 assigned a specific email address.

At least two (2) weeks prior to the expiration of the policies, Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.

3. Failure of the LIRR/MTA to demand such COIs or other evidence of full compliance with these insurance requirements, or failure of the LIRR/MTA to identify a



deficiency from evidence provided, will not be construed as a waiver of the Contractor's obligation to maintain such insurance. LIRR/MTA acceptance of any COI evidencing the required coverages and limits does not constitute approval or agreement by the LIRR/MTA that the insurance requirements have been met or that the insurance policies shown in the COI are in compliance with the requirements.

4. The LIRR/MTA has the right, but not the obligation, of prohibiting Contractor from entering the Project Site until LIRR/MTA receives all COIs or other evidence that insurance has been placed in complete compliance with these requirements.

**SECTION D. REQUIRED INDEMNITEES (by Location of Work)**

- All LIRR Agreements:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.
- Penn Station:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, and NJ Transit Rail Operations, Inc.
- West Side Yard:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc. and Triborough Bridge & Tunnel Authority (B&T).
- Sunnyside Yard:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc. and New York & Atlantic Railway Company (when applicable).
- Jamaica:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, and Port Authority of NY & NJ.
- 93-4 Sutphin Blvd:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings 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.
- 48 East 50<sup>th</sup> St:** Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings 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.

[The MTA Guidelines & Instructions for Submission of Evidence of Insurance and Mocked-up Samples of how to complete the ACORD Certificate forms begin on the next page.]



Please use the link below for access to:

- List of MTA's Indemnitees, which you can copy directly to your Certificate of Insurance and Endorsements

<http://www.mta.info/vendor-insurance>.

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**SECTION IX – DISPUTES AND CLAIMS****IX – 1.0 CLAIMS AND DAMAGES**

- A. The Consultant shall have no claim against LIRR for damage sustained through any act or omission of any other contractor or consultant.
- B. If the Consultant has any claim(s) as a result of a direction, order or requirement of LIRR, the Consultant shall give written notice to the Project Manager, with a copy to the Procurement Officer, no later than five (5) days after the claim arises. Failure of the Consultant to give such notice shall be deemed a waiver by the Consultant of all claims for additional compensation or damages by reason thereof.

**IX – 2.0 REMEDIES**

All legal action against LIRR relating to or arising out of this Contract shall be initiated by the Consultant within ninety (90) days following Final Completion or termination of the Contract for any reason, whichever is sooner. All rights and remedies relating to all claims, disputes, or legal action filed by the Consultant after expiration of that time, shall be waived and any such claim, dispute or legal action shall be deemed settled.

**IX – 3.0 OBLIGATION TO CONTINUE WORK**

The Consultant shall continue the Work and comply with the Contract Schedule as set forth in each Release during the pendency of any claim, dispute, action or proceeding unless otherwise directed in writing by LIRR.

**IX – 4.0 FORUM, SERVICE OF PROCESS AND CHOICE OF LAW**

- A. The Consultant agrees that all legal actions relating to, concerning or arising out of this Contract shall be filed in a court of competent jurisdiction in the State of New York in and for Queens County or in the United States District Court for the Eastern or Southern District of New York. The Consultant hereby consents to the jurisdiction of any such courts.
- B. The Consultant agrees that service of process in any legal or administrative action or proceeding may be made upon it by certified mail, return receipt requested, at the Consultant's last known mailing address.
- C. This Contract shall be governed, construed and interpreted in accordance with the laws of the State of New York without regard to any conflicts of law principles.

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**SECTION X – AFFIRMATIVE ACTION****X – 1.0 AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

The Consultant agrees that during the performance of this Contract, the Consultant shall comply with all affirmative action/equal opportunity requirements of MTA/LIRR including, but not limited, to the following:

- (a) Not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status. The Consultant 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 Consultant 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) 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 MTA, the Consultant 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 Consultant's obligations herein.
- (d) Prior to the award of any Release under this Contract, the Consultant shall submit an Equal Employment Opportunity (EEO) Policy Statement and an EEO-1 form, to MTA within the time frame established by the Contract Documents or such other time as designated by the Railroad. The Consultant's EEO Policy Statement, shall contain, but not necessarily be limited to, and the Consultant, as a precondition to entering into any Release under 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 Consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this Contract.
- (e) Within 10 (ten) days of Notice of Award of a Release under this Contract, the Consultant shall submit a staffing plan for the Work under the Release, in a form and manner required by MTA/LIRR, which shall contain information on employees projected to work on activities related to the Release. This information must be broken down by specified ethnic background, gender and related job titles.
- (f) Include the language of the provisions of paragraphs (a)-(e) above in every subcontract in such manner that the requirements of the provisions will be binding upon each subcontractor, including the requirement that subcontractors and parties involved in the Work under 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 Consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this Contract.

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AFFIRMATIVE ACTION

**SECTION XI – WORK SITE SECURITY REQUIREMENTS**

**XI – 1.0 COMPLIANCE WITH WORK SITE SECURITY**

The Consultant shall comply with all work site security requirements set forth in the Contract Documents.

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**SECTION XII – NEW YORK STATE PROVISIONS****XII - 1.0 APPLICABILITY**

These New York State Provisions apply to the Contract by and between LIRR and the Contractor including, but not limited to, any and all Work performed by the Contractor.

**XII - 2.0 DEFINITIONS**

1. Contract – The contractual agreement for the sale and purchase of goods, materials, equipment, products and/or services set forth in the Contract Documents.
2. Contract Documents – The Invitation for Bid (IFB) or Request for Proposal (RFP), as applicable, including the terms and conditions annexed thereto and all attachments to the IFB/RFP; any Purchase Orders issued by LIRR, the Notice of Award, the Notice to Proceed, if applicable, and any Change Order or Modifications issued by LIRR after award, all of which are hereby incorporated by reference and made part of the Contract.
3. Contractor – the seller, vendor, consultant or contractor providing goods, materials, equipment, products and/or services under the Contract.
4. LIRR or the Railroad – The Long Island Rail Road Company.
5. MTA – The Metropolitan Transportation Authority, its subsidiaries and affiliates.
6. Procurement Officer – LIRR’s Chief Procurement and Logistics Officer or his/her designee.
7. Technical Specifications – Any specifications, work scope, drawings or other provisions included in the Contract Documents, which set forth the technical requirements and scope of the Work.
8. Work – The furnishing of all goods, services, materials, equipment and products as required by the Contract Documents.

**XII - 3.0 NO ASSIGNMENT WITHOUT CONSENT**

Pursuant to Section 138 of New York's State Finance Law, neither the Contractor (nor its surety) shall assign, transfer, convey, sublet or otherwise disposing of this Contract, or of its right, title or interest therein, or its power to execute this Contract to any other person, company or corporation, without the previous consent in writing of LIRR. Any such assignment, transfer, conveyance, sublet or disposal of this Contract as provided in this section shall, without the previous written consent specified in the first paragraph of this section, revoke and annul this Contract, and LIRR shall be relieved and discharged from any and all liability and obligations growing out of the Contract, and to the person, company, or corporation to whom the Contractor has assigned, transferred, conveyed, sublet or otherwise disposed of the same, and the Contractor, and his assignee, transferee, or sub-lessee, shall forfeit and lose all moneys, theretofore earned under the Contract except so much as may be required to pay his employees; provided that nothing contained herein shall be construed to hinder, prevent or affect an assignment for the benefit of his creditors, made pursuant to the law of the State of New York. In the event the Contractor seeks and receives the consent of LIRR (in writing) to assign the Contract, such consent shall not relieve the Contractor from its primary responsibility for satisfactory completion of its obligations under the Contract.

