

**The Metropolitan Transportation Authority
Acting By
The MTA Capital Construction Company**



MTA CONTRACT #6240

**DESIGN-BUILD SERVICES
FOR
LIRR EXPANSION PROJECT
FROM FLORAL PARK TO HICKSVILLE**

CONFORMED DOCUMENTS

**VOLUME 2
GENERAL PROVISIONS**

JANUARY 8, 2018

A handwritten signature in blue ink, consisting of a stylized, abstract shape that resembles a large letter 'R' or a similar character, with a horizontal line extending from the base.

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CHAPTER 1 – GENERAL TERMS AND CONDITIONS

GP 1.01 ENTIRE AGREEMENT

The Contract Documents set forth the entire agreement between MTA and the Design-Builder, superseding all prior agreements and understanding written or oral, and may not be altered or modified except in writing by MTA's Procurement Officer.

GP 1.02 DEFINITIONS

All capitalized terms used herein shall have the meanings set forth below or as may be defined elsewhere in the Contract Documents.

Addendum/Addenda: Additional Contract provisions, revisions or clarifications issued in writing by the Railroad prior to the award of the Contract (each individually an Addendum and collectively "Addenda").

Alternative Technical Concept: An alternative to requirements of the Contract Documents proposed by the Design-Builder.

Authorities Having Jurisdiction. As defined in TP A1.1.2.

Calendar Day: Every day shown on the calendar, beginning at 12:00 a.m. (midnight) Eastern Time (standard or daylight as applicable).

Change in Law: Change, after the date of the Design-Build Agreement, in any applicable law, code, rule, order, ordinance, regulation, statute, requirement, permit, approval, consent or certificate of any Governmental Authority affecting the Work.

Community Benefits Fund: As defined in GP 13.01.

Compensable Delay: As defined in GP 3.06A.

Compensation Event: An event entitling the Design-Builder to adjustment of the Contract Price.

Completion Option: Means MTA's right to require the Design-Builder to perform the Completion Option Work as set forth in the Design-Build Agreement.

Completion Option Work: Means all Work required for the construction of the Completion Option Work as described in Exhibit A to the Design-Build Agreement.

Construction Documents: Surveys, Staging Plans, Design Plans and Project Specifications showing the location, character, dimensions, and other design related details of the work to be done, signed and stamped by a Design Professional, and any other documents required by MTA prior to issuance of authorization to commence construction.

Contract: The contractual agreement between MTA and the Design-Builder for the performance of all of the Work by the Design-Builder, which agreement consists of the Contract Documents, as the

same may be amended, supplemented and modified by MTA and the Design-Builder in accordance with the terms thereof.

Contract Documents: Instructions to Proposers; Addenda; Design-Build Agreement; General Provisions; Technical Provisions; Utility Requirements; Technical Specifications; Environmental Compliance Plan; Contract Drawings; Directive Drawings; Standards, Existing Conditions Data, all Addenda issued by the Railroad; any and all appendices and other documents that were included in or referenced in the Contract Documents; MTA's Notice of Award; Limited Notice to Proceed; Notice to Proceed; and all Change Orders and Modifications, if any, issued subsequent to award.

Contract Drawings: Those drawings included in the Technical Specifications.

Contract Price: The lump sum price agreed to by MTA and the Design-Builder for the performance of all of the Work by the Design-Builder, as reflected in Article 2.1 of the Design-Build Agreement.

Contract Price Allowance: An amount included in the Contract Price, as provided in the Design-Build Agreement, to cover costs of performing an item of the Work for which the quantity or scope is expected to vary.

Days: Unless otherwise noted, the word "days" shall mean Calendar Days.

Design-Build Agreement: The agreement executed by MTA and the Design-Builder for the Project.

Design-Builder: The party that is awarded the Contract to perform the Work and executes the Design-Build Agreement as Design-Builder.

Design-Builder's Project Manager: The individual duly authorized representative of the Design-Builder responsible for overall project management.

Design-Builder's Superintendent: The on site manager of the Design-Builder's activities on the Project.

Design Professionals: Licensed professional engineers, registered architects, land surveyors, landscape architects and professional geologists engaged by the Design-Builder to perform any design Work forming part of the Work under the Contract.

Detailed Contract Schedule: The resource loaded schedule for all Work as defined in TP 2.11.3.2 and otherwise in accordance with the requirements of TP 2.11 approved by MTA.

Differing Site Condition: As defined in GP 2.15.

Early Start Work: Items of Work identified in Exhibit D to the Design-Build Agreement or that MTA and the Design-Builder otherwise agree shall commence during the period after issuance of the LNTP and before issuance of the NTP.

Emergency: The word "emergency" shall mean a situation involving danger to life, safety or property or which is essential to the efficient operation of or to adequately provide Railroad service, and which requires immediate corrective action.

Excusable Delay: As defined in GP 3.04A.

FTA: Federal Transit Administration.

Final Acceptance: MTA's written notification to the Design-Builder that it accepts the Work performed by the Design-Builder under the Contract.

Final Completion: As defined in GP 3.03.

Force Majeure: Means an act of God; act or requirement of Government Authority that is limited to the Project such as emergency decrees or orders not of general applicability; war or other hostilities, riot or civil commotion; embargo; or industry-wide, region-wide or nationwide strike, work-to-rule action or similar labor disruption.

General Provisions: The General Provisions of the Contract, cited to herein as "GP".

Governmental Authority: The United States of America, the State of New York, the City of New York and any agency, department, corporation, commission, board, bureau, instrumentality or political subdivision of any of the foregoing (with the exception of MTA or the Railroad to the extent that either is acting in its capacity as a party to or third-party beneficiary of the Contract) now existing or hereafter created, having or exercising jurisdiction over the Work.

Grade Crossing: An intersection where the railway track crosses a road or path at the same level, as opposed to the railway track crossing over or under using a bridge or tunnel.

Hazardous Materials: As defined in TP 2.7.13.1D.1.i.

Hazardous Materials/ACM and Lead Based Paint Allowance: The allowance included in the Contract Price for increased costs of staging, handling, transportation and disposal of Hazardous Materials and for abatement and disposal of asbestos containing material and lead based paint as provided in Article 2.1 of the Design-Build Agreement.

Heavy Construction: Means all Work that requires use of heavy lifting equipment, earth moving equipment or any other equipment using mechanical tread propulsion.

Indemnified Party(ies): As defined in GP 7.02.

Instructions to Proposers: The Instructions to Proposers issued by the Railroad with respect to the Request for Proposals for the Project.

Key Personnel: The Design-Builder's Project Executive, Design-Builder's Project Manager, Design Manager, General Superintendent and Quality Manager.

Limited Notice to Proceed (LNTP): Written notice from MTA's Procurement Officer to the Design-Builder authorizing commencement of Pre-construction Work and Early Start Work in accordance with the Contract Documents.

Liquidated Damages Grace Period: The period of sixty (60) calendar days beyond the time requirement for completion of the Work or a specified portion thereof where applicable as set forth in the Design-Build Agreement.

LIRR: The Long Island Rail Road Company.

Modification/Change Order: For the words “modification” or “change order” refer to Chapter 5, Changes to the Contract, GP 5.01, “Changes”.

MTA: The Metropolitan Transportation Authority or its duly designated representative.

MTA Changes: As defined in GP 5.01.

MTA Delay. Means a delay by MTA in performing an express obligation of MTA or the Railroad under the Contract Documents within the agreed time for performance of such obligation.

MTA Project Consultant: A duly authorized independent firm engaged by MTA responsible to assist MTA in the performance of technical support, inspection and administration of the Work.

MTA’s Project Manager: A duly authorized representative of MTA responsible for overall project management.

Notice of Award: A writing issued by the Procurement Officer notifying the Proposer selected by MTA to serve as Design-Builder of MTA's acceptance of its Proposal and instructing it to provide specified documentation in accordance with the Contract Documents.

Notice to Proceed: Written notice from MTA's Procurement Officer to the Design-Builder authorizing the Design-Builder to proceed with the Work subject to compliance with the Contract Documents.

NYSDOT: The New York State Department of Transportation.

Parking Structure Option 1: MTA’s right to require the Design-Builder to perform the Parking Structure Option 1 Work.

Parking Structure Option 2: MTA’s right to require the Design-Builder to perform the Parking Structure Option 2 Work.

Parking Structure Option 3: MTA’s right to require the Design-Builder to perform the Parking Structure Option 3 Work.

Parking Structure Option 4: MTA’s right to require the Design-Builder to perform the Parking Structure Option 4 Work.

Parking Structure Options: Means MTA’s right to require the Design-Builder to perform any of the Parking Structure Option Work consisting of Parking Structure Option 1, Parking Structure Option 2, Parking Structure Option 3 and Parking Structure Option 4.

Parking Structure Option 1 Work: All Work required for the design and construction of the Parking Structure at Mineola Second Street described in TP 3.14 – Parking Structures.

Parking Structure Option 2 Work: All Work required for the design and construction of the Parking Structure at Westbury North described in TP 3.14 – Parking Structures.

Parking Structure Option 3 Work: All Work required for the design and construction of the Parking Structure at Westbury South described in TP 3.14 – Parking Structures.

Parking Structure Option 4 Work: All Work required for the design and construction of the Parking Structure at Hicksville described in TP 3.14 – Parking Structures.

Parking Structure Option Work: Parking Structure Option 1 Work, Parking Structure Option 2 Work, Parking Structure Option 3 Work and Parking Structure Option 4 Work, as further described in Exhibit B to the Design-Build Agreement.

Pre-construction Work: Design, procurement, off-site fabrication, surveys, utility relocations not requiring full road closures or traffic re-routing, soil testing and test pits and mobilization including set-up of field offices, laydown areas and staging areas, and as further described in GP 3.02A. Pre-construction Work does not include excavation, heavy construction or placement of construction equipment on-site, except as required for Early Start Work.

Procurement Officer: MTA's Chief Procurement & Logistics Officer who has the authority to obligate, administer, interpret and modify the Contract on behalf of MTA or his designee.

Professional Standard: The standard of care exercised by highly qualified professionals experienced in the design of complex rail transportation and roadway construction projects similar to the Project including its various components.

Project: LIRR expansion from Floral Park to Hicksville as described in the Contract Documents.

Project Element: As defined in TP 4.1.3A.

Project Labor Agreement. As defined in GP 14.01.

Project Management Plan: is a formal approved document that defines how the Project is executed, monitored and controlled.

Proposal: A proposal submitted by a Proposer in response to the RFP.

Proposal Deadline: October 12, 2017.

Proposer: A Respondent to the RFQ included on the Shortlist.

Railroad: The Long Island Rail Road Company.

Relief Event: An event entitling the Design-Builder to relief from time requirements of the Contract Documents.

Road Re-opening Incentive Payment: An incentive payment to the Design-Builder for early re-opening of a road closed for Work at a Grade Crossing as provided in Article 4 of the Design-Build Agreement.

Schedule Meetings: Meetings of MTA, Design-Builder's Superintendent and appropriate schedule staff to review the Detailed Contract Schedule and other Project schedules.

Site: "Site" or "work site" or words of like import shall mean the location on the Railroad property or other locations at which the Work will take place.

Six-Week Rolling Schedule: As defined in TP 2.11.3.3.

Subcontractors: Subcontractors and suppliers utilized by Design-Builder for the performance of the Work, including lower-tier subcontractors and suppliers (i.e., tiers below subcontractors holding direct contracts with the Design-Builder for the performance of portions of the Work), except as may be otherwise defined by applicable statute or regulation.

Substantial Completion: As defined in GP 3.03.

Technical Provisions: The Technical Provisions of the Contract, cited to herein as “TP”.

Technical Specifications: Volumes 3 through 10 of the Contract Documents.

Utility Owner: A corporation or other entity which owns a utility line, pipeline, conduit, wire, cable, or other utility facility or equipment which runs within, alongside or across the Railroad property forming part of the Site where work is to be performed and which requires relocation, removal or alteration so as to allow the Work to be performed in accordance with the Contract.

Utility Owner Delay. Means a delay by a Utility Owner in reviewing a relocation submittal, relocating an interference or supporting the Design-Builder’s relocation of an interference within the time required by the Detailed Contract Schedule approved by MTA. Utility Owner Delay does not include (i) delay resulting from an incomplete or inaccurate submittal by the Design-Builder, (ii) failure of the Detailed Contract Schedule to account for Utility Owner moratoriums or other Utility Owner requirements that were known to or discoverable by the Design-Builder or (iii) delay by the Design-Builder or any subcontractor hired by the Design-Builder to perform utility relocation work (except for Excusable Delay) in the Detailed Contract Schedule.