**XII - 4.0**      **HIPAA COMPLIANCE**

The Contractor, its agents, employees subcontractors and subcontractors shall ensure that any reproduction or coping of any plans, drawings, specifications, surveys, maps, reports, studies, records or other documentation related to the Project and/or LIRR shall only be made on Health Insurance Portability and Accountability Act (“HIPAA”) compliant photocopiers or multifunctional printer/copier/scanner/fax machines.

**XII - 5.0**      **INTEREST IN CONTRACT**

- A. Pursuant to Section 73(8) of the Public Officers’ Law, no employee of the Contractor or the MTA during their employment or for two (2) years thereafter shall have any interest, direct or indirect in the Contract or the proceeds thereof.
- B. The Contractor shall not employ or permit any individual to work on the Contract or receive compensation therefrom:
  - 1. for a period of two (2) years after their employment has terminated with the LIRR, the MTA or its affiliates and
  - 2. who, at any time during the term of their employment with the LIRR, MTA or its affiliates, was directly concerned with the subject matter of the Contract, personally participated in the Contract or had the subject matter of the Contract under his/her active consideration. .
- C. The Railroad reserves the right to require the Contractor to remove any individual impermissibly employed by the Contractor in connection with the Work under the Contract. The Contractor shall promptly remove any such individual upon the request of the Railroad.

**XII - 6.0**      **EQUAL EMPLOYMENT OPPORTUNITIES FOR  
MINORITY GROUP MEMBERS AND WOMEN**

During the performance of this Contract, the Contractor will abide by the following:

- A. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this section affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other form of compensation.
- B. At the request of LIRR, 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.
- C. 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.



- D. The Contractor will include the provision of paragraphs A, B and C in every subcontract or purchase order, except as provided in paragraph F, in such a manner that the provisions will be binding upon each subcontractor (including subcontractors) as to Work in connection with this Contract.
- E. The provisions of this section shall not be binding upon contractors or subcontractors in the performance of Work or the provision of services or any other activity that are unrelated, separate or distinct from this Contract.
- F. The requirements of this section shall not apply to any employment outside New York State, or application for employment outside New York State or solicitations or advertisements therefor, or any existing programs of affirmative action regarding employment outside New York State.

**XII - 7.0 COMPLIANCE WITH SECTION 316-A OF NEW YORK'S EXECUTIVE LAW**

If the Contractor willfully and intentionally fails to comply with the minority and women-owned participation requirements of Article 15-A as set forth in this Contract, the Contractor shall be liable to LIRR for liquidated or other appropriate damages on account of a breach of such requirements and LIRR shall be entitled to all remedies at law or in equity and as may otherwise be provided for in the Contract.

**XII - 8.0 CONTRACT CLAUSES FOR IMPLEMENTATION OF THE OMNIBUS PROCUREMENT ACT OF 1992**

- A. As used in this section, the following terms shall have the following meanings:
  - 1. "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other for of exchange, goods sought by LIRR and which are substantially produced outside New York State, or services, other than construction services, sought by LIRR and which are substantially performed outside New York State. For purposes of construction services foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
  - 2. "New York State business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other for of exchange, goods which are sought by LIRR and which are substantially manufactured, produced or assembled in New York State, or services which are sought by LIRR and which are substantially performed within New York State.
  - 3. "New York resident" shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.
- B. It is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of minority and women-owned businesses, where possible, in the procurement of goods and services.

- C. Information concerning the availability of New York State subcontractors and suppliers is available from the New York State department of economic development, which shall include the directory of certified minority and women-owned businesses and from:

Metropolitan Transportation Authority  
Department of Diversity and Civil Rights  
Division of Business Programs/Contract Compliance Unit  
2 Broadway, 16<sup>th</sup> Floor  
New York, New York 10004  
(646) 252-1363

- D. If the amount of this Contract is estimated to be equal or greater than one million dollars, the Contractor shall:

1. Encourage the participation of New York State business enterprises, including minority and women-owned businesses, as suppliers and contractors (including subcontractors and subcontractors) on this Contract.
2. Document its efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors. Documented efforts by the Contractor shall consist of and be limited to showing that the Contractor has:
  - (a) solicited bids/proposals, in a timely and adequate manner, from New York state business enterprises including minority and women-owned businesses, or
  - (b) contacted the New York State department of economic development or MTA Office of Civil Rights to obtain listings of New York State business enterprises, or
  - (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
  - (d) participated in bidder outreach conferences.
3. If the Contractor determines that New York State business enterprises are not available to participate on the Contract as subcontractors or suppliers, provide a statement indicating the method by which such determination was made.
4. If the Contractor does not intend to use subcontractors on the Contract, provide a statement verifying such intent.
5. Provide notification to New York State business enterprises and New York State residents of employment opportunities arising out of this Contract through listing any such positions with the community service division of the Department of Labor or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.
6. Potential bidders/proposers located in foreign jurisdictions are advised that LIRR may assign or otherwise transfer offset credits created by this Contract to third parties located in New York State and potential bidders/proposers shall cooperate with LIRR in any such efforts.

7. Comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

**XII - 9.0      PARTICIPATION IN AN INTERNATIONAL BOYCOTT PROHIBITED**

Pursuant to Section 139-h of New York's State Finance Law and Section 220-f of New York's Labor Law, if applicable, if this Contract is for work or services to be performed or for goods sold or to be sold and exceeds \$5,000, the Contractor agrees, as a material condition of the award of the Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969 or the United States Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder. If, subsequent to the award of the Contract, the Contractor or any substantially owned or affiliated person, firm, partnership or corporation is convicted of a violation of United States Export Administration Act of 1969 or the United States Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either such federal acts or such regulations, the Contract shall be rendered forfeit and void.

**XII - 10.0      MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Section 165(5) of New York's State Finance Law, as a condition of the award of the Contract, where the Contract is for the supply of commodities, services or construction, the Contractor must certify that it or any individual or legal entity in which the Contractor holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the Contractor either (1) has no business operations in Northern Ireland; or (2) shall make lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles, relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles by LIRR and/or its designee. Failure of the Contractor to provide the required certification contained in the Invitation for Bid/Request for Proposal/Contract Documents shall render the Contractor ineligible for award of the Contract pursuant to Section 165(5)(b) of New York's State Finance Law.

**XII - 11.0      FAILURE TO COMPLY WITH STATE INVESTIGATION  
AS GROUNDS FOR CANCELLATION OF CONTRACT**

- A. Upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof (including LIRR,

MTA and its subsidiary or affiliated agencies) for goods, work or services, for a period of five (5) years after such refusal.

- B. This Contract and any and all contracts made with any public authority or official thereof by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by LIRR (or applicable public authority) without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by LIRR (or public authority) for goods delivered or work done prior to the cancellation or termination shall be paid.

**XII - 12.0 NON-COLLUSIVE BIDDING CERTIFICATION**

The Contractor shall complete and submit with its bid/proposal the certification pursuant to Section 139-d of the New York State Finance Law contained in the Invitation for Bid/Request for Proposal/Contract Documents. Where the Contractor has not complied with items (1), (2) and (3) of the certification, the Contractor's bid/proposal/offer shall not be considered for award nor shall any award be made unless LIRR's Chief Procurement & Logistics Officer or his designee determines that such disclosure was not made for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or tariffs covering the 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 Section 139-d(1)(a) of the State Finance Law.

**XII - 13.0 IRAN DIVESTMENT ACT CERTIFICATION**

- A. By entering into the Contract, the Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. The Contractor agrees that should the Contract be renewed or extended, it must provide the same certification at the time the Contract is renewed or extended. The Contractor also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before LIRR may approve a request for assignment of the Contract.
- B. During the term of the Contract, should LIRR receive information that a person (as defined in State Finance Law §165-a) is in violation of its Iran Divestment Act certifications, LIRR will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within ninety (90) days after the determination of such violation, then LIRR shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.
- C. LIRR reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with the Contractor should it appear on the Prohibited Entities List hereafter.