Work: The furnishing of all labor, materials, plant, equipment, tools, supervision, and other incidentals required by the Contract except for the Completion Option Work and the Parking Structure Option Work, and the performance of all duties and obligations imposed by the Contract, including work performed pursuant to the warranty provisions of the Contract and work necessary to reconstruct and restore all structures, appurtenances/connections thereto including, but not limited to all Railroad real property and any other real property as may be affected by the Design-Builder’s performance. The Work also includes all planning, design and architectural/engineering services required for the proper design and construction of the Project, including but without limitation all drawings and specifications, all design clarifications and all construction phase Design Professional services that may be necessary or desirable for the Project except for construction phase Design Professional services for the Completion Option (unless the Completion Option is exercised) and design and architectural/engineering services and construction phase Design Professional services for the Parking Structure Option Work (unless and to the extent that the Parking Structure Options are exercised). The Work shall include separate completed Construction Documents for the Completion Option Work in a form and format that will allow for their use in soliciting bids and construction of the Completion Option Work by others and without further work or adjustments. The Work shall also include the Completion Option Work and the Parking Structure Option Work if and to the extent the Completion Option and the Parking Structure Options are exercised by MTA.

GP 1.03 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.

GP 1.04 NOTICES AND APPROVALS

All notices, correspondence, reports, schedules which the Design-Builder is required or permitted to deliver to MTA under the Contract shall be in writing and submitted to the Procurement Officer and to MTA's Project Manager. The Design-Builder shall reference the Contract number and consecutively number all such documents. All information other than notices and correspondence, such as submittals, samples, plans, reports, schedules and the like shall be accompanied by a standard Letter of Transmittal Form and submitted only to MTA's 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 if sent or delivered as follows:

- The MTA Capital Construction Company
2 Broadway
New York, New York 10004
Attn: Mark Roche

and

- (excluding samples, plans and schedules)
The MTA Capital Construction Company
2 Broadway
New York, New York 10004
Attn: John Hanna

All notices of claim for extension of time, increase in compensation or damages of any sort shall also be copied to:

The MTA Capital Construction Company
2 Broadway
New York, New York 10004
Attn: General Counsel

GP 1.05 LAWS, PERMITS, CODES AND STANDARDS

- A. Except where different requirements are set forth in the Contract Documents, Design-Builder shall comply with all provisions of:

(i) Federal and State Laws, ordinances, rules, regulations and orders affecting the Work, including (without limitation) the New York State Uniform Fire Prevention and Building Code, and

(ii) Where directed by MTA in writing or as otherwise required by the Technical Provisions, municipal or local laws, ordinances, rules, regulations or orders affecting the Work as if the Work were being performed for a private corporation.

In the event the Design-Builder is directed to or is otherwise required by the Technical Provisions to comply with municipal or local laws, ordinances, rules, regulations or orders, and if there is a difference in standards between such laws, ordinances, rules, regulations

and orders and applicable federal or state laws, ordinances, rules, regulations or orders, the stricter standard shall be applied. Where one is not more stringent than the other, the federal or state laws, ordinances, rules, regulations and orders shall apply.

- B. If the Work requires the Design-Builder to open, alter, remove, damage or otherwise affect property owned by federal, state, municipal or local governments, the Design-Builder shall obtain in its own name any permits or licenses required to allow such property to be so affected.
- C. The Design-Builder shall, at its own expense, secure and pay for all permits and licenses if and when required to perform any portion of the Work, including any permits or licenses of the type referred to in GP 1.05A above. Anything herein to the contrary notwithstanding, unless expressly authorized by MTA in writing, Design-Builder shall not apply for any permits or licenses in the name of or on behalf of MTA or the Railroad, or take any other actions which would subject MTA or the Railroad to municipal or local laws, ordinances, rules, regulations or orders from which it would otherwise be exempt.
- D. The Design-Builder shall obtain prior written approval from MTA's Project Manager for any submission the Design-Builder proposes to make to any municipality, state or local agency or utility for any permit or license, including permits or licenses of the type referred to in GP 1.05A above.
- E. 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 specifications and the practice or standard, in which case the more stringent shall govern.
- F. The applicable revision level and/or date of all the above, shall be the issue in effect at the date of Proposal Deadline. The Design-Builder must immediately advise MTA of any subsequent revision and its impact on price or any other contract items, and request approval from MTA to implement such subsequent revisions to the Work.

GP 1.06 SUBMITTALS

- A. The review of submittals by MTA is solely for MTA's benefit and shall not relieve the Design-Builder of its obligation to perform the Work in conformance with the requirements of the Contract Documents. Acceptance of any submittal by MTA shall not constitute, or be construed as, an assumption by MTA of responsibility for the design of any of the Work, or for the quality of materials or workmanship of any Work constructed or installed by the Design-Builder, or for the ability of the completed Work to meet any performance specifications set out in the Contract, it being understood and agreed that the Design-Builder remains solely responsible for such matters.
- B. MTA shall review submittals for general conformance with the specified standards. Approval of submittals for design conformance shall be the responsibility of Design-Builder as the Designer of Record as described in the Technical Provisions, 2.12 - Submittals.

- C. For approval of alternate products and equipment (approved equals or substitutions), the Design-Builder shall submit a request for such alternate products and equipment by submitting to MTA's Project Manager, in writing, the names of the proposed manufacturers, products and equipment. The Design-Builder shall properly submit complete identifying information, and note whether the item is included in the Technical Specifications including references to the applicable section and paragraph. All requests for approval of alternate products and equipment (approved equals or substitutions) shall comply with the requirements of the Contract Documents. MTA's Project Manager may reject products or installed equipment not in conformance with the Contract Documents.

GP 1.07 REFERENCE DOCUMENTS

Any reference documents indicated in these Contract Documents are for informational purposes only. MTA will not be responsible for the completeness or accuracy of the reference documents provided or cited, and the Design-Builder 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.

GP 1.08 INTERPRETATION

- A. Anything mentioned in the Technical Specifications and not shown in the Contract Drawings, or shown in the Contract 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 Contract Drawings and the Technical Specifications, the Technical Specifications shall take precedence over the Contract Drawings for estimating purposes. Contract Drawings are not satisfactory for construction 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 Design-Builder shall immediately submit in writing the question(s) to MTA for a written clarification. Any adjustment by the Design-Builder 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 MTA is intended and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" MTA. The word "conforms" or words of like import, shall be understood to mean "conformance with the Technical Specifications and the Contract 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 specifications or drawings.
- D. Unless otherwise expressly stated, all references to any of these General Provisions, or to any article or section of any of the other Contract Documents, shall include all sub-paragraphs, sub-articles or subsections under the General Provisions, article or section referenced. Similarly, all references to sub-paragraphs, sub-articles, and subsections similarly include

references to sub-sub-paragraphs, sub-sub-articles, and sub-subsections. A reference to any specific General Provision, 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.

GP 1.09 (NOT USED)

GP 1.10 NOTICE OF ANY GOVERNMENTAL ACTION OR THIRD PARTY SUIT

Upon obtaining knowledge of any such action, proceeding or claim, the Design-Builder shall immediately notify MTA 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 the Contract and at any time thereafter until Final Completion of all Work. Every three (3) months, commencing with the first day of the third full calendar month after the date of the Contract the Design-Builder must furnish MTA 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. MTA may elect to deem failure to comply with this provision as a material breach of the Contract.

At any time, upon written request by MTA, the Design-Builder shall provide MTA with an update report on the status of any action, proceeding or claim previously reported by Design-Builder to MTA under GP 1.10, in such detail as MTA may reasonably require.

GP 1.11 DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES

In order to induce MTA to enter into this Contract, the Design-Builder represents and warrants to MTA that:

1. Existence: Compliance with Law. The Design-Builder (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 the 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 Design-Builder has full power, authority and legal right to execute, deliver and perform the Contract. The Design-Builder 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 any 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 Design-Builder or of any mortgage, indenture, lease, contract, or other agreement or undertaking to which the Design-Builder is a party or by which the Design-Builder 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 MTA or the Railroad 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 Design-Builder, is any claim, litigation or proceeding threatening against the Design-Builder 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 Design-Builder or (ii) which, if adversely determined, would have an adverse effect on the business, operations, property or financial or other condition of the Design-Builder. For purposes of this paragraph, a claim, litigation, investigation or proceeding may be deemed disclosed to MTA or the Railroad if MTA or the Railroad 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 Design-Builder to controvert or respond to such matter.
5. No Default. The Design-Builder 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 Design-Builder 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 Design-Builder to carry on its business as presently conducted or the ability of the Design-Builder to perform its obligations under this Contract or of any loan, mortgage or other financing agreement or transaction entered into by the Design-Builder.
6. No Inducement or Gratuities.
 - a. The Design-Builder warrants that no person, broker 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 bona fide employees of the Design-Builder or bona fide commercial

or selling agencies established and controlled by Design-Builder for the purpose of securing business.

- b. The Design-Builder 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 MTA or the Railroad. The Design-Builder further warrants that during the term of the contract it shall not make any offers of employment to any MTA or Railroad 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, MTA, in addition to any other rights or remedies available to it by law or under the Contract, shall have the right to terminate the Contract upon written notice to the Design-Builder, 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 Design-Builder's responsibility in future MTA or Railroad procurements where the Design-Builder has submitted, or has expressed an interest in submitting, a bid or proposal.

GP 1.12 CONFIDENTIALITY

The Design-Builder, its officers, agents, employees and subcontractors shall not, either during or after the term of the Contract, disclose to any third party, any information relative to the business of MTA or the Railroad obtained while rendering such services, without the written consent of MTA's Procurement Officer.

GP 1.13 SEVERABILITY

In the event any General Provision, article, sub-article, section, paragraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other General Provisions, articles, sub-articles, sections, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall nevertheless remain in full force and effect.

CHAPTER 2 – PERFORMANCE OF THE WORK

GP 2.01 DESIGN-BUILDER RESPONSIBILITY

- A. The Design-Builder represents and warrants to MTA that the Design-Builder 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 Design-Builder possesses all the legally required permits and/or licenses to perform Work of the type represented by the Work, which shall be kept current and valid throughout the entire period of performance under this Contract.
- B. The Contract Documents establish the minimum requirements for the design and construction of a satisfactory project. Nothing therein shall be construed to limit the Design-Builder's obligation to assume full responsibility for providing the Project, in all aspects. Design of the Work shall be performed in accordance with the Professional Standard. Any Work including but not limited to designs, materials or equipment that may reasonably be inferred from the provisions of the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be designed, furnished and performed by the Design-Builder whether or not specifically called for. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, the highest quality construction, integration and testing practices shall be followed and only materials and workmanship of highest quality shall be used. Unless otherwise specified, the Design-Builder shall furnish all design, labor, materials, tools, equipment and incidents which are necessary to complete the Work in accordance with the Contract Documents, the Professional Standard and other, generally accepted standards.

GP 2.02 (NOT USED)

GP 2.03 (NOT USED)

GP 2.04 SUBCONTRACTING

- A. The Design-Builder shall not subcontract any portion of the Work without the prior written approval from MTA's Procurement Officer. MTA reserves the right to disapprove such proposed subcontractor for reasonable cause. All terms of any busing subcontractor subcontract shall be in accordance with the Contract Documents and subject to the written approval of MTA before the start of Work under the subcontract, and the Railroad shall be a third-party beneficiary of the subcontract.
- B. The Design-Builder must submit a request for subcontractor approval to MTA, including a resume of experience for each proposed subcontractor which resume shall contain, for each prior project referenced in such resume, the owner of the project for whose benefit the subcontractor performed work, the name of the prime contractor on the project (if the subcontractor performed such work as a subcontractor and not as the prime contractor), a description of the project and of the work performed by the subcontractor, the date(s) such work was performed, the value of such work, and the name and telephone number of a representative of the owner of the project who can speak to the quality of the work performed by the subcontractor. The request shall also include the specific Work proposed for the subcontractor and the estimated dollar amount. The approval will also specify if application of any markup by the prime contractor will not be allowable on the subcontractor costs.

- C. If DBE, MBE/WBE or SDVOB goals are applicable to the Contract, the Design-Builder's request for approval of each subcontractor must specify whether it intends to apply that proposed subcontractor against any such applicable goals specified in the Contract.
- D. MTA reserves the right in its discretion to require any subcontractor to undergo a responsibility review prior to approval. Approval of any subcontractor or supplier by MTA shall not operate as a waiver of any right against the Design-Builder or third parties nor shall it relieve the Design-Builder of any of its obligations to perform the Work as required by, and in accordance with the terms of, the Contract.
- E. Any subcontractor which required and received approval prior to Notice of Award, must be used by the Design-Builder for the portion of the Work for which they were approved. MTA will not consider any substitute of any such subcontractor in the absence of compelling circumstances to do so. If a proposed subcontractor is not approved, the Design-Builder may propose another subcontractor, or if it chooses to perform such portion of the Work itself, Design-Builder should so notify the Procurement Officer. The Design-Builder shall apprise the Procurement Officer of the addition, deletion or substitute of any subcontractor it proposes to make, including pertinent information or reason(s) therefore.
- F. The Design-Builder shall fully inform its subcontractors of all provisions and requirements of this Contract relating either directly or indirectly to the Work to be performed and the material to be furnished under the subcontract agreement and the agreement shall expressly stipulate that labor performed and materials, equipment, devices and apparatus furnished shall comply with the requirements of the Contract. The Design-Builder shall insert into every subcontract and require in lower tier subcontracts all provisions required by law, regulation, and rule and by the Contract Documents. MTA shall have the right to audit the records of subcontractors and suppliers in the same manner as the Design-Builder, and Design-Builder shall insert into each and every subcontract or supply agreement a provision, reasonably satisfactory to MTA, requiring the subject subcontractor or supplier to provide MTA with such right to audit the subcontractor's or supplier's records. Unless proscribed by law, such agreements between the Design-Builder and subcontractor relating to payment and retainage shall be no less favorable to the subcontractor than are those with respect to the Design-Builder as set forth in this Contract.
- G. In the event that the Design-Builder is in default of the Contract, or in the event that the Contract is terminated, in whole or in part, for any reason, the Design-Builder agrees that, upon MTA's request, it will assign those subcontracts that MTA designates, to MTA. Under such circumstances, the Design-Builder shall require its subcontractors to deliver all materials, equipment, supplies, labor, apparatus or other deliverables directly to MTA. Those assigned subcontractors shall continue to comply with all applicable provisions of the subject subcontract. The Design-Builder shall insert the following provisions into every subcontract and require its subcontractors to insert the following provisions in all lower tier subcontracts:

"In the event that the Design-Builder in MTA CONTRACT #6240 is declared in default or that such contract is terminated for any other reason in whole or in part, (fill in name of subcontractor) understands that the Design-Builder may be required to assign its interest in this Contract to The Metropolitan Transportation Authority ("MTA")."

Under such circumstances, (fill in name of subcontractor) agrees that all professional services, materials, equipment, supplies, labor, apparatus or other deliverables under this Contract shall be supplied directly to MTA and that it will continue to comply with all applicable provisions of this Contract under the direction of MTA.

- H. The Design-Builder, at the request of MTA, shall supply priced copies of all subcontracts to MTA.
- I. Unless otherwise provided by the Contract Documents, each subcontractor utilized for the Work shall have a minimum of three (3) years' experience or equivalent in its trade and employ a superintendent at the worksite with a minimum of five (5) years' experience or equivalent in the subcontractor's trade.

GP 2.05 DESIGN PROFESSIONALS SUBCONTRACTS

- A. The Design-Builder shall submit its Design Professionals for approval with its proposal ("Design Professionals Subcontracts"). All Design Professionals Subcontracts shall be approved by MTA before any such professional performs any Work.
- B. Each Design Professionals Subcontract shall incorporate the terms and conditions of the Contract and shall comply with the following requirements:
 - 1. The Design Professionals shall provide a minimum level of insurance coverage specified in the Contract (Insurance Requirements). MTA and the Railroad shall be named as intended third-party beneficiaries of each such subcontract.
 - 2. All plans, drawings, designs, specifications and other materials prepared by the Design Professionals pursuant to a subcontract shall become the property of MTA.
 - 3. Design Professionals shall comply with MTA's requirements for preparation of specifications, drawings and other design documents as set forth in the Technical Specifications, which must be attached to and incorporated in the Design Professionals Subcontract.
 - 4. Except upon prior written approval of MTA, Design Professionals shall treat as confidential all information provided by MTA or the Railroad in connection with the Contract or generated by the Design Professionals in performing their respective Design Professional Subcontracts.
 - 5. MTA shall have the right at any time, at its sole option, to assume any Design Professional Subcontract (or any sub-subcontract) if the Contract is terminated for any reason. In the event MTA assumes a Design Professional Subcontract, the Design Professional shall be obligated to complete the performance of its obligations thereunder according to the terms thereof.
 - 6. The Design-Builder shall insert into each and every Design Professional Subcontract a provision, reasonably satisfactory to MTA, obligating the subject Design Professional in the event of any such termination of the Contract and assumption by

MTA of such subcontract, to recognize such assumption by MTA and continue to perform the Design Professional Subcontract under the direction of MTA

7. All Design Professionals Subcontracts shall contain the following provisions:

a. DELIVERY OF MATERIAL TO MTA

Upon approval of the Final Design documents by MTA, the Design Professional shall deliver to MTA all Design and Construction Documents such as studies, reports, maps, surveys, data, design calculations, specifications, drawings, charts, photographs and all other material and exhibits prepared, developed or kept in connection with the Project. The Design Professional shall make and retain copies of any items that may be required for the construction phase activities of the design services.

b. OWNERSHIP OF DOCUMENTS

All Design and Construction Documents prepared and furnished by the Design Professional shall become the property of MTA upon the approval of the Final Design documents by MTA.

GP 2.06 DESIGN DRAWINGS AND SPECIFICATIONS

- A. The Design-Builder shall prepare the Construction Documents as required by the Technical Specifications. The Construction Documents shall be prepared under the supervision of, and signed and sealed by, a professional engineer licensed in the State of New York and experienced in the design of similar projects. MTA reserves the right to review and comment on the Construction Documents at any time during preparation of same. The Design-Builder may, after review of the survey provided by MTA or the Railroad, verify the survey and assure its accuracy, and use said survey for their design in lieu of providing a new survey. The Design-Builder assumes all risks associated with use of the MTA or the Railroad survey.
- B. No associated Work may proceed prior to completion and approval of Release for Construction design. The Design-Builder may elect to subdivide the Work and advance portions of the design separately to advance segments of the Work.
- C. Final Design Submission (Release for Construction)
1. There shall be no deviation from the Release for Construction design (including design drawings) accepted by MTA without prior written authorization from MTA. Any costs associated with unauthorized deviations from the Release for Construction design approved by MTA shall be the responsibility of the Design-Builder.
 2. Any approved changes to the Release for Construction design shall only be permitted for the following: code compliance, regulatory approval, constructability, or usability. The Design-Builder shall request any such changes in writing and obtain MTA approval prior to incorporating the changes into the Release for Construction drawings accepted by MTA.

GP 2.07 PATENTS, COPYRIGHTS AND ROYALTIES

- A. The Design-Builder shall avoid infringement of patents, copyrights and trademarks in the performance of the Work.
- B. With respect to the design of the Work, the means, methods and equipment utilized in constructing the Work, and the materials, machinery, and systems incorporated in the Work as completed, the Design-Builder will assume liability for infringement, and shall hold harmless, indemnify, and defend the Railroad, MTA and the State of New York from and against all claims, suits and proceedings for infringement of patents, copyrights or trademarks arising from or related to such design, means, methods, equipment, materials, machinery and systems.
- C. All royalties for patents, copyrights or trademarks that may be utilized in performing the Work, or incorporated into the Work shall be included in the Contract Price(s) and the Design-Builder shall pay for all such costs.
- D. At the request of MTA, and in any instance in which the use of the material, equipment, devices or processes or any part thereof has been enjoined on the grounds that such would infringe any patent, copyright or trademark held by a third party, the Design-Builder shall promptly and at its own expense: (a) obtain for MTA the right to continue using said materials, equipment, devices or processes; or (b) replace same with non-infringing materials, equipment, devices or processes satisfactory to MTA; or (c) modify the materials, equipment, devices or processes in a way satisfactory to MTA, so that such items become non-infringing.
- E. MTA shall own any patents, copyrights or trademarks relating to, and the right to patent, copyright, or trademark 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 Design-Builder, any subcontractor or by their respective agents, officers or employees in connection with the Work, whether prior or subsequent to execution of the Contract. Upon completion of the Work or upon termination of the Contract, the Design-Builder shall deliver to MTA all Material, including such documentation, certifications and executed forms, assignments and agreements as may be necessary to enable MTA to fully comprehend, apply and change the knowledge and information contained in such Material and to patent, copyright or trademark same.
- F. In the event of such Material or portions thereof utilized in the Performance of the Work have been or may be patented, copyrighted or trademarked by the Design-Builder or by others, or are subject to other protection from use or disclosure, then MTA shall have a royalty-free perpetual license, to use the same for any purpose provided that if the Design-Builder does not have the right to grant such license, the Design-Builder shall obtain for MTA such rights of use as MTA may request without separate or additional compensation, whether such Material or portions thereof are patented, copyrighted or trademarked, or become subject to such other protection from use before, during or after the Performance of the Work.
- G. At any time during the term of the Contract, or upon termination, the Design-Builder shall, at the request of MTA, deliver to MTA 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 MTA which may be in its possession or in the possession of its lower tier subcontractors.

GP 2.08 AUDIT AND INSPECTION OF WORK AND RECORDS AND MAINTENANCE OF RECORDS

- A. The Design-Builder shall permit, and also shall require its subcontractors and suppliers hereunder to permit representatives of the Railroad, MTA, Federal Government, and the Comptroller of the State of New York to inspect all work, materials, payrolls and other data and records with regard to the Work and to audit the books, records and accounts of the Design-Builder and its subcontractor(s) and suppliers pertaining to the Work. Such records shall be made available, upon request, at the Design-Builder's place of business during normal working hours.
- B. The Design-Builder's and its subcontractor's records shall be maintained in accordance with generally accepted accounting principles and show actual costs of all items of labor, material, supplies, services and all other expenditures for which compensation is payable. Such records shall be preserved, at Design-Builder's and subcontractor's expense, for a minimum of six (6) years after Final Completion of all Work and final payment therefore, and the parties listed in subsection (A) above shall have access thereto up to that time.
- C. Representatives of MTA shall have access during normal business hours to all records and documents of the Design-Builder relating to any labor, materials, apparatus, plant and equipment used in the performance of all Work, and the Design-Builder shall obtain for them, to the same extent and on the same terms, access to the records and documents of its suppliers and subcontractors.

GP 2.09 PERSONNEL

- A. All personnel provided by the Design-Builder and any of its subcontractors or suppliers shall be properly trained, qualified and licensed as required to perform those portions of the Work which they are responsible for. MTA shall have the right to remove any of the Design-Builder's or a subcontractor's or supplier's personnel from the site at its sole discretion. The Design-Builder and its subcontractor(s) shall promptly replace any personnel removed from the site pursuant to GP 2.09 with personnel acceptable to MTA.
- B. The Design-Builder shall submit resumes for all Key Personnel to MTA for approval. All Key Personnel shall have verifiable experience on projects of similar design, scope and complexity and comply with the requirements set forth in the Contract Documents.

GP 2.10 INDEPENDENT CONTRACTOR

The Design-Builder and any of its subcontractors and suppliers agree that in accordance with their status as independent contractors, they and each of them are and shall remain private and independent contractors and will not represent themselves to be or claim to be officers or employees of MTA or the Railroad or of the State of New York. The Design-Builder will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of MTA or the Railroad or of the State of New York, including but not limited to, payment of salaries, Worker's Compensation coverage, Federal Employer's Liability Act, Railroad Retirement Board coverage, Railroad

Unemployment Insurance Act coverage, Unemployment Insurance Benefits, Social Security Coverage or Retirement membership or credit. The Design-Builder alone is responsible for the salaries, Worker's Compensation Coverage, Unemployment Insurance benefits, Social Security Coverage, retirement benefits, and all other fringe benefit applicable to its employees, all of which shall be paid out of its own funds for all persons engaged in the performance of the Work. Such persons shall be and remain solely the employees the Design-Builder and subject solely to its authority, supervision, direction and control.

GP 2.11 INTEREST IN CONTRACT

No employee of NYSDOT, the Railroad 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. The Design-Builder shall not employ any such individual to work on any contract with the Railroad or the MTA for a period of two (2) years after such individual's employment with the Railroad or the MTA has terminated. In accordance with NYS Public Officers Law, the Design-Builder may not employ any individual to work on the Contract who, at any time during the term of his/her employment with the Railroad or MTA, was directly concerned with the Contract, personally participated in this Contract or had this Contract under his/her active consideration. Design-Builder shall insert this provision in all its lower tier contracts.