**XII - 14.0 COMPLIANCE WITH OBLIGATION TO DISCLOSE  
PRIOR NON-RESPONSIBILITY DETERMINATIONS**

This Contract is subject to Sections 139-j and 139-k of New York State Finance Law regarding the Contractor's disclosure of prior non-responsibility determinations to LIRR. In accordance with Section 139-k, the Contractor shall disclose to LIRR any findings of non-responsibility against it within the previous four (4) years by any governmental entity where the finding of non-responsibility was due to: (a) a violation of Section 139-j of New York State Finance Law, or (b) the intentional provision of false or incomplete information to a governmental entity. If the Contractor fails to disclose accurate or complete information required by Section 139-k(2) or if the Contractor's certification pursuant to Section 139-k is found to be intentionally false or intentionally incomplete, LIRR may terminate the Contract without costs to the Contractor.

**XII - 15.0**      **MTA DEBARMENT PROCESS**

In accordance with Public Authorities Law §1279-h, the Contractor will be subject to debarment and will not be permitted to bid on future MTA contracts for a period of five years if the MTA, after completing the debarment process established by it pursuant to regulation, determines that the Contractor failed to substantially complete the work within the time frame set forth in the contract, or in any subsequent change order, by more than ten percent of the contract term, or that the Contractor's disputed work exceeds ten percent or more of the total contract cost where claimed costs are deemed to be invalid pursuant by the contractual dispute resolution process.

**XII - 16.0**      **NEW YORK STATE LABOR LAW**

The Contractor agrees to comply with applicable requirements of New York's Labor Law. More particularly, if any part of the Work under the Contract falls within the purview of the State Labor Law, the Contractor agrees as to such part of the Work to comply therewith, including, without limitation, Sections 220, 220-f and 222-a 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 hereinbefore 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 locality (as defined in said Section 220 of the Labor Law) wherein the completed Work is to be situated, erected or used, and shall be paid in cash except as otherwise permitted by said 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-a of the Labor Law, as amended and supplemented, the Contractor further agrees that if the provisions of the said Section 222-a are not complied with, the Contract shall be void.

**XII - 17.0**      **PREVAILING WAGE RATE AND SUPPLEMENT**

- A. Pursuant to Section 220-d of New York's Labor Law, if this Contract is for the construction, reconstruction, maintenance and/or repair of a public work, the Contractor, its subcontractors (including subcontractors) and any other person doing or contracting to do the whole or part of the Work under the Contract, shall not pay laborers, workingmen or mechanics performing the Contract less than the hourly minimum rate of wage or provide supplements less than the prevailing supplements at the time the Work is performed.

- B. The minimum hourly wage rates and prevailing supplements are available from the office the Industrial Commissioner of the State of New York and are also annexed to this Contract. The U.S. Secretary of Labor has also established minimum wage rates that must be paid to laborers and mechanics under the Davis-Bacon Act. If this Contract is federally funded, those wage rates shall apply to this Contract, however, where there are differences between the wage rates set by the U.S. Secretary of Labor and the Industrial Commissioner of the State of New York, the higher rate shall apply.
- C. If after entering into the Contract, the Contractor (or in the case of a subcontractor or any other person doing or contracting to do the whole or part of the Work, the contract or subcontract) willfully pays less than such stipulated minimums regarding wages and supplements, the Contractor, subcontractor or person shall be guilty of a misdemeanor. Upon conviction of a violation of Section 220-d, the Contractor, subcontractor or such person shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment. Upon conviction of a second offense, the Contractor, subcontractor or such person shall be punished by a fine of one thousand dollars. In addition, the contract on which the violation has occurred shall be forfeited; and neither the Contractor, subcontractor or other person shall be entitled to receive any sum nor shall LIRR pay the same or authorize its payment from the funds under its charge or control to the Contractor, subcontractor or such person for work done upon any contract, on which the Contractor, subcontractor or such person has been convicted of second offense in violation of the provisions of Section 220-d.

**XII - 18.0****PROHIBITION AGAINST DISCRIMINATION IN EMPLOYMENT OF NEW YORK STATE CITIZENS IN PUBLIC WORKS CONTRACTS**

Pursuant to Section 220-e of New York's Labor Law, if this Contract is for the construction, alteration or repair of a public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, the Contractor agrees:

- A. That in hiring employees for Work under the Contract or any subcontract hereunder, neither it, its subcontractors (including subcontractors), nor any person acting on its behalf or on behalf of such subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.
- B. Neither the Contractor, its subcontractors, nor any person acting on its behalf or on behalf of any such subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color, disability, sex or national origin.
- C. That there may be deducted from the amount payable to the Contractor under this Contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of these provisions of the Contract.
- D. That this Contract may be cancelled or terminated by LIRR, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this section of the Contract.
- E. The application of the provisions of this section shall be limited to operations performed within the territorial limits of the State of New York.

**XII - 19.0**      **COMPLIANCE WITH WORKERS' COMPENSATION LAW**

Pursuant to Section 142 of New York's State Finance Law, the Contractor shall provide and maintain during the life of this Contract, the required insurance coverage for the benefit of its employees as are required to be covered by the provisions of New York's Workers' Compensation Law. Failure of the Contractor to provide the required insurance coverage under this section shall render the Contract void and of no effect.

**XII - 20.0**      **STEEL COMPONENTS**

Pursuant to Section 2603-a of New York's Public Authorities, (1) if this Contract is in excess of \$100,000 and is if for the construction, reconstruction, alteration, repair, maintenance or improvement of a public work, all structural steel, reinforcing steel and/or other major steel items to be incorporated in the Work shall be produced or made in whole or substantial part in the United States, its territories or possessions, unless otherwise determined by LIRR; and (2) if this Contract is for the purchase of supplies, material or equipment in excess of \$50,000, all materials, supplies and equipment made of, fabricated from or containing steel components shall be produced or made in whole or substantial part in the United States, its territories or possessions. Section 12(2) hereof shall not apply to motor vehicles and automotive equipment assembled in Canada in conformity with the United States-Canadian trade agreement known as the "Automotive Products Trade Act of 1964" or any amendments thereto.

**XII - 21.0**      **TROPICAL HARDWOODS AND TROPICAL WOOD PRODUCTS**

Except as permitted by Section 165(b) of New York's State Finance Law, LIRR does not require or permit the use of any tropical hardwood or wood product (as that term is defined by Section 165(1) of the State Finance Law) by the Contractor in its performance of the Work where such Work consists of the construction of any public work, building maintenance or improvement. Except as provided in Section 165(d) of New York's State Finance Law, any bid or proposal that proposes or calls for the use of any tropical hardwood or wood product in the performance of such a contract, shall be deemed non-responsive.

**XII - 22.0**      **RECYCLED PRODUCTS**

The Contractor shall supply LIRR with products that comply with Section 2878-a of New York's Public Authorities Law, which requires that all products purchased by LIRR be recycled products, which meet the Contract specifications, unless the only available product does not contain recycled content, and provided that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product. A recycled product shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of Section 261 of New York's Economic Development Law, and which meets the requirements of Section 27-0717(2) of New York's Environmental Conservation Law.