GP 2.12 COOPERATION

- A. The Design-Builder shall schedule the Work and expedite delivery of materials, equipment and apparatus to comply with the schedule set out in the Design-Build Agreement, and with reasonable requests of MTA.
- B. The Work shall be performed under the usual conditions affecting construction of the type involved, and in conjunction with the numerous other operations at the work site(s). The Design-Builder shall cooperate with MTA and other contractors, in performing its Work, and shall proceed in such a manner as not to delay or hinder in any way the progress of the Work at the site as a whole.
- C. The Design-Builder shall not utilize any labor, materials or means which may in any way cause or result in a strike, work stoppages, delays, suspension of work or similar impacts by workmen employed by the Design-Builder or its subcontractors or suppliers, or by any of the trades working in or about the buildings and premises where Work is being performed under the Contract, or by other contractors or their subcontractors pursuant to other contracts, or on any other building or premises owned or operated by MTA or the Railroad. Any violation by the Design-Builder of this requirement may be considered as proper and sufficient cause for declaring the Design-Builder to be in default, and for MTA to take action against it as set forth in GP 8.02 hereof or such other action as MTA may deem just and proper.
- D. The Design-Builder shall provide access to the Work so as to fully cooperate with MTA and other contractors in the performance of their Work. If disagreement or dispute arises regarding the scheduling of work by other contractors or unnecessary interference to the Work caused by lack of cooperation between other contractors and the Design-Builder, the Design-Builder shall fully cooperate to resolve any disagreements or disputes with or between other contractors. Where any such disagreement or dispute cannot be resolved by the Design-Builder and such contractor or contractors, MTA shall be consulted and its decision(s) as to

proper methods for coordinating the Work shall be final and conclusive and the Design-Builder shall proceed accordingly.

- E. The Design-Builder shall attend meetings as requested by MTA. The Design-Builder's representative who attends these meetings shall have the authority to, and his/her decisions at any such meetings shall, bind the Design-Builder.
- F. The Design-Builder, if required by the Technical Specifications and Contract Drawings, shall make connections to materials or equipment furnished, set and/or installed by other contractors or by MTA or the Railroad. No Work connecting to such materials or equipment provided by other contractors or MTA or the Railroad shall be done without giving such other contractors and/or MTA a reasonable length of time to complete their Work and until permission to proceed has been obtained from MTA.
- G. The Design-Builder shall coordinate directly with Utility Owners with respect to the performance of work and services required from Utility Owners in relocating utility interferences as provided by the Contract Documents. The Design-Builder shall incorporate realistic times and durations for Utility Owner activities into the Detailed Contract Schedule and demonstrate the adequacy of such times and durations to MTA's satisfaction. Notwithstanding anything to the contrary stated herein, no act or omission of a Utility Owner or delay in performance by a Utility Owner prior to MTA's approval of the Detailed Contract Schedule shall support a claim by the Design-Builder for Utility Owner Delay.

GP 2.13 PROJECT MANAGEMENT

- A. MTA may utilize the services of an independent firm(s) to provide project management to assist MTA in the performance of technical support, inspection and administration of the Work (such firm(s) hereinafter, the "MTA Project Consultant").
- B. In the performance of the Work, the Design-Builder shall coordinate the Work with, and shall conform to all orders, directions and requirements of MTA Project Consultant and shall perform the contractually specified Work to MTA Project Consultant's satisfaction. MTA Project Consultant shall determine the quality, acceptability and fitness of the Work, all in accordance with the requirements of the Contract Documents. Upon request, MTA Project Consultant will promptly confirm in writing any oral order, direction, requirements or determination made pursuant to this General Provision. Any approval required to be given by MTA Project Consultant pursuant to any other provision of the Contract Documents will be made or given in conformance with the Contract Documents.
- C. Any approval given by MTA Project Consultant or MTA pursuant to any provision of the Contract shall be construed merely to mean that at that time MTA Project Consultant or MTA had no reason for objecting; and no such approval shall release the Design-Builder 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 or shall be construed as a waiver by MTA.
- D. If an MTA Project Consultant is not assigned to the Work, then MTA's Project Manager shall be responsible for the above Project management efforts.

GP 2.14 DESIGN-BUILDER'S SITE EXAMINATION

- A. The Design-Builder represents and warrants that it has examined the sites and areas where the Work is to be performed and compared its findings with the Contract Documents, and has informed and satisfied itself as to all matters necessary for carrying out the Work including, without limitation, general working conditions, labor requirements, accessibility, condition of premises, obstructions, drainage conditions, actual levels, excavating, filling character, quality and quantity of surface and subsurface materials or obstacles, utilities and equipment. The Design-Builder further represents and warrants that it has investigated all conditions as to character of the Work sites and areas and character of existing structures at or adjacent to the Work sites and areas, and the character and extent of the Railroad's and other contractors' operations in the vicinity. The Design-Builder shall take all these matters into account prior to undertaking the Work. No allowance or extra payment will be made because of any such items or conditions occasioned by the Design-Builder's failure to make such examination and comparison.
- B. Any failure of the Design-Builder to take any of the actions referenced in GP 2.14A above, including, without limitation, any failure to examine the sites and areas where Work is to be performed, to compare its findings with the Contract Documents or to investigate the character of such sites and areas, will not relieve the Design-Builder from its responsibility for properly estimating the difficulty and cost of the Work and successfully performing the Work without additional expense to MTA.
- C. MTA assumes no responsibility for any conclusions or interpretations made by the Design-Builder based upon information not included in the Contract. No allowance or extra payment will be made by reason of any error or oversight on the part of the Design-Builder.

GP 2.15 DIFFERING SITE CONDITIONS

- A. "Differing Site Condition" means either:
 - 1. a latent condition at a Site differing materially from conditions disclosed in or reasonably inferable from the Contract Documents or other data made available to the Design-Builder prior to submission of the Proposal; or
 - 2. an unknown physical condition at a Site, of an unusual nature, differing materially from conditions ordinarily encountered and generally recognized as occurring in work of the character provided for in the Contract;except that "Differing Site Condition" excludes in any event, utility house connections and distribution lines, connections to visible Railroad facilities on the Railroad right-of-way or work site, conditions at locations where Work is performed as a result of an ATC and conditions that could have been discovered by site examination in accordance with GP 2.14A. If a Differing Site Condition requires a material change in the Work, the Design-Builder shall be eligible for time and cost relief on account of such condition in accordance with GP 3.04, GP 3.06A and GP 5.01E and as further provided in this GP 2.15.
- B. The Design-Builder shall promptly, but no later than forty-eight (48) hours after first encountering or discovering a condition that the Design-Builder believes to be a Differing Site

Condition, and before such condition is disturbed, notify the MTA Procurement Officer in writing of the condition and why it is believed to require a material change in the Work and thereafter promptly submit to MTA a detailed description of the proposed change to address the condition. MTA shall investigate such condition promptly after notification by the Design-Builder, determine whether a Differing Site Condition exists and requires a material change in the Work and notify the Design-Builder of such determination. If MTA determines that a Differing Site Condition exists and requires a material change in the Work, MTA shall issue a Change Request to the Design-Builder. The time and cost relief required to address the condition will be established in a Change Order, which will constitute full and final resolution of the change. Pending final decision of any claim or dispute regarding a Differing Site Condition, the Design-Builder shall proceed diligently with performance of the Work in accordance with MTA's directions.

- C. Not Used.
- D. It is expressly understood and agreed that except as provided in GP 2.15B, GP 3.04 and GP 3.06A, (1) MTA and the Railroad assume no responsibility whatsoever for the sufficiency or accuracy of any investigations, analyses or reports with respect to conditions in, on, under or adjacent to the sites and areas where the Work is to be performed and furnished by MTA or the Railroad to the Design-Builder or incorporated within the Contract Documents, which are for general information only, (2) such investigations, analyses or reports in no way constitute representations, warranties or guaranties by MTA or the Railroad, either express or implied, that the conditions indicated therein are representative of those existing wherever Work is to be performed, or in any part thereof, that unforeseen conditions may not occur or that materials other than or in proportions different from those indicated may not be encountered and (3) the Design-Builder relied solely on its own investigations, examinations and inspections in arriving at its estimate of the cost and difficulty of successfully performing the Work in accordance with the Contract Documents. It is further expressly understood and agreed that except as provided in GP 2.15B, GP 3.04 and GP 3.06A no additional compensation will be paid to the Design-Builder, and no additional time for performance will be granted to the Design-Builder, as a result of unforeseen or unexpected site conditions, or site conditions that differ in any respect from those reflected in such investigations, analyses or reports furnished by MTA or the Railroad or incorporated in the Contract Documents, or from the conclusions drawn by the Design-Builder as a result of its own investigations, examinations and inspections.

GP 2.16 MATERIALS, EQUIPMENT, DEVICES, PROCESSES AND WORKMANSHIP

- A. Materials, equipment, devices or processes and workmanship shall be in accordance with current industry standards unless otherwise specified. Whenever the Contract Documents or directions of MTA fail to note the quality of any workmanship, then the interpretation that requires the best quality of workmanship shall apply. Materials, equipment, devices and apparatus installed as part of the Work shall be new, shall be of the latest design as of the Proposal Deadline, and made by manufacturers regularly engaged in the production of such material, equipment, devices, or apparatus and/or materials. All materials, equipment, devices and apparatus of the same description shall be from the same manufacturer and the same model. Processes and workmanship shall be as set forth in the Technical Specifications or, if not specified, of the best quality.

- B. Where materials, equipment, devices, processes and workmanship are required by the Technical Specifications or the Drawings to conform to standards, specifications or requirements of named organizations, the Design-Builder shall furnish to MTA's satisfaction, the manufacturer's written certification that such materials, equipment, devices, processes and workmanship conform to such standards, specifications or requirements prior to installation. Such certifications shall not be binding or conclusive on MTA and may be rejected at any time if incorrect, improper, or otherwise unsatisfactory.
- C. Failure of MTA to request any certification shall not release the Design-Builder from its responsibility for the accurate and complete performance of the Work required by the Contract. Nor shall any such failure by MTA to request any certification be construed as a waiver by MTA.
- D. The Design-Builder may, subject to written approval from MTA, use any material, equipment, device, process that is equal to that named in the Technical Specifications, unless otherwise specifically provided for in this Contract. The Design-Builder shall submit data to MTA for its written approval for such substitution, prior to installation.
- E. No variations in any required dimension, material, equipment, method or procedure shall be made by the Design-Builder unless approved in writing by MTA. Any such request for approval by the Design-Builder shall not imply or impose upon MTA any obligation whatsoever to discuss, disclose, or justify the reasons for the opinion, approval, acceptance or rejection. Any such approval of a variation(s) shall not, of itself, in any way entitle the Design-Builder to any credit or compensation from MTA.
- F. If, in the performance of the Work, the Design-Builder discovers any errors or omissions in the Contract Documents, it shall immediately notify MTA in writing. If the Design-Builder proceeds with any part of the Work affected thereby without the written approval of the Procurement Officer, the Design-Builder shall be responsible for the performance thereof.

GP 2.17 PROTECTION OF MATERIAL, EQUIPMENT AND APPARATUS

- A. Any laydown, storage and staging areas required for the execution of the Contract, shall be planned for and secured by the Design-Builder at its sole cost and expense. MTA makes no representation or warranty that it, the Railroad or any third party property owner can or will make available to the Design-Builder any specific real property for use as a laydown, storage or staging area, and shall not be liable to the Design-Builder for its refusal or the refusal of other owners or lessees to make any areas, properties or lands available for such use. The Railroad will not make available any storage or laydown area on its property or right of way.
- B. The Design-Builder shall use care and diligence to ensure that all Work, materials, equipment, and apparatus, whether temporary or permanent, including that supplied by MTA or the Railroad, are at all times thoroughly protected from vandalism or theft, the weather, and any and all other damage prior to acceptance of Work. The Design-Builder shall provide watchmen and other labor, materials, protective features and other safeguards as are necessary. Any loss or damage to the material, equipment and apparatus shall be at the Design-Builder's sole expense.

GP 2.18 LINES, GRADES AND MONUMENTS

- A. The Design-Builder shall be solely responsible for all surveying layout and measuring required for performance of the Work. The Design-Builder shall include in its Detailed Contract Schedule and advise MTA within a reasonable time in advance of the times and places at which it wishes to do the Work so that its horizontal and vertical control points may be checked by MTA, at MTA's discretion. Any Work done by the Design-Builder without being properly located shall be removed and replaced at the Design-Builder's expense.
- B. The Design-Builder shall carefully preserve all monuments, benchmarks, reference points and stakes. The Design-Builder will be responsible for the costs and expenses of replacement of any such items destroyed by the Design-Builder, and for any associated problems, including loss of time. All surveys shall be performed by a surveyor who is registered in the State of New York, and tied into the USGS coordinate system.
- C. Permanent monuments or benchmarks that must be removed or disturbed shall be protected until they can be properly referenced for relocation. The Design-Builder shall furnish materials and labor for the relocation of such monuments or benchmarks.
- D. All Design-Builder lines, elevations and grades shall be tied into the primary control system established by MTA. MTA will make available to the Design-Builder field notes or drawings generated in establishing the primary control system for the Design-Builder's review. The Design-Builder shall carefully and accurately lay out all lines, elevations and grades for the Work under the Contract by using equipment and persons satisfactory to MTA. The Design-Builder shall compare carefully all lines and elevations given on drawings with existing lines, elevations and grades and shall review discrepancies, if any, with MTA prior to their use.

GP 2.19 SYSTEMS AND UTILITIES

- A. Whenever a system or utility is encountered during the performance of the Work that is not shown on the Contract Drawings, the Design-Builder shall stop the associated Work, notify MTA in writing, and proceed in accordance with MTA's written directions.
- B. The Design-Builder shall source and verify all utility locations and, if their removal or relocation is required, shall act as liaison with the affected utility company. The Design-Builder shall be responsible for all costs for utility removals or relocations.
- C. The Design-Builder shall coordinate with MTA and protect all systems and utilities encountered, shall schedule all connections, disconnections and reconnections with the Railroad, and shall ensure continuity of services at all required times as determined by the system or utility owner and its customer or user. If the condition of a system or utility, which is to be left in place, is determined to be unsafe, the Design-Builder shall immediately notify MTA and proceed in accordance with MTA's written directions.
- D. The Design-Builder shall permit free and clear access to all areas of the Work site at all times to personnel of the utility owners, MTA and the Railroad for the purpose of inspection, maintaining and providing service of systems and utilities.

- E. The Design-Builder shall act immediately to restore to the prior level of service for those systems or utilities not scheduled for replacement but damaged during construction. All such systems or utilities cut, interfered with, or damaged, including insulation, shall be fully restored, immediately, at the Design-Builder's expense.

GP 2.20 DEMOLITION

- A. The Design-Builder shall perform all necessary explorations and probes to determine any protection measures that may be required prior to performing any demolition. The use of explosives is not permitted. The Design-Builder shall perform all work, including demolition, in a manner so that adequate ingress and egress for MTA and Railroad employees and passengers shall be maintained at all times. The Design-Builder shall be responsible for removing all debris resulting from demolition in accordance with the requirements of the Contract.
- B. The Design-Builder shall provide and maintain catch platforms, lights, barriers, warning signs and other items as required by law or as are necessary for proper protection of passengers and general public, MTA and Railroad employees, and adjacent construction.

GP 2.21 CLEAN UP AND DISPOSAL OF DEBRIS

The Design-Builder shall coordinate with MTA and provide at all times continuous clean-up of the Work at the work site. All debris and material resulting from the Work, including demolition, shall be removed promptly from the work site and lawfully disposed of by the Design-Builder. No material removed from the work site can be disposed of, either temporarily or permanently, on property owned or leased by the Railroad or MTA, including all subsidiaries.

GP 2.22 NOISE

The Design-Builder shall comply with the noise limits as established by applicable federal and state law, codes and regulations. If a local code, ordinance or regulation which would be applicable if the Work were being performed for a private corporation contains a more stringent standard than comparable provisions of federal or state law, the Design-Builder shall adhere to the more stringent standard where expressly required by the Technical Provisions. The foregoing notwithstanding, nothing contained in GP 1.05B, or in any other provision of the Contract, shall constitute, or be construed as, an agreement on the part of MTA or the Railroad to subject itself to the regulatory jurisdiction of any municipality, or to the provisions of any local code, ordinance or regulation, that it would not otherwise be subject to under the laws of the State of New York.

GP 2.23 LIGHTS

The Design-Builder shall comply with lighting levels as specified by 29 CFR 1926.56. The Design-Builder shall not shine lights directly at any trains, street traffic or private facilities. The Design-Builder shall provide lighting for all Work related activities, including MTA or Railroad support activities, for the duration of the Contract.

GP 2.24 SAFETY

- A. General Description:

1. The Design-Builder shall be responsible to comply with the most stringent provisions of the applicable statutes and regulations of the City and State of New York, and the United States (and, if so directed by MTA pursuant to GP 1.05A, the applicable statutes and regulations of any municipality), including without limitation, any regulations or orders issued by the United States Department of Labor, the United States Occupational Safety and Health Administration (OSHA), and the New York State Department of Labor (NYS DOL). The Design-Builder is responsible for ensuring that the requirements of such statutes and regulations are observed and further that the methods of performing the work do not involve undue danger to the personnel employed thereon, the public and public or private property. Should charges of violation of any of the above be issued to the Design-Builder in the course of work; a copy of each charge and resolution thereof, shall immediately be forwarded to MTA's Project Manager or MTA Project Manager's designee.

GP 2.25 ENVIRONMENTAL PROTECTION

- A. The Design-Builder shall comply with all applicable Federal and State environmental standards, statutes and regulations, including, but not limited to, the requirements of the Clean Air Act, as amended, Section 318 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), and the New York State Environmental Conservation Law Section 27-1305, and with all regulations and guidelines issued thereunder. Any hazardous waste shall be disposed of in accordance with applicable law and implementing regulations at the Design-Builder's expense.
- B. The Design-Builder agrees to report each violation of Federal or State environmental standards, statutes or regulations during the course of the Work to MTA's Project Manager. The Design-Builder agrees to comply with all the requirements of Section 6002 of the Resource Conservation Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 2.47 and Executive Order 12873, as they apply to procurement of items designated in subpart B of 40 CFR Part 247.
- C. The Design-Builder agrees to report each violation of Federal or State environmental standards, statutes or regulations during the course of the Work to MTA's Project Manager and understands and agrees that MTA will, in turn, report each violation as required to assure proper notification to the appropriate regulatory authorities such as the United States Environmental Protection Agency ("EPA") or the New York State Department of Environmental Conservation. The Design-Builder also agrees to include these requirements in each subcontract exceeding \$100,000.
- D. The Design-Builder agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321, *et seq.*, 49 CFR Part 18.
- E. The Design-Builder shall not utilize in its performance of the Work any violating facilities on EPS's "List of Violating Facilities" pursuant to 40 CFR 15.20, the New York State list of Inactive Hazardous Waste Disposal Sites, pursuant to Title 13 of the New York State Environmental Conservation Law Sections 2.7-1301 et seq., or any other facility or site on a similar state or local list. The Design-Builder shall notify MTA 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 Design-Builder's performance under the 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.

CHAPTER 3 – PROVISIONS RELATING TO TIME

GP 3.01 PROGRESS OF WORK

- A. The Design-Builder 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 complete the Work.
- B. The Design-Builder is obligated to monitor the progress of the Work against budget and schedule and to bring to the attention of MTA any work elements which require corrective action.
- C. The Project Management Plan shall be updated monthly in accordance with the approved schedule.
- D. The Contract Price is based on the Design-Builder working as many hours as necessary, subject to the provisions of the New York State Labor Law, during any workweek to properly perform the Work and achieve the Contract schedule requirements. If Design-Builder incurs any overtime costs to maintain the agreed upon schedule, the Design-Builder shall be responsible for all such costs.
- E. The Design-Builder shall notify MTA at least two (2) full days in advance of any scheduled overtime or extra shift operation. When it becomes necessary to perform overtime or shift operations on an Emergency basis, the Design-Builder shall notify MTA of such activities immediately. The Design-Builder shall be responsible for all Design-Builder incurred overtime costs, including those on an Emergency basis, to maintain the agreed upon schedule. The Design-Builder shall be responsible for additional MTA support costs incurred in excess to those identified in the Contract Documents.
- F. If, in the opinion of MTA, the Design-Builder is not achieving its schedule, the Design-Builder shall take such steps as may be necessary to improve its progress and MTA may require it to increase the manpower or shifts, or days of work, or the amount of construction equipment, or all the aforementioned, all subject to the requirements of the New York State Labor Law, and to submit for approval, a recovery schedule or schedules as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, without cost to MTA. If the Design-Builder fails to submit an acceptable recovery schedule demonstrating what MTA, at its sole discretion finds as a realistic plan to return to schedule, MTA reserves the right to direct the Design-Builder to utilize additional labor, equipment and material to progress the Work in accordance with the Detailed Contract Schedule, all at no additional cost to MTA.
- G. Failure of the Design-Builder to comply with the requirements of the Contract schedules under this Contract shall be grounds for withholding payment in whole or part of any amount due or claimed by the Design-Builder, or MTA may declare the Design-Builder in default and terminate Contract, or any separable part thereof, in accordance with the General Provision 8.02 -"Design-Builder's Default".

GP 3.02 COMMENCEMENT AND COMPLETION DATES

- A. Work shall not commence until the Design-Builder receives the Limited Notice to Proceed (LNTP) authorizing commencement of Pre-construction Work and Early Start Work. “Pre-construction Work” means design, planning, procurement, off-site fabrication, surveys (including topographic, right-of-way and utilities), Site photography, utilities investigation and coordination, geotechnical instrumentation and monitoring, noise testing and monitoring, relocations of utilities not requiring full road closures or traffic re-routing, interaction with Authorities Having Jurisdiction, permitting activities, soil testing and test pits that can be completed in a day, mobilization (including set-up of field offices, laydown areas and staging areas), public meetings, public involvement planning, modification of highway signals and signage MWBE and SDVOB activities; and other activities not involving on-site construction. Early Start Work is identified in Exhibit D to the Design-Build Agreement.
- B. For the avoidance of doubt: Pre-construction Work does not include excavation, Site development or heavy construction (including earthwork, trenching and site clearing), placement of construction equipment on-site, directional drilling, general utilities Work, Railroad utilities Work, Work on structures (including bridges, parking structures and stations), highway modifications or restrictions, drainage, Work on retaining or noise walls, Work on substations, Work on systems (including rail, signals, communications and security systems), demolition, clearing and grubbing, lead and asbestos abatement, construction of fences and grates, establishment of waste or borrow sites adjacent to Sites, equipment storage or staging or track or pole activities.
- C. Work other than Pre-construction Work and Early Start Work shall not commence until the Design-Builder receives the Notice to Proceed.
- D. The Design-Builder shall advise MTA two (2) workdays (Monday through Friday) in advance of the planned start of operations at any Site, including surveying and layout.
- E. The Design-Builder shall not commence Work requiring any submittal under the Contract Documents until the required submittal has been provided and any required response has been received.
- F. The Design-Builder shall complete the Work within the times set forth in the Design-Build Agreement, as such times may be subsequently modified by MTA, in writing. Completion of Work prior to any time required will not entitle the Design-Builder to additional compensation.
- G. The Design-Builder shall prosecute the Work continuously and diligently, using such means and methods as will ensure completion of the following items no later than the time specified, as may subsequently be modified in writing by MTA.
- H. Any schedule impact due to unsatisfactory documentation or submittals required from the Design-Builder prior to the start of Pre-construction Work, Early Start Work or other Work shall be the responsibility of the Design-Builder.
- I. No permanent Work may proceed prior to completion and approval of Release for Construction design. The Design-Builder may elect to subdivide the Work and advance

portions of the design separately to advance segments of the Work, provided, however, that construction of any such segment of the Work shall not commence unless and until MTA shall have approved the Release for Construction design for such segment.

GP 3.03 SUBSTANTIAL COMPLETION, POSSESSION PRIOR TO SUBSTANTIAL COMPLETION AND FINAL COMPLETION

- A. Use Prior to Substantial Completion: MTA reserves the right to take possession or make use of any portion of the Work or Project Element prior to Substantial Completion upon written notice to the Design-Builder setting forth the portion of the Work or Project Element and the effective date of MTA's possession or use. The Design-Builder shall remain responsible for the completion of the portion of Work or Project Element and MTA's possession or use of any portions of the Work or a Project Element shall not be considered an acceptance of any Work under the Contract. Risk of loss to a Project Element shall transfer to MTA upon the date MTA accepts a Project Element as set forth in GP 7.04B, and the cost of maintenance, heat, and utilities for the Project Element will be borne by MTA from such time.
- B. Substantial Completion: Substantial Completion is the stage in the progress of the Work where the Work has been completed in accordance with the Contract Documents (other than minor punch list work) and otherwise in accordance with the check-list with respect to installation, testing, commissioning, and issuance of permits, licenses and certificates of compliance or occupancy required from any governmental authority, and other items as set forth in the Work Breakdown annexed as Exhibit A-1 to the Design-Build Agreement. The issuance of a Certificate of Substantial Completion is contingent upon, but not limited to, delivery by the Design-Builder's Design Professional(s) to MTA of a certificate, in form and substance satisfactory to MTA, that all Work is substantially complete and has been performed in accordance with the design documents released for construction as approved by MTA and any revisions or supplements to such documents approved by MTA.