**XII - 23.0**      **NOTICE REGARDING TOXIC SUBSTANCES**

Pursuant to Section 876 of New York's Labor Law and Federal law, LIRR must (a) advise its workers about the health effects of any toxic substances to which they may be exposed, including the composition and effects of toxic substances and (b) must keep a file of Safety Data Sheets ("SDS") for any products found and/or used at LIRR facilities. To facilitate LIRR's

notice to its employees, if this Contract involves the use or sale of toxic substances, the Contractor shall, during the Contract:

- A. Prior to shipment or use, supply a SDS to LIRR for each toxic substance delivered to LIRR. All SDS and product labels must reference Railroad item numbers when specified. The required documents for LIRR must be submitted to:

The Long Island Rail Road Company  
Attn: Senior Manager Procurement, Equipment  
90-27 Sutphin Boulevard  
3rd Floor, Mail Code 0335  
Jamaica, New York 11435

- B. The SDS shall contain all health hazard information as required under Federal OSHA Regulations: The SDS must contain these sixteen (16) sections as required by OSHA's Hazard Communications Standard:

**Section 1. Identification** includes product identifier; manufacturer or distributor name, address, phone number; emergency phone number; recommended use; restrictions on use.

**Section 2. Hazard(s) identification** includes all hazards regarding the chemical; required label elements.

**Section 3. Composition/information on ingredients** includes information on chemical ingredients; trade secret claims.

**Section 4. First-aid measures** includes important symptoms/effects, acute, delayed; required treatment.

**Section 5. Fire-fighting measures** lists suitable extinguishing techniques, equipment; chemical hazards from fire.

**Section 6. Accidental release measures** lists emergency procedures; protective equipment; proper methods of containment and cleanup.

**Section 7. Handling and storage** lists precautions for safe handling and storage, including incompatibilities.

**Section 8. Exposure controls/personal protection** lists OSHA's Permissible Exposure Limits (PELs); ACGIH Threshold Limit Values (TLVs); and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the SDS where available as well as appropriate engineering controls; personal protective equipment (PPE).

**Section 9. Physical and chemical properties** lists the chemical's characteristics.

**Section 10. Stability and reactivity** lists chemical stability and possibility of hazardous reactions.

**Section 11. Toxicological information** includes routes of exposure; related symptoms, acute and chronic effects; numerical measures of toxicity.

**Section 12. Ecological information\***

**Section 13. Disposal considerations\***

**Section 14. Transport information\***

**Section 15. Regulatory information\***



**Section 16. Other information**, includes the date of preparation or last revision.

\*Note: Since other agencies regulate this information, OSHA will not be enforcing Sections 12 through 15 (29 CFR 1910.1200(g)(2)).

- C. Manufacturer's product labeling shall include the following: as per OSHA's Hazard Communication Standard:
- Product Identity
  - Manufacturer or Supplier Information including address and telephone number
  - Hazard Pictograms
  - Signal Words
  - Hazard Statements
  - Precautionary Statements as needed, including: first aid statements, spill \ response, compatibilities and usage instructions
- D. In addition, each container of any product shall be labeled with a weatherproof label containing the above noted information. For drums of such products, labeling shall be affixed to both the top and side of each drum. LIRR reserves the right to refuse the use of any product or acceptance of any delivery or part thereof where containers of these classes of products arrive lacking proper labeling. Manufacturers must supply updated SDS whenever an ingredient is modified in a product. If the product does not meet the approval of the Safety Department, LIRR reserves the right to terminate the Contract.
- E. Submittal of a SDS does not constitute the acceptance of the product by LIRR. If the Contractor fails or refuses to comply with these provisions, LIRR may declare the Contractor to be in default and exercise its rights under the termination provisions of the Contract.

## **XII - 24.0 DIESEL EMISSIONS REDUCTION ACT**

- A. The Contractor represents that, in connection with activities relating to the 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.
- B. In accordance with DERA, the Contractor:
1. 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 LIRR/MTA job sites in rendering services or providing materials or equipment hereunder unless said vehicles are otherwise exempt.
  2. 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 (0.01g/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).

3. If the 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, the Contractor will present same to LIRR/MTA during negotiations or with its bid/proposal documents.
4. The Contractor understands and acknowledges that LIRR/MTA is required to submit an annual report detailing compliance with DERA by LIRR/MTA and the Contractor. The 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 LIRR/MTA work site at which Work is to be performed pursuant to the 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.

## **XII - 25.0 COMPLIANCE WITH EXECUTIVE ORDER 162**

- A. The Contractor shall comply with Executive Order No. 162 in performance of the Contract.
- B. The Contractor shall submit a detailed workforce utilization report, which shall include, but shall not be limited to, the job title and salary of each employee of the Contractor performing the work or each employee in the Contractor’s entire workforce if the Contractor cannot identify the individuals working directly on the Contract.
- C. The Contractor shall ensure that its subcontractors comply with the same requirements imposed by Executive Order 162 and that its subcontractors submit workforce utilization reports for their employees as set forth above.

- D. Contractors and subcontractors shall submit monthly workforce utilization reports for construction contracts in excess of \$100,000 and quarterly workforce utilization reports for labor, services, supplies, equipment and materials contracts in excess of \$25,000. Reports must be submitted by the 10<sup>th</sup> day of each month or quarter following the end of the reporting period.

One (1) copy of the reports shall be submitted to each of the following:

MTA Department of Diversity and Civil Rights  
[mtaworkforceutilization@mtahq.org](mailto:mtaworkforceutilization@mtahq.org)

The Long Island Rail Road Company  
 Project Manager  
 LIRR Program Management Office: [ClearingHouse@lirr.org](mailto:ClearingHouse@lirr.org)

- E. The Contractor shall utilize the form provided by LIRR for its reports.
- F. 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 for cause.

**XII - 26.0 COMPLIANCE WITH EXECUTIVE ORDER 134**

If the Contract involves the use or sale of cleaning products, in the performance of this Contract, the Contractor shall comply with Executive Order 134, which requires LIRR to procure and use cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of effectiveness of these products for the protection of public health and safety.

**XII - 27.0 COMPLIANCE WITH EXECUTIVE ORDER 111 AND 142**

In the performance of this Contract, the Contractor shall comply with Executive Orders 111 and 142, which require LIRR to –

- A. (a) with respect to energy efficiency:
1. implement energy efficiency practices and meet the ENERGY STAR® building criteria for energy performance and indoor environmental quality in its existing buildings to the maximum extent possible;
  2. in the design, construction, operation and maintenance of new LIRR buildings, to the maximum extent practicable, following guidelines for construction of "Green Buildings", including guidelines set forth in the Tax Law §19, which created the Green Buildings Tax Credit, and the U.S. Green Buildings Council's LEED™ rating system;
  3. in the construction of new LIRR buildings, achieve 20% improvement in energy efficiency performance relative to levels required by New York State's Energy Conservation Construction Code, as amended;
  4. in the substantial renovation of existing LIRR buildings, incorporate energy-efficiency criteria consistent with ENERGY STAR® and any other energy efficiency levels as may be designated by New York State Energy Research and Development Authority into all specifications developed for new construction and renovation;

- B. with respect to new products and replacing existing LIRR equipment, select ENERGY STAR® energy-efficient products;
- C. with respect to fuel, purchase, allocate, distribute and use E85 ethanol and bio-diesel if feasible;
- D. with respect to purchasing energy, increase LIRR's purchase of energy generated from wind, solar, thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuels cells;
- E. with respect to LIRR vehicles, procure increasing percentages of alternative-fuel vehicles and implement strategies to reduce petroleum consumption and emissions by using alternative fuels and improving vehicle fleet fuel efficiency.

**XII - 28.0 BREACH OF SECURITY OF PRIVATE INFORMATION**

Pursuant to Section 208 of New York's State Technology Law, if this Contract involves the ownership, licensing or maintenance of computerized data that includes private information, the Contractor shall immediately notify LIRR following the discovery of a breach of the security of the system if the private information was, or is reasonably believed to have been, acquired by a person without valid authorization.