The Design-Builder shall notify MTA in writing when the Work has advanced to the point of Substantial Completion and request MTA to conduct an initial inspection. MTA will conduct an initial inspection of the Work within thirty (30) days from receipt of the Design-Builder's written request. Within thirty (30) days after the initial inspection, MTA shall determine whether or not Substantial Completion has been achieved and notify the Design-Builder in writing of the results of the inspection.

In the event MTA determines that the Work is not capable of serving its intended purpose as required by the Contract or if any nonconforming Work, defects, omissions or incomplete items results in an unacceptable punch list, MTA will provide written notice to the Design-Builder that Substantial Completion has been denied and the reasons therefor. The status of the Work involved shall be considered to be unaffected by the Design-Builder's request for initial inspection, and the Design-Builder shall continue to progress the Work in accordance with the Contract.

In the event MTA considers the Work to have achieved Substantial Completion, MTA will deliver to the Design-Builder a Certificate of Substantial Completion. "Substantial Completion" shall be deemed to occur upon MTA's issuance of a Certificate of Substantial Completion to the Design-Builder. There shall be attached to the Certificate of Substantial Completion a punch list of remaining Work that shall list items to be corrected or completed.

Such remaining Work shall be completed within thirty (30) days unless otherwise extended by MTA. The issuance of such Certificate of Substantial Completion shall in no way relieve the Design-Builder from its obligation to complete all Work as specified in the Contract Documents.

- C. Final Completion: Subsequent to MTA's issuance of a Certificate of Substantial Completion and upon the Design-Builder's completion of all Work and demobilization, including but not limited to, all punch list items and the furnishing of all required submittals and deliverable items required by the Contract Documents, the Design-Builder shall notify MTA in writing that the Work has achieved the status of Final Completion. MTA will conduct an inspection of the Work within fifteen (15) days from receipt of the Design-Builder's notice to determine if the Design-Builder has achieved Final Completion. Within fifteen (15) days after the inspection, MTA will notify the Design-Builder in writing of the results of the inspection.

In the event MTA determines that the Work is unsatisfactory due to nonconforming Work, defects, omissions or incomplete items, MTA will notify the Design-Builder in writing that Final Completion has been denied and the reasons therefor. The status of the Work involved shall be considered to be unaffected by the Design-Builder's request for inspection and the Design-Builder shall continue to progress the Work in accordance with the Contract.

The Design-Builder shall notify MTA in writing when it has corrected all nonconforming Work, defects, omissions or failures to complete noted by MTA, and MTA shall arrange for a follow-up inspection of the Work within fifteen (15) days after receipt of the Design-Builder's notice to determine if the Design-Builder has achieved Final Completion. Within five (5) working days after the follow-up inspection, MTA shall determine whether or not the Work has achieved Final Completion.

In the event MTA determines that all non-conforming Work, defects, omissions, or failures to complete have been corrected, all disputes, claims, liens, charges and back-charges have been resolved, and all releases, affidavits, certifications, bonds, warranties and guarantees as required by the Contract have been provided to MTA, and the Work has otherwise achieved the status of Final Completion, MTA will issue to the Design-Builder a Certificate of Final Completion. "Final Completion" shall be deemed to occur upon MTA's issuance of a Certificate of Final Completion to the Design Builder.

- D. Acceptance of Project Elements: The Design-Builder shall notify MTA in writing forty-five (45) days before the anticipated date of completion of all Work on a Project Element. Upon completion of all Work on a Project Element, the Design-Builder shall again notify MTA in writing that the Project Element has been completed and request acceptance of the Project Element, and submit all documentation required by MTA to confirm to its satisfaction that (i) all comments by MTA during design and construction have been resolved, (ii) all required testing and inspections by the Design-Builder have been completed, (iii) the Designer of Record has provided signed/stamped documentation that the Work has been designed and constructed in accordance with the Contract Documents and all is working as intended, (iv) QA/QC has been completed and all discrepancies with MTA quality assessments and tests have been resolved, (v) MTA has conducted satisfactory inspections of the Work, (vi) punch list items have been addressed, and (vii) completed as-built drawings, record documents and O&M manuals have been received, and training completed. MTA shall issue documentation confirming MTA's acceptance of a Project Element upon its determination that the aforementioned items have been completed to its satisfaction.

GP 3.04 EXTENSIONS OF TIME

- A. The Design-Builder is firmly obligated to complete the Work within the times specified in Article 3 of the Design-Build Agreement and the exhibits thereto. Extensions of such times will be authorized in writing by the MTA Procurement Officer only if the Work or applicable element thereof has been necessarily delayed by a Differing Site Condition, Force Majeure, MTA Delay or Utility Owner Delay or conditions covered by the Hazardous Materials/ACM and Lead Based Paint Allowance, and such delay to the Work (1) was beyond the Design-Builder's reasonable control; (2) was not caused in any respect by the Design-Builder; (3) arose after the execution of the Contract and neither was, nor could have been, anticipated by the Design-Builder through reasonable investigation before such execution; (4) necessarily and actually delays the critical path to completion of the Work; and (5) could not be 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. A delay meeting all of the foregoing criteria is hereinafter referred to as an "**Excusable Delay**". The Design-Builder's entitlement to an extension of time for Excusable Delay is further subject to all of the other provisions of this GP 3.04.
- B. Anything herein to the contrary notwithstanding, economic hardship, changes in market conditions or insufficiency of funds shall never be considered to have met the qualifying conditions for Excusable Delay set forth above.
- C. MTA may rescind or modify any extension of time previously granted if subsequently, MTA determines that any information provided by the Design-Builder in support of a request for an extension of time was erroneous, including if it is subsequently found that the delay can or could have been overcome or reduced by the exercise by the Design-Builder of reasonable precautions, effort and measures; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, MTA will not rescind or modify any extension previously granted if the Design-Builder acted in reliance upon the granting of such extension and the request for the extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Design-Builder.
- D. The Design-Builder shall give written notice including an explanation and anticipated schedule impact to MTA within five (5) days after the time the Design-Builder 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 MTA has knowledge. Failure of the Design-Builder to give written notice shall be a waiver of an extension of time and any right to reimbursement of costs under GP 3.06A. for the cause of delay in question.
- E. It shall in all cases be presumed that no extension, or further extension of time is due unless the Design-Builder shall request it in writing and affirmatively demonstrate the extent thereof to the satisfaction of MTA. To this end, the Design-Builder shall maintain adequate records supporting any claim for an extension of time, and in the absence of a written request and/or absence such records, this presumption shall be deemed conclusive.

- F. The period of any extension of time shall be only that which is necessary to make up the time actually lost for a Work item identified on the Design-Builder's schedule on the critical path at the time, and only to the extent such Work item has actually been delayed on account of the cause for which the extension was granted.
- G. The Design-Builder shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but only for the actual period of delay in completion of the Work as determined by MTA, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Design-Builder or of its Subcontractors or Material Suppliers, and would of itself, irrespective of other concurrent causes, have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
- H. If an extension of time is granted to the Design-Builder, the Design-Builder shall be obligated to employ all reasonable measures to mitigate the period of delay, and upon request by MTA, to report to MTA on the measures it is employing and the status of the delay in completion of the Work.
- I. An extension of time shall be the sole available relief to the Design-Builder on account of the qualifying cause for which an extension was granted.
- J. Anything herein to the contrary notwithstanding, no cause that would otherwise qualify for an extension of time under this GP 3.04 shall excuse any obligation by the Design-Builder to make any payment to MTA required under the Contract by the date such payment is due.

GP 3.05 LIQUIDATED DAMAGES FOR CONTRACTOR DELAY

A. TIME IS OF THE ESSENCE.

1. If the Work or a specified portion thereof is not completed within the time requirements set forth in the Design-Build Agreement, damage will be sustained by MTA, the precise amount of which will be difficult to determine. Liquidated damages therefore will be assessed in the amounts set forth in the Design-Build Agreement for each day that the Design-Builder does not complete the Work or specified portion thereof within such time requirements, subject to the expiration of the Liquidated Damages Grace Period where applicable.

2. In addition, if the Design-Builder fails to return the track affected by a scheduled outage by the end times of the available times periods, the Design-Builder shall also be subject to liquidated damages as set forth in the Design-Build Agreement. If the Design-Builder demonstrates a consistent disregard for the scheduled track outages by not returning the track back in a timely manner, MTA may reduce the available track time provided to the Design-Builder.

- B. Based on Railroad operations, and other ongoing Railroad construction and maintenance activities, no track outages are permitted for the duration of the Project with the exception of those identified in TP 1.22 or during the Final Design at MTA's approval.

- C. MTA may deduct the sum of liquidated damages from any monies due or that may become due the Design-Builder, or if such monies are insufficient, the Design-Builder shall pay to MTA any deficiency within thirty (30) days of notification by MTA. The remedies provided herein are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- D. Where there is one or more specified completion milestone date to which liquidated damages apply, the individual damages for each milestone shall be additive. Liquidated damages for failure to complete the Work and liquidated damages for failure to return track to MTA shall be additive.

GP 3.06 DESIGN-BUILDER DAMAGES FOR DELAY

- A. If the Design-Builder submits a timely and properly documented claim therefor, MTA shall reimburse the Design-Builder's actual direct costs, including direct labor costs and field office overhead, for damages for an Excusable Delay caused solely by: (i) an MTA Delay (other than failure to provide single track outages or cancellation of up to ten percent of double-track outages in accordance with, and subject to the limitations set out in, TP 1.22); (ii) a Utility Owner Delay; or (iii) a Differing Site Condition or conditions covered by the Hazardous Materials/ACM and Lead Based Paint Allowance in excess of the allowance amount; provided that such delays previously claimed by the Design-Builder total in the aggregate more than thirty (30) days, and provided further that with respect to the first delay which first causes such aggregate total to exceed thirty (30) days, only that portion of such delay as shall exceed thirty (30) days in the aggregate shall be the basis for reimbursement to the Design-Builder as provided in this GP 3.06A. Such a delay is referred to hereinafter as a "**Compensable Delay**". The Design-Builder shall submit with any claim for Compensable Delay evidence satisfactory to MTA demonstrating the cause of such delay and that the delay does not include any concurrent delays by other causes.
- B. Not Used.
- C. In no event will MTA be obligated to reimburse costs for a Compensable Delay which are in the nature of consequential damages, inefficient performance of Work, lost profits or indirect costs (generally, indirect costs are those costs which are not exclusively identified with this Contract, such as Design-Builder's home office overhead and general and administrative expenses).
- D. The provisions of GP 3.06 provide the Design-Builder's exclusive remedy for damages for delay. Other than in the circumstances set forth above, MTA shall not be liable for any claims for damages for delay associated with a delay in the performance of this Contract occasioned by any cause whatsoever. Any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.
- E. The Design-Builder must recognize that a certain number of Contract changes, errors, omissions, delays, modifications and variances should be reasonably contemplated in relation to the information and data supplied in these Contract Documents and standard industry practices for the type of Work described herein. MTA does not waive any of its rights as contained in other articles and provisions of these Contract Documents by inclusion of this GP 3.06.

- F. MTA shall not be responsible for impairment or interruption of the Work, or any indirect or direct costs under this Contract attributable to strikes, civil commotion, force majeure or governmental interference.

GP 3.07 TEMPORARY SUSPENSION

- A. MTA may at any time, by written order to the Design-Builder, require the Design-Builder to suspend all or any part of the Work for a period not exceeding ninety (90) days after the suspension order is issued to the Design-Builder by MTA (“Stop Work Order”). Upon receipt of the Stop Work Order, the Design-Builder shall immediately comply and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the order during the period of work suspension.
- B. Within a period of ninety (90) days after the order has been delivered to the Design-Builder, MTA shall either:
 - 1. Cancel the Stop Work Order; or
 - 2. Terminate the Work covered by the Stop Work Order for either default or for convenience.
- C. If the Stop Work Order is canceled, the Design-Builder shall immediately resume the Work covered by the Stop Work Order. MTA will make an equitable adjustment in the delivery schedule and/or Contract Price, if the Stop Work Order results in an increase in the time required for performance, or in the Design-Builder’s cost properly allocable to the performance of any part of this Contract.
- D. No adjustment shall be made for any suspension of the Work to the extent that performance would have been so suspended by any other cause, including the fault or negligence of the Design-Builder or for those situations for which an equitable adjustment is otherwise provided for or excluded under this Contract.
- E. MTA reserves the right at any time, by written notice to the Design-Builder, to require the Design-Builder to suspend, all or any part of the Work for a period not to exceed ninety (90) days, if MTA is concerned about the quality of the Design-Builder’s performance under this Contract. In such a situation, the Design-Builder shall not be entitled to delay damages or any other equitable adjustment to cover its costs for the period of the suspension.