**XII - 29.0 CONTRACTS WITH FOREIGN BUSINESS ENTERPRISES**

The Contractor is hereby notified that pursuant to Section 165(6) of New York's State Finance Law, if the Contractor's principal place of business is located in a discriminatory jurisdiction (as identified in the list prepared by the New York State Commissioner of Economic Development), the Contractor may not be awarded the Contract unless MTA/LIRR waives the requirements of Section 165(6).

**XII - 30.0 CONTRACTOR AND SUBCONTRACTOR DISCLOSURE OBLIGATIONS UNDER PUBLIC AUTHORITIES LAW 1269-G**

If this Contract is a public works contract involving the employment of laborers, workmen, or mechanics, the Contractor and any subcontractors shall:

- A. The Contractor shall comply with the requirements of Section 1269-g of New York's Public Authorities Law, as amended and supplemented, and with rules and regulations that LIRR and/or the Metropolitan Transportation Authority (MTA) may adopt pursuant to Section 1269-g(6).
- B. No later than ninety (90) days from the effective date of this Contract, the Contractor shall file with LIRR a certification signed by an officer of Contractor and sworn to under penalties of perjury that the Contractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Such certification shall include a copy of the information that the Contractor posted and distributed and a description of how that it has been posted and distributed.
- C. At such time as LIRR and/or MTA have posted on their public internet websites, currently [www.lirr.org](http://www.lirr.org) and [www.mta.info](http://www.mta.info), sample statements, displays and other materials that provide the information required by Section 1269-g, the Contractor may use LIRR's and/or MTA's sample statements, displays and other materials in complying with Section 1269-g. Until LIRR and/or MTA have posted such information, it is the

Contractor's responsibility to accurately and completely prepare and communicate the required information. The required information consists of the following:

1. the telephone numbers and addresses to report information of fraud or other illegal activity to the appropriate officers of LIRR and/or the MTA inspector general and the Attorney General of New York;
  2. a description in detail of conduct prohibited by Section 189 of the State Finance Law, and the role of that act in preventing and detecting fraud and abuse in work paid for by LIRR and/or MTA or with funds originating from LIRR and/or MTA;
  3. a notice to prospective qui tam plaintiffs on how to file a qui tam action, including the necessity to contact private counsel skilled in filing such actions and of the potential for cash rewards in such actions based on the percentage of the funds recovered by the government; and
  4. a description of the prohibitions on employer retaliation against persons who file or assist actions under Article 13 of the State Finance Law (the New York False Claims Act) pursuant to Section 191 of the State Finance Law, or who report illegal conduct that threatens the health or safety of the public pursuant to Section 740 of the labor law.
- D. The Contractor shall insert into every first-tier subcontract, and require the insertion into all lower-tier subcontracts, a provision requiring each subcontractor to comply with the requirements of Section 1269-g of the Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that LIRR may adopt pursuant to Section 1269-g(6) and requiring that, no later than ninety (90) days from the effective date of each subcontract, each subcontractor file with the Contractor a verified statement from such subcontractor certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). The verified statement shall include a copy of the information that such subcontractor posted and distributed.
- E. No later than ninety (90) days from the effective date of each subcontract of any tier, the Contractor shall file with LIRR a certification signed by an officer of subcontractor and sworn to under penalties of perjury certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Such certification shall include a copy of the information that the Contractor posted and distributed and a description of how that information has been posted and distributed.
- 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. Each request for payment submitted by the Contractor shall include a certification signed by an officer of the Contractor and sworn to under penalties of perjury certifying that the Contractor and every subcontractor has continued to comply with the requirements of Section 1269-g of the Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that LIRR may adopt pursuant to Section 1269-g(6).

## XII - 31.0

**COMPLIANCE WITH FRA ALCOHOL AND DRUG USE  
REGULATIONS FOR MAINTENANCE OF WAY EMPLOYEES**

- A. The Contractor and its employees, agents and representatives shall comply with 49 CFR Part 219 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 LIRR 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 random testing pool of fifty percent (50%) for drug testing and twenty-five percent (25%) for alcohol testing of its maintenance of way employees on an annual basis or such other pool designated by the FRA.
- D. The Contractor shall submit to the FRA and LIRR a 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.
- E. If the Contract was awarded:
1. Prior June 12, 2017, the Contractor shall submit its 219 Compliance Plan to the FRA and to LIRR no later than May 1, 2017. The 219 Compliance Plans submitted to LIRR shall be sent to the attention of LIRR's Designated Employer Representative.
  2. After June 12, 2017, the Contractor shall, within 10 days of Notice of Award, submit to LIRR a *Certification of Compliance With Random Drug and Alcohol Use Testing Regulations* 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 LIRR with the certification.
- F. LIRR shall have the right, in its sole discretion, to reject any 219 Compliance Plan that designates a consortium unacceptable to LIRR.
- 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 LIRR, 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 LIRR 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 LIRR, at the Contractor's place of business during normal working hours or such other place as designated by the FRA or LIRR.

- I. On a semi-annual basis, the Contractor shall submit to LIRR 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 related testing data (in a form compliant with Part 219) with its semi-annual certification to the LIRR Medical Department. For purposes of this section, the date for semi-annual reporting shall be calculated from the date of LIRR's Notice of Award.
- J. Unless otherwise authorized by LIRR 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.

**XII - 32.0 COMPLIANCE WITH EXECUTIVE ORDER NO. 177**

In accordance with Executive Order No. 177, LIRR may not enter into any contract for goods, services, technology or construction with an entity that has institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected basis. Failure of the Contractor to provide the required certification contained in the Invitation for Bids/Request for Proposals/Contract Documents shall render the bidder/proposer ineligible for award of the contract. Any contract awarded without submission of the required certification shall be rendered null and void.

**XII - 33.0 COMPTROLLER APPROVAL**

If this Contract is subject to approval by the New York State Comptroller pursuant to Section 2879-a of New York's Public Authorities Law, the Contract, and any subsequent amendment where the value of such amendment equals or exceeds ten percent (10%) of the contract amount approved by the Comptroller, shall not be binding and enforceable until the earlier of (i) the Comptroller's approval of the Contract or (ii) ninety days after submission of the Contract to the Comptroller for approval if the Comptroller has not approved or disapproved the Contract within that time.

**XII - 34.0 COMPLIANCE WITH MTA/LIRR RULES AND REGULATIONS**

The Contractor and its employees, agents and representatives shall comply with all rules and regulations of the MTA and LIRR during the term of the Contract including, but not limited to, MTA's All Agency Policy Directive, Computer and Social Media Usage Policy.

**XII - 35.0 GOVERNING LAW**

This Contract shall be governed and construed in accordance with the laws of the State of New York without regard for conflicts of law principles.

**XII - 36.0**      **COMPLIANCE WITH APPLICABLE LAW**

The Contractor shall comply with all applicable New York State laws.

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**CERTIFICATION OF COMPLIANCE WITH FRA RANDOM DRUG AND ALCOHOL USE TESTING REGULATIONS**

Pursuant to Part 219 of Title 49 of the Code of Federal Regulations, LIRR 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 LIRR.

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>1</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 ten (10) days after Notice of Award and on a semi-annual basis following award.** Failure of the Contractor to submit this certification as required by LIRR 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>1</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.

**SECTION XIII – FEDERAL PROVISIONS (applicable to Federally Funded Releases only)****1.0 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 C.F.R. Part 1200 and 2 C.F.R. Part 180. As such, the Contractor is required to comply with the aforementioned Parts and to verify that neither the Contractor, its principals, or affiliates are excluded or disqualified. By signing and submitting its bid or proposal, the Contractor certifies that neither it nor its affiliates or principals as defined in 2 C.F.R. Parts 1200 and 180 is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal department or agency.