GP 3.08 SCHEDULING PERSONNEL

The Design-Builder shall prepare and maintain the Detailed Contract Schedule by the use of skilled and experienced scheduling personnel, each with at least ten (10) years’ experience or the equivalent thereof in detailed scheduling. Such personnel shall be directly involved in the planning, scheduling, evaluating and progress reporting of the Work.

GP 3.09 SCHEDULE MEETINGS

- A. MTA will conduct Schedule Meetings, as defined in the Contract Documents. A Schedule Meeting will generally be held as part of a project progress meeting.

- B. The Design-Builder's Project Manager or a designee, who shall have the authority to make decisions on behalf of, and commit the resources of, the Design-Builder shall attend all Schedule Meetings.
- C. The Design-Builder's Superintendent and appropriate schedule staff shall also attend the meetings. At these meetings, the Design-Builder's Detailed Contract Schedule ("DCS"), along with the Six-Week Rolling Schedule and other schedules required by the Contract Documents, will be examined in detail. Schedule slippages will be analyzed and corrective actions will be discussed and agreed upon.
- D. MTA will plan the Schedule Meetings so that, regardless of frequency, there will always be a Schedule meeting taking place on or about the last working day of the month. During this monthly Schedule Meeting in addition to the in-depth review of the DCS, the Project progress (i.e. completed activities and percent complete of partially completed activities) shall also be discussed and agreed upon.
- E. Subsequent to this meeting, the DCS shall be updated with progress made and a monthly progress report shall be prepared and submitted to MTA along with Design-Builder's monthly progress payment request (see GP 4.03).

CHAPTER 4 – PRICE AND PAYMENTS

GP 4.01 COMPENSATION

- A. The Design-Builder agrees to accept and MTA agrees to pay in full consideration for the satisfactory performance of the Work by the Design-Builder the firm fixed price(s) set forth in the Design-Build Agreement, plus the price(s) of any option(s) elected by MTA as stipulated in the Notice of Award only, and no more, subject only to the provisions of these Contract Documents concerning sales taxes and additional/extra or deleted Work. The enumeration at any place in the Contract of particular goods or services, including professional services, to be furnished or performed, unless otherwise specifically stipulated, shall be performed by the Design-Builder as required without compensation other than that stipulated in the Notice of Award, including unforeseen conditions or obstacles that may arise including those which may require additional Design Work, as well as labor, material and/or equipment cost increases.
- B. Any part of the Work which may not be specifically noted in the Contract Documents but is required to fully complete the Work shall be deemed to have been included by the Design-Builder in its Proposal, and shall be performed as part of the Work, and no additional payment shall be made by MTA. It is understood by the Design-Builder that it shall furnish and provide for the price set forth in the Notice of Award, all the necessary design planning, supervision, labor, materials, equipment, tools, utilities, services and incidentals and all other items of whatever nature to complete the Work in accordance with the Contract.

GP 4.02 NEW YORK STATE AND LOCAL TAXES

- A. MTA is a government instrumentality of the State of New York, and by authority of Sections 1266 and 1275 of the Public Authorities Law of the State of New York, as amended, is exempt from New York State and local taxes.
- B. Articles 28 and 29 of New York State Tax Law provide an exemption to MTA from sales and compensating use taxes on all tangible personal property, materials, equipment and components, sold to contractors or subcontractors in connection with the Work and which will become an integral component part of that Work.
- C. The Design-Builder shall not pay any State of New York sales or compensating use taxes on the sale or transfer for any personal property which will become an integral component part of the Work. If any claim is made against the Design-Builder 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, MTA will reimburse the Design-Builder in an amount equal to the amount of such tax required to be paid and actually paid by Design-Builder in accordance with the requirements of law, provided that:
 - 1. MTA 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 MTA may designate is authorized to act in the name of the Design-Builder for the purpose of contesting, settling and satisfying said claim; and

2. The Design-Builder gives immediate notice to MTA of any such claim, cooperates with MTA and its designated attorney in contesting said claim and furnishes promptly to MTA and said attorney all information and documents necessary or convenient for contesting 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 MTA elects to contest any such claim, it will bear the expense of such contest.

GP 4.03 PROGRESS PAYMENTS

- A. Subject to the provisions of these Contract Documents, monthly progress payments will be made to the Design-Builder for all Work. Payments shall be approved by MTA and the Design-Builder shall receive compensation for the Work based on the approved cost loaded DCS and will reflect the dollar value of the actual percentage of Work performed during the month.
- B. A progress payment cover sheet shall accompany all requests for payment and shall be prepared by the Design-Builder summarizing the monetary totals detailed on the breakdown sheet(s). The cover sheet shall include the following statement signed by the Design-Builder's Project Superintendent:

"I certify that this payment request represents an accurate and complete measure of all the Work performed to the date indicated, and that the amount of Work performed and the labor, materials, and permanent equipment installed as presented on this request for payment are correct and in full compliance with the terms of the referenced contract and all authorized changes thereto."

- C. Each progress payment request will be prepared by the Design-Builder and submitted to MTA for approval by the fifth (5th) day of each month, and shall include the values of labor, and quantities of material and permanent equipment installed during the preceding month for items listed on the forms.
- D. If there have been modifications (including Change Orders) to the Contract issued by MTA, the Design-Builder shall list those modifications separately on the invoice, detailing the amount contractually authorized for each such modification and the percent complete for such Work.
- E. MTA shall pay invoices in accordance with Section 2880 of New York Public Authorities Law, which requires MTA to pay *proper invoices* within thirty (30) Calendar Days of receipt, excluding legal holidays. Payments made after thirty (30) days of receipt of a proper invoice will be subject to an interest payment at the applicable rate provided for in Section 2880. In accordance with Section 2880, MTA shall have fifteen (15) Calendar Days after receipt of the Design-Builder's invoice to notify the Design-Builder regarding (i) defects in the delivered goods, property or services, (ii) defects in the invoice or (iii)

suspected improprieties of any kind; the existence of which shall prevent the commencement of the time period for calculation of interest.

- F. Each invoice must be accurate and commensurate with the Work and, to ensure MTA's ability to pay invoices promptly, the following information must be furnished on all invoices:
- Company Name
 - Invoice Number
 - Invoice Date
 - Contract Number
 - Purchase Order Number
 - Task Number
 - Description of Services and Date(s) Performed
- G. An original invoice with two (2) copies and invoice-related information (including all supporting documentation shall be submitted to MTA Capital Construction Company at an address to be provided by MTA with an additional copy (including all supporting documentation), to MTA's Project Manager and MTA Project Consultant.
- H. Unless specifically waived by MTA in writing, in order for an invoice to be deemed a proper invoice by MTA, MTA must have received the following:
- Detailed Contract Schedule
 - Submittals Register
 - Six-Week Rolling Schedule and other schedules required by the Contract Documents
 - Daily Shift Reports
 - Minutes
 - Certifications of Compliance with New York Public Authorities Law Section 1269
 - Certified Payrolls
 - Monthly Progress Report
 - MBE/WBE and/or SVDOB Participation Forms
 - Tool Box Safety Meeting
 - Progress Photographs
 - As-Built Drawings prepared to date

Should any of the foregoing requirements be furnished by the Design-Builder and found unacceptable by MTA, the Design-Builder shall be notified of such and the requirement shall be considered as not being received by MTA.

- I. Prior payments for materials and equipment shall be subtracted proportionately from the payment for completed Work as the material or equipment is incorporated into the Work in whole or in part.
- J. Prior to payment, MTA will review the invoice and verify that the invoice is proper and in accordance with the terms of the Contract, that the indicated Work effort completed is commensurate with the requested payment and that all necessary submissions for the time

period have been promptly received from the Design-Builder. MTA reserves the right to withhold all or partial payments for failure by the Design-Builder to furnish submissions required by this Contract. Progress payment estimates are for the sole purpose of determining payments due the prime Design-Builder, and are not to be relied on for any other purpose. MTA reserves the right to adjust or not approve and return any invoice rendered if it disagrees with the Work completed as shown on the invoice and/or the billing computation.

- K. As further security for the full performance of the Work, after MTA approval of the invoice, payment for 95 percent (95%) of the invoice for the accepted Work performed during that period will be processed to the Design-Builder. The withholding of five percent (5%) of the invoiced amount will also be deducted from Contract change order billings. MTA reserves the right to deduct interim costs incurred by MTA for which the Design-Builder is responsible, as specified in this Contract. MTA shall adjust appropriate Design-Builder invoice(s) for such costs prior to payment and modify the Contract Price as necessary.
- L. Within seven (7) Calendar Days of the receipt of any payment from MTA, the Design-Builder shall pay each of its subcontractors and material men the proceeds from the payment representing the value of the Work performed and/or materials furnished by the subcontractor and/or material man and reflecting the percentage of the subcontractor's work completed or the material man's material listed in the invoice approved by MTA and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or material man which have not been suitably discharged and less any retained amount as provided in Section 139(f)(2) of the New York State Finance Law. The Design-Builder shall, within twenty (20) days after receipt of such payment from MTA, deliver a certificate to MTA, signed by an officer of the Design-Builder, certifying that it has made all payments to subcontractors and material men required by this section subparagraph M, and with a summary sheet attached identifying such payments by recipient and amount.
- M. Within seven (7) Calendar Days of the receipt of payment from the Design-Builder, the subcontractor and/or material man shall pay each of its subcontractors and material men in the same manner as the Design-Builder has paid the subcontractor.
- N. Nothing provided herein shall create any obligation on the part of the Railroad or MTA to pay or to see to the payment of any monies to any subcontractor or material man from the Design-Builder nor create or give rise to any contract, implied or expressed, between any subcontractor or material man and MTA.
- O. Upon MTA's acceptance of a Project Element, the Design-Builder may request in writing payment of fifty percent (50%) of the retainage withheld with respect to the portion of the Contract Price applicable to the Project Element. If the Project Element has been substantially and satisfactorily completed, as determined by MTA in its sole and absolute judgment, the Design-Builder will be paid up to fifty percent (50%) of the retainage withheld with respect to the portion of the Contract Price applicable to the Project Element, less two times the value of remaining items to be completed as determined by MTA in its sole and absolute judgment.