The Contractor shall comply with, and shall assure the compliance of each Contractor, subcontractor, or other participant in a lower tier with, Executive orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. §6101 note, and U.S. DOT regulation 2 C.F.R. Part 1200 and 2 C.F.R. Part 180, including Subpart C of 2 C.F.R. Part 180, and further agrees to, and assures that its contractors, subcontractors or other participants in a lower tier will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subcontract or other arrangement in connection with the Project.

The Contractor shall include the requirement to comply with Subpart C of 2 C.F.R. Part 180 in any lower tier subcontracts it enters into where the amount of the subcontract is expected to equal or exceed \$25,000. The Contractor shall also require that all such subcontractors certify compliance with Subpart C of 2 C.F.R. Part 180 and that any such certification be forwarded to the Railroad.

If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Railroad, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**2.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND 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.

### 3.0 **PROHIBITION AGAINST USE OF FEDERAL FUNDS FOR LOBBYING**

Pursuant to 31 U.S.C. §1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, et seq.], Contractors who propose or bid for an award of \$100,000 or more shall file the certification required by 49 C.R.F. Part 20, "New Restrictions on Lobbying." The Contractor and any other Contractor or subcontractor must certify to the Contractor or subcontractor above it (or in the case of the Contractor, to the Railroad,) that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Such certifications shall be forwarded from the Contractor and any other contractor or subcontractor to the Contractor or subcontractor above it up to the Contractor who shall submit such disclosures to the Railroad.

The Contractor and any subcontractor shall also disclose in the Standard Form-LLL, "Disclosure Form to Report Lobbying," set forth in 49 C.F.R. Part 20, the name of any registrant under the Lobbying Disclosure Act of 1995 who has made or will make lobbying contact on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures shall be forwarded from the Contractor and any other Contractor or subcontractor to the Contractor or subcontractor above it up to the Contractor who shall submit such disclosures to the Railroad.

The Contractor and any other Contractor or subcontractor shall require that the language of the certification be included in any contract or subcontract entered into in connection with this Contract and that all Contractors or subcontractors certify and disclose pursuant to this section accordingly. If the Contractor or any other Contractor or subcontractor fails to file, disclose, or to amend, the required certification or disclosures required by 31 U.S.C. §1352 and 49 C.F.R. Part 20, the Contractor, or any such other Contractor or subcontractor shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The imposition of a civil penalty does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

### 4.0 **CIVIL RIGHTS REQUIREMENTS**

The following Civil Rights requirements apply to the underlying Contract:

1. **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.
2. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying Contract:
  - (a) **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 DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity,

Department of Labor," 41 C.F.R. Part 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 USC §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 Contract. 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.

- (b) Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621 through 634, as amended, its implementing regulations, 29 C.F.R. Part 1625, 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.
- (c) 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.

- 3. 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.

## **5.0 DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

The following DBE requirements apply to this Contract:

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The Contractor shall comply with the separate contract goals established by the Railroad for this procurement.
- B. The Contractor 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 this DOT-assisted Contract. Failure by the Contractor 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 Railroad deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 C.F.R. 26.13(b)).
- C. The Contractor shall be required to report its DBE participation obtained through race-

neutral means throughout the period of performance.

- D. The Contractor must promptly notify the Railroad, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Railroad.

## **6.0 PROMPT PAYMENT TO DBE SUBCONTRACTORS**

The Contractor agrees to pay all DBE subcontractors, including retainage, for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment by the Railroad (including any retainage) in accordance with U.S. Department of Transportation regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. 26.29. Pursuant to 49 C.F.R. 26.29(c), work is "satisfactorily" completed when (a) all the tasks called for in the subcontract have been accomplished and documented as required by the Railroad or (b) the Railroad has made an incremental acceptance of a portion of the Work under the Contract that covers the subcontractor's work. The Contractor may only delay or postpone payment to a DBE subcontractor for good cause, with the Railroad's prior written approval. The Contractor shall include in any subcontract with a DBE subcontractor language providing that the Contractor and DBE subcontractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes. The Railroad shall not reimburse the Contractor for any part of the Work performed by DBE subcontractors unless and until the Contractor ensures that the DBE subcontractors are promptly paid for any work they have performed. The Contractor's failure to comply with this section shall constitute a material default of the Contract, which may result in termination of the Contract or such other remedy as the Railroad deems appropriate.

## **7.0 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 21<sup>st</sup> 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 section 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 section and shall, upon request, provide LIRR personnel data that reflects compliance with the terms contained in this section.

## **8.0 ENERGY CONSERVATION**

The Contractor agrees to comply with all 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, as amended, 42 U.S.C. §6321 et seq., except to the extent the Federal Government determines otherwise in writing.

## **9.0 CLEAN WATER ACT**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act (the "Clean Water Act"), as amended, 33 U.S.C. §1251 et seq. including section 508 of the Clean Water Act, as amended, 33 U.S.C. §1368 and Executive Order 11738. The Contractor also agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300f through 300j-6.
- B. The Contractor agrees to facilitate compliance with Executive Order 11738, including reporting each violation to the Railroad and understands and agrees that the Railroad will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **10.0 CLEAN AIR ACT**

- 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. including section 306 of the Clean Air Act, as amended, 42 U.S.C. §7606 and Executive Order 11738.
- B. The Contractor agrees to facilitate compliance with Executive Order 11738, including reporting each violation to the Railroad and understands and agrees that the Railroad will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **11.0 COMPLIANCE WITH EPA REGULATIONS**

The Contractor shall comply with all regulations of the United States Environmental Protection Agency (EPA) and the State of New York including refraining from use of facilities that are placed on the EPA's List of Violating Facilities. The Contractor shall immediately inform the Railroad, the FTA and the Regional U.S. EPA Office if the Contractor and/or any subcontractor receives a communication from the United States Environmental Protection Agency or any New York State environmental agency concerning (i) any environmental matter or (ii) notice that any facility used to perform work under this Contract is under consideration to be listed on the EPA's List of Violating Facilities.

#### **12.0 TERMINATION FOR DEFAULT**

The Railroad shall have the right to terminate the Contract, in whole or in part, based on the Contractor's default in performance including any of the following: (a) the Contractor's failure to begin the Work or abandon the Work; (b) the Contractor's refusal to perform any part of the Work as defined in the Contract or any Change Order issued by the Railroad; (c) the Contractor's failure to perform or comply with any provisions or implied covenants contained in the Contract; (d) the Contractor's performance is unnecessarily or unreasonable delayed at any time; or (e) the Railroad's determination, in its sole discretion, that the Work is unacceptable.

#### **13.0 TERMINATION FOR CONVENIENCE**

The Railroad shall have the right to terminate the Contract in whole or in part at any time for any reason, irrespective of whether the Contractor is in default, by giving the Contractor written notice to

such effect, which notice shall specify the termination date. Upon any such termination, the Contractor shall waive any associated claims for damages, including loss of anticipated profits. As the sole right and remedy of the Contractor for termination for convenience, the Railroad shall pay the Contractor (1) all amounts due, including retentions, and not previously paid to the Contractor for Work completed in accordance with the Contract prior to notice of termination, and for Work thereafter completed as specified in such notice; (2) the reasonable costs incurred for the Contractor's (i) discontinuance of the Work, (ii) cancellation of all outstanding commitments for materials, equipment, and apparatus that may be canceled without undue cost, (iii) orders or subcontracts for materials, services, or facilities that are necessary or required for completion of such portion of Work under the Contract that is not terminated, (iv) assistance to the Railroad in the maintenance and protection of the property used for the Work under the Contract; (3) any other reasonable costs incidental to such termination of the Work. Those provisions of the Contract, which by their nature continue beyond final acceptance under the Contract, shall remain in full force and effect after such termination.

#### **14.0 BREACHES AND DISPUTE RESOLUTION**

- A. Disputes – Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Railroad's Procurement Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Railroad's Procurement Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Procurement Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.
- B. Performance During Dispute – Unless otherwise directed by the Railroad, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- C. Claims for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within five (5) days after the claim arises.
- D. Remedies – Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Railroad and the Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within the State of New York in and for Queens County or in the United States District Court for the Eastern or Southern District of New York.
- E. Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Railroad or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **15.0 ACCESS TO RECORDS**

The following access to records requirements apply to this Contract:

- A. In accordance with 49 C.F.R. 18.36(i) and 49 C.F.R. 18.26, the Contractor agrees to

provide the Railroad, the FTA Administrator, the Comptroller General of the United States, the U.S. Secretary of Transportation or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. 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 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. In accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Railroad, the FTA Administrator, the Comptroller General of the United States, the U.S. Secretary of Transportation or any of their duly 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- C. In accordance with 49 U.S.C. §5325(a), if this Contract is for a capital project or improvement (defined at 49 U.S.C. §5302(a)(1)) entered into through other than competitive bidding, the Contractor shall make available records related to the Contract to the Railroad, the FTA Administrator, the Comptroller General of the United States, the U.S. Secretary of Transportation or any of their duly authorized representatives for the purposes of conducting an audit and inspection.
- D. 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.
- E. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) 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 the Railroad, the FTA Administrator, the Comptroller General of the United States, the U.S. Secretary of Transportation or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- F. FTA does not require the inclusion of these requirements in subcontracts.

## **16.0 BUY AMERICA**

- A. If this Contract involves the purchase of steel, iron and/or manufactured products, the Contractor agrees to comply with 49 U.S.C. §5323(j), as amended, and 49 C.F.R. Part 661, "Buy America Requirements," which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R 661.7 and include, among other things, microprocessors, computers, microcomputers, software, or other such devices, which are used solely for the purpose of processing or storing data. The general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing. This section does not apply to lower tier subcontractors.
- B. The Contractor shall maintain all documentation and records relating to the Buy America



requirements and the Contractor's compliance (including its efforts to comply) with such requirements under the Contract. Upon request of the Railroad, MTA and/or the FTA, the Contractor shall provide, within five (5) business days, all information and documentation substantiating and evidencing the origin of materials, components and subcomponents subject to the Buy America requirements under the Contract.

#### **17.0 FLY AMERICA**

The Contractor agrees to comply with the Fly America Act, 49 U.S.C. §40118, 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 certification with the Fly America requirements of this section in all subcontracts that may involve international air transportation.

#### **18.0 CARGO PREFERENCE REQUIREMENTS**

- A. Within 120 days after issuance of the Notice of Award, the Contractor shall provide LIRR with a Shipping Plan for any product(s), goods, materials, or other items to be shipped under the Contract. The Shipping Plan shall contain the information set forth in the Technical Specifications but at a minimum, but include:
1. A list of items that the Contractor intends to ship, a description of the items, indicating their origin, the shipping weight of such items or groups of items, calculated by both gross tonnage and volumetric tonnage, and a statement of whether the items or groups of items are to be shipped on US-flagged carriers.
  2. Method of transportation of the items from the point of origin to the site of the Work or an entry point in the United States.
- B. The Contractor agrees, pursuant to 46 U.S.C. §55305 and U.S. Maritime Administration Regulations, 46 C.F.R. Part 381, (i) 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; (ii) to furnish within 20 working days following the date of leading for shipments originating within the United States or within 30 working days following the date of loading 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 LIRR (through the contractor in the case of a subcontractor's bill-of-lading); and (iii) 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.
- C. Ten days prior to shipping, the Contractor shall provide LIRR with details of the vessel for shipping and the proposed bill of lading.
- D. Upon written request, the Contractor shall provide LIRR and/or MTA with any and all

documents demonstrating and related to the Contractor's compliance with this section including but not limited to (i) requests for shipping quotes obtained by the Contractor or anyone acting on the Contractor's behalf; (ii) purchase orders; (iii) shipping authorizations; (iv) communications with the U.S. Department of Transportation and its agencies; (v) bills of lading; (vi) packing slips; (vii) weight and volumetric calculations of cargo that has been shipped or is anticipated to be shipped under the Contract.

- E. The Contractor agrees that LIRR and/or MTA may conduct investigations and exercise any and all remedies available to it under the Contract based upon the Contractor's failure to comply with this section. The rights of LIRR and/or MTA under this subsection shall not be limited by any actions taken by the U.S. Department of Transportation, its departments or agencies. The rights of LIRR and/or MTA hereunder shall be in addition to and independent of any rights of the U.S. Department of Transportation.

## **19.0 PREFERENCE FOR RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6962, including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

## **20.0 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The requirements of 40 U.S.C. §3701 et seq., specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. §3702, and implementing regulations at 29 C.F.R. Part 5, and the safety requirements of section 107 of that Act at 40 U.S.C. §3704, and implementing regulations at 29 C.F.R. Part 1926, and implementing regulations at 29 C.F.R. Part 5, including the clauses contained in 29 C.F.R. 5(b) and clauses A, B, C, and D listed below, are applicable to this Contract if this Contract is for non-construction involving the employment of laborers or mechanics. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### **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 work week in which he or she is employed on such Work to work in excess of forty hours in such work week 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 work week.

### **B. Violation; Liability for Unpaid Wages; Liquidated Damages**

In the event of any violation of the requirements of 29 C.F.R. 5.5(b) (1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of Work done under contract for the District of Columbia or a territory, to such district or to such territory) 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 29 C.F.R. 5.5(b) (1) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. 5.5(b) (1).

C. Withholding for Unpaid Wages and Liquidated Damages

The FTA or the recipient 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 at 29 C.F.R. 5.2(b) (2).

D. Subcontracts

The Contractor or any subcontractor shall insert in any subcontracts the clauses set forth in Sections A through D hereof 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 this requirement.

**21.0 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- A. The Contractor acknowledges and agrees 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 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.

**22.0 SEISMIC SAFETY**

The Consultant 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 C.F.R. Part 41 (specifically, 49 C.F.R. §41.117) and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §7701 *et seq.*, in accordance with Executive Order 12699, 42 U.S.C. §7704 note and the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**23.0 CONFORMANCE WITH NATIONAL ITS ARCHITECTURE**

The Consultant agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU §5307(c), 23 U.S.C. §512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**24.0 PRIVACY ACT**

The following requirements apply to the Consultant and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, the Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Consultant also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**25.0 FEDERAL CHANGES**

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 MTA/LIRR 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.

**26.0 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated herein 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 shall not perform any act, fail to perform any act, or refuse to comply with any the Railroad requests, which would cause the Railroad to be in violation of the FTA terms and conditions.

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**CERTIFICATION OF POTENTIAL CONTRACTORS REGARDING  
DEBARMENT AND SUSPENSION AND OTHER RESPONSIBILITY MATTERS**  
(For Contracts Estimated to Equal or Exceed \$25,000)

CONTRACT NO.:

DESCRIPTION:

The Contractor, \_\_\_\_\_, hereby certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified from covered transactions by any Federal, State or local department or agency;
2. Have not within the three (3) year period preceding this proposal/bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 hereof;
4. Have not within the three (3) year period preceding this proposal/bid had one or more public transactions (Federal, State or local) terminated for cause of default;
5. The Contractor also acknowledges and agrees by signing this certification that it shall have a continuing obligation to provide LIRR with immediate written notice, at any time, after it learns that its certification was erroneous when submitted or has become erroneous by reason(s) of changed circumstances and that such continuing obligation also applies to all subcontractors. The Contractor shall be solely responsible for collecting, updating, and submitting all updated notices under this paragraph to LIRR.

THE CONTRACTOR HEREBY CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS CONTAINED HEREIN AND ACKNOWLEDGES AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. §3801, ET SEQ. APPLY TO SUCH STATEMENTS.

\_\_\_\_\_  
Signature and Title of Authorized Representative      Date

Note: If the Contractor cannot for any reason certify to any of the statements contained in this certification, it shall attach a complete explanation to this certification. Failure to furnish a certification or an explanation may disqualify the Contractor for participating in the Contract.

**CERTIFICATION OF POTENTIAL SUBCONTRACTOR  
DEBARMENT AND SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

(For Subcontracts Estimated to Equal or Exceed \$25,000)

CONTRACT NO.:

DESCRIPTION:

\_\_\_\_\_, a potential subcontractor or vendor ("Subcontractor") hereby certifies to the best of its knowledge, information and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified from covered transactions by any Federal, State or local department or agency;
2. Subcontractor also acknowledges and agrees by signing this certification that it shall have a continuing obligation to provide the Contractor and LIRR with immediate written notice, at any time, after it learns that its certification was erroneous when submitted or has become erroneous by reason(s) of changed circumstances.
3. If for any reason the potential Subcontractor is unable to certify to any of the statements contained herein, it shall attach a complete explanation to this Bid/Proposal.

THE SUBCONTRACTOR HEREBY CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS CONTAINED HEREIN AND ACKNOWLEDGES AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. §3801 ET SEQ. APPLY TO SUCH STATEMENTS.

\_\_\_\_\_  
Signature and Title of Authorized Representative      Date

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See page 3 for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change  <b>For Material Change Only:</b> Year _____ Quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee Tier _____, if Known:  Congressional District, if known:	<b>1. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable:	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$ _____	
<b>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</b>  (attach Continuation Sheet(s) SF-LLL-A, if necessary)		<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</b>
<b>11. Amount of Payment (check all that apply):</b>  \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b>  <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment (check all that apply):</b> ~ a. cash ~ b. in-kind; specify: nature _____  value _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</b>  (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<b>15. Continuation Sheet(s) SF-LLL-A attached:    <input type="checkbox"/> Yes    <input type="checkbox"/> No</b>		
<b>16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____  <b>Print Name:</b> _____  <b>Title:</b> _____  <b>Telephone No.:</b> _____ <b>Date:</b> _____	

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by  
OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local  
Reproduction  
Standard – LLL-A



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE  
OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to 31 U.S.C. §1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change reports. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include, but are not limited to, subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee", then enter the full name, city, state and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IF) number; grant announcement number; the contract, grant or loan number; the applicable/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting identified in Item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if differed from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonable expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not must time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

(TO BE COMPLETED BY PRIME CONSULTANT AND EACH POTENTIAL SUBCONTRACTOR FOR EACH SUCH CONTRACT OR SUBCONTRACT THAT IS ESTIMATED AT or EXCEEDS \$100,000. THIS CERIFICATION MUST BE UPDATED QUARTERLY IF ANY MATERIAL CHANGE IS APPLICABLE DURING THAT QUARTER.)

I, \_\_\_\_\_  
(Name and Title of Consultant/Subcontractor)

hereby certify, to the best of my knowledge and belief, on behalf of

\_\_\_\_\_, that  
(Name of Firm)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

\_\_\_\_\_  
(Title of Authorized Official)

**BUY AMERICA CERTIFICATION**

(For steel, iron or manufactured products)

If steel, iron, or manufactured products (as defined in 49 C.F.R. §§661.3 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder/proposer/offeror in accordance with the requirement contained in 49 C.F.R. §661.13(b).

Certificate of Compliance with Buy America Requirements

The bidder/proposer/offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations of 49 C.F.R. part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Certificate of Non-Compliance with Buy America Requirements

The bidder/proposer/offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. §5323(j), but 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 C.F.R. §661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**BUY AMERICA CERTIFICATION**

(For buses, other rolling stock and associated equipment)

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder/Proposer/offeror in accordance with the requirement contained in 49 C.F.R. §661.11.

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder/Proposer/offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. §661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder/Proposer/offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. §5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. §661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**BIDDER/PROPOSER QUESTIONNAIRE**

The USDOT requires that Agencies using USDOT funding maintain a Bidder's List, which is intended to be a count of all firms that are participating or attempting to participate on USDOT assisted contracts. The Bidder's List must include all firms that bid/proposed on prime contracts or on subcontracts on USDOT assisted projects; therefore, Bidders are required to fill out the attached form and return it with their bid/ proposal.

If the following two sheets are insufficient, make addition photocopies of these sheets and submit them with the bid/proposal.

**Bidder's/Offoror's Questionnaire**

The USDOT DBE Program promulgated at 49 CFR Part 26, requires MTA to develop and maintain a Bidder's 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 on USDOT-assisted projects, including both DBEs and non-DBEs. Please complete the information listed below and return with your bid/proposal.

**Bidder/Offoror** DBE  Non-DBE

Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Fax \_\_\_\_\_

\_\_\_\_\_ E-Mail Address \_\_\_\_\_

Gross Receipts  Less than \$100K

\$1M  \$5M  \$10M  Over \$100K -500K  \$5M - \$10M

Fed. Id \_\_\_\_\_ Year Business Started \_\_\_\_\_

SIC Codes Service Performed

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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** DBE  Non-DBE

Name \_\_\_\_\_ Phone # \_\_\_\_\_

Address \_\_\_\_\_ Fax # \_\_\_\_\_

E-Mail Address \_\_\_\_\_ Gross Receipts

Fed. I.d \_\_\_\_\_  Less than \$100K  \$1M-\$5M

Year Business Started \_\_\_\_\_  \$100K - \$500K  \$5M - \$10M

**SIC Codes** **Potential Subcontractor** DBE  Non-DBE

Name \_\_\_\_\_ Phone # \_\_\_\_\_

Address \_\_\_\_\_ Fax # \_\_\_\_\_

\_\_\_\_\_ E-Mail Address \_\_\_\_\_

\_\_\_\_\_ Gross Receipts

**Contract No. 6340; General Engineering Consultants**

Fed. I.d \_\_\_\_\_

Less than \$100K     \$1M-\$5M

Year Business Started \_\_\_\_\_

\$100K - \$50     \$5M - \$10M

**SIC Codes**

**Potential Subcontractor**

**DBE**

**Non-DBE**

Name \_\_\_\_\_

Phone # \_\_\_\_\_

Address \_\_\_\_\_

Fax # \_\_\_\_\_

\_\_\_\_\_ E-Mail Address \_\_\_\_\_

\_\_\_\_\_ Gross Receipts

Fed. I.d \_\_\_\_\_

Less than \$100K     \$1M-\$5M

Year Business Started \_\_\_\_\_

\$100K - \$500K     \$5M - \$10M

**SIC Codes**

**Potential Subcontractor**

**DBE**

**Non-DBE**

Name \_\_\_\_\_

Phone # \_\_\_\_\_

Address \_\_\_\_\_

Fax # \_\_\_\_\_

\_\_\_\_\_ E-Mail Address \_\_\_\_\_

\_\_\_\_\_ Gross Receipts

Fed. I.d \_\_\_\_\_

Less than \$100K     \$1M-\$5M

Year Business Started \_\_\_\_\_

\$100K - \$500K     \$5M - \$10M

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 \_\_\_\_\_