- P. Upon Substantial Completion of all Work, the Design-Builder may request in writing payment of the remainder of the Contract Price for the Work. If all Work has been substantially and satisfactorily completed, as determined by MTA in its sole and absolute judgment, the Design-Builder will be paid the remainder of the Contract Price for the Work, as increased or decreased, less two times the value of any remaining items to be completed as determined by MTA in its sole and absolute judgment, and less an amount necessary to satisfy any actual or potential claims, liens, judgments and similar items against the Design-Builder which have not been satisfactorily resolved, and subject to the deduction of liquidated damages for delay, if any, and to any other provision of the Contract Documents expressly permitting the withholding or deduction of monies by MTA. Payment of the remainder of the Contract Price for the Work shall be deemed final payment for all the purposes of the Contract.
- Q. The Design-Builder may, from time to time, withdraw the whole or any portion of the amount withheld by MTA for the full performance of the Work, upon depositing with the 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, at market value, not exceeding par (at the time of deposit) equal to the amount so withdrawn. The MTA may from time to time, but not more than once a month, direct the Design-Builder to deposit with the MTA 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 the market value of such obligations. In the alternative, the privilege granted the Design-Builder hereunder to substitute the said obligations for amount so withheld may be suspended by MTA to the extent necessary to make up any difference between such market values as described in the preceding sentence. MTA shall, from time to time, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the Design-Builder. If the deposit is in the form of coupon bonds, the coupons as they respectively become due, shall be delivered to the Design-Builder. The Design-Builder shall not, however, be entitled to interest on coupons or income on any of the deposited obligations, the proceeds of which shall be or shall have been used or applied by MTA for the performance of the Work as herein provided. There is an annual service charge, payable by the Design-Builder, of \$900 to implement the above withdrawal of the withholding. Payment of this service charge should be made by check payable to The Metropolitan Transportation Authority and mailed or delivered to MTA Comptroller's Office, Attention Deputy Comptroller, 2 Broadway, New York, New York, 10004.
- R. The Design-Builder may request approval of MTA for payment of the actual true net cost of material and/or equipment purchased and delivered to an MTA-approved site but not installed. MTA shall have the right, in its sole discretion, to approve or disapprove of any proposed storage site. A payment schedule for each such non-installed item to be invoiced must be approved by MTA, prior to submittal of the first invoice for such payments. Requests for such payments shall be submitted to MTA for approval by the fifteenth (15th) of each month for inclusion into the following month's payment estimate. At MTA's sole option, such Design-Builder request may be denied. The request shall include at a minimum the following:
- A Certificate of Title and a Lien Release for the material or apparatus
 - A transfer of Title for the material from the Design-Builder to the Rail Road

- A copy of the suppliers' true net invoices verifying the material costs
 - A Certificate of Compliance from the Design-Builder verifying that the material and/or apparatus quality and quantity is in accordance with the Contract requirements.
 - Insurance coverage acceptable to MTA.
- S. The Design-Builder may request that MTA approve payment for stored material. Such requests for payment shall be invoiced with regular monthly invoices and must be based upon the labor assembly costs as approved in the DCS.
1. To qualify for payment for stored material, the following conditions must be met:
 - The Design-Builder must develop and present for approval a payment schedule specifically for payments for stored materials qualifying for payment under this Section (S) prior to the first payment request.
 - The Design-Builder shall make all requests for payments for materials and assemblies as part of its monthly payment invoice.
 - The Design-Builder must submit with its payment request a "Certificate of Compliance" verifying that the quality and quantity of the material is in accordance with Contract requirements.
 - Storage facilities and protections provided for items listed in Section S above shall be subject to prior approval by MTA.
 - Insurance coverage acceptable to MTA against theft and damage must be in place.
 - All stored materials shall be subject to inspection by MTA prior to installation.
 - Any material that, in the opinion of MTA, has become damaged as to be unsuitable for use, shall be promptly removed from the work site, and the Design-Builder shall receive no compensation for the damaged material or its removal.
 - The Design-Builder must certify to MTA that the material for which payment is requested is free of liens and encumbrances and that the Design-Builder has title to the material.
 - Title to material must be transferred from the Design-Builder to MTA.
 - The Design-Builder must submit with its request for payment true net invoices verifying material costs and with approved detailed cost breakdown for the Work.
 - Payment for stored material may be suspended at the sole discretion of MTA should damage to any material currently in storage be evident.

GP 4.04 FINAL PAYMENT

- A. Upon receipt of written notice from the Design-Builder that the Work is ready for final inspection, MTA will promptly make such inspection and, when all the Work is

determined by MTA to be acceptable under the Contract Documents and all the Work fully and acceptably performed, MTA shall notify the Design-Builder, in writing, that the Work has been completed in accordance with the terms and conditions of the Contract Documents. Upon satisfaction of all these requirements, the Design-Builder shall then submit its final invoice and the balance due the Design-Builder will be payable upon issuance of the Certificate of Final Completion.

- B. At the completion of this Contract, or upon termination, the Design-Builder shall deliver to MTA, at its request, all books, writings, records, documents, drawings, or other reproductions, special data, tables and calculation, plans, designs, specifications, reports, studies, surveys, maps, models, or other Work products and information pertaining to MTA which may be in its possession or in the possession of its lower tier subcontractors.
- C. Neither the final payment nor the remaining retained percentage nor the final milestone payment shall become due until the Design-Builder submits to MTA (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which MTA might in any way be responsible, have been paid or otherwise satisfied, (2) if required by MTA, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by MTA, and (3) any other Work still due from the Design-Builder as required by the Contract Documents. If any Subcontractor refuses to furnish a release or waiver required by MTA, the Design-Builder may furnish a bond satisfactory to MTA to indemnify the Design-Builder against any such lien. If any such lien remains unsatisfied after all payments are made, MTA shall require the Bonding Company pay all proper liens and any cost allowances. The writer of this Bond shall have the same qualifications as are specified elsewhere in these Contract Documents for other Bonds.
- D. MTA will include in its final payment to the Design-Builder all claim amounts where such claims or a portion thereof have been mutually agreed to be the responsibility of MTA, and where the parties have agreed to the amounts to be paid in settlement of any such claims.
- E. It is clearly understood and agreed that the acceptance of the final payment by the Design-Builder for all Contract Work shall be a waiver of any and all Design-Builder claims for all Work performed under this contract and under any associated impacts. Acceptance of such payment by the Design-Builder shall represent the Design-Builder's complete satisfaction with final compensation for all claims and work performed under this Contract.
- F. Design-Builder's obligation to perform the Work and complete the Contract in accordance with the Contract Documents shall be absolute. Neither approval of any partial or final payment by MTA, nor the issuance of a Certificate of Substantial Completion or Certificate of Final Completion, nor any payment by MTA to Design-Builder under the Contract Documents, nor any use or occupancy of the Work or any part thereof by MTA, nor any act of acceptance by MTA nor any failure to do so, nor any correction of defective work by MTA shall constitute an acceptance of Work not in accordance with the Contract Documents.

- G. The following notarized statement shall be on the final request for payment submitted by the Design-Builder after completion of the Work is achieved.

In consideration for The Metropolitan Transportation Authority ("MTA") paying this final invoice together with the other invoices on this Contract previously submitted by the Design-Builder to MTA, the aggregate amount totaling \$ _____ the undersigned agrees to absolutely release and discharge MTA of and from all claims and demands arising or to arise out of said contract, 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 hold harmless and indemnify MTA from and against any and all claims including but not limited to claims arising from or related to design errors and omissions, delay claims, claims of mechanics or material suppliers, and from and against any and all claims of other Contractors and Consultants, and any and all liens, claims and demands for material furnished and provided and work and labor performed, on the Work which is the subject matter of said Contract.

GP 4.05 NON-WAIVER

Failure by MTA to take any action with regard to anything under this contract shall not be a waiver of any of MTA's rights under this contract or as provided by law. MTA's review, approval to pay, or payment for any of the Work shall not be construed to operate as a waiver of any of MTA's rights under this Contract or as otherwise provided by law. The Design-Builder shall be and remain liable to MTA in accordance with the applicable law and the Contract Documents for all damages to MTA caused by Design-Builder errors, omissions or negligent acts in the performance of the Work.

GP 4.06 PAYROLL CONTRIBUTIONS

The Design-Builder accepts full and exclusive responsibility for the payment of any and all contributions or taxes, or both, which include but are not limited to payment for unemployment insurance and retirement benefits, annuities, or any other benefits whatsoever, with respect to all persons employed by the Design-Builder, now or hereafter imposed under any law of the United States or of the State of New York. The Design-Builder shall comply with all legislation, regulations and rulings thereunder respecting any of the aforesaid contributions or taxes. If by law, the Railroad or MTA is required to make such contributions for persons employed by the Design-Builder, the Design-Builder shall then make full reimbursement to the MTA or the Railroad. The Design-Builder shall furnish MTA weekly certified payrolls, enumerating the above, prepared the week following the pay period for the certified payroll.

CHAPTER 5 – CHANGES TO THE CONTRACT

GP 5.01 CHANGES

- A. MTA reserves the right to make changes to the Work at any time and without notice to the Design-Builder's surety(ies). The changes may include but are not limited to revisions to the Contract Drawings, Technical Specifications, method and manner of performance of the Work, including additions, deletions in whole or in part, and acceleration of the Work. The Design-Builder shall, when directed in writing by MTA, immediately perform the changed Work diligently and without delay. If MTA concurs that such direction justifies an increase in price, but a mutually acceptable adjustment cannot be established in a timely manner, then such work shall proceed at MTA's sole determination in accordance with GP 5.01(E)(2)(r) "Time and Material" as set forth herein.
- B. The Design-Builder shall have the right to make changes to the Work required as a result of a Change in Law, with MTA's prior written approval (not to be unreasonably withheld), consisting of revisions to the Contract Drawings, Technical Specifications and method and manner of performance of the Work including additions and deletions of the Work. If such change materially increases the scope of the Work and provided that MTA approves any such change and concurs that the change justifies an increase in price, such adjustment shall be determined by agreement of MTA and the Design-Builder in the same manner as adjustment for a change by MTA.
- C. The provisions of the Contract relating to the Work and its performance shall apply without exception to any changed Work required and to the performance thereof, except as may otherwise be directed in writing by MTA.
- D. All proposals from the Design-Builder relating to changes shall be submitted to MTA in accordance with GP 1.04 "Notices and Approvals" in these General Provisions.
- E. Changes to the Work shall be proposed, priced, negotiated, and issued as follows:
 - 1. Change Requests. MTA's Project Manager shall issue, in writing, to the Design-Builder, any request for cost and schedule impact for Change Requests which MTA wants to consider. The Design-Builder shall submit, in writing to the Procurement Officer within fifteen (15) days after receipt or as otherwise specified by MTA, the total proposed cost of the Change Request detailed per the cost breakdown specified herein, together with any associated proposed revision to the Detailed Contract Schedule. A Change Request that may be required/desired by MTA shall not become a change to the Contract until a written contract modification is issued by the Procurement Officer. If the Design-Builder fails to submit a proposal within the specified time, or if in the opinion of MTA such proposal submitted by the Design-Builder is not representative of the Work to be performed, or for any other reason in the sole opinion of MTA, MTA may nevertheless direct the Design-Builder to proceed with such Work in

writing. Failure of the Design-Builder to perform such work when directed by MTA, even in the absence of agreement as to price, schedule impact, payment terms, or other issues, shall be grounds for default.

2. Compensation for Changes. Proposals for all changes, except when supplementary unit prices are provided for in the Contract, shall be priced in accordance with the following, which amounts shall provide for all necessary increased or decreased costs. Proposals for Work for which unit prices are included in the Contract shall use these unit prices only for additions and deletions as may be further conditioned in the Contract for such unit prices. The proposal for the change shall serve as the basis for MTA's cost analysis and subsequent negotiation of a fixed price change and schedule impact. Proposed cost for the change shall be based on the following, and the proposal shall include the associated information and calculations:

- a. Design Work

Full compensation for the Design Work is included in Contract Price as set forth in the Notice of Award and is fixed as a portion of the overall price. If Work, which is the subject of the Change Request includes Design Work, and requires any Design Work to proceed on a time and material basis, pricing for such work will be based on the following: MTA will pay the Design-Builder's direct wages, overheads, other direct costs, subcontractor charges, and fixed fee as set forth in paragraph f 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.

- b. Direct Wages for Technical and Clerical Personnel

The reimbursement of direct wages for technical and clerical personnel, in connection with the subject Change Request, provided the Design-Builder'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 Design-Builder 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 negotiated rate, commensurate with the actual services performed as determined by MTA, as an Other Direct Cost without further markup. 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 an hourly rate. Employees

subject to any law requiring the payment of premium pay for overtime will be paid at the hourly wage rate fixed by the Design-Builder. 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 Design-Builder'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 MTA. Premium pay shall be added to the hourly wage rate for all overtime hours per published personnel policies of the Design-Builder, but only to the extent actually paid and only when previously authorized, in writing, by MTA. Overhead charges shall not be applied to overtime premium invoiced charges. All the labor charges are subject to adjustment based on MTA audit.

c. Overhead Costs

The Design-Builder's applicable actual overhead costs, payroll taxes, pension and retirement, and fringe benefit expenses, in connection with the subject Change Request, including vacation, holiday and sick leave allowances, all as verified by post audit and limited by both the negotiated overhead cap (as set out in the Notice of Award) and the Design-Builder's most favored customer rates for such costs, will be reimbursed by MTA as an overhead rate allowable on direct wages exclusive of the premium portion of overtime pay.

d. Other Direct Costs

Other Direct Costs shall include the following expenses incurred by the Design-Builder, in connection with the performance of the subject Change Request, 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. Other Direct Costs which are eligible for reimbursement shall be limited to:

- 1) Long distance telephone, telegram and cable charges;
- 2) Charges for outside reproduction and printing of contracts, reports, documents, specifications, and plans at the actual costs to the Design-Builder, except that MTA's prior written approval is required for any expenditure of \$1,000 or higher for printing costs;
- 3) 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 MTA;

- 4) Travel expenses including railroad (coach), airplane (coach), bus, rented automobile, taxi, or other fares, or 53.5 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 MTA and MTA's Project Manager. These costs shall not exceed those that are acceptable under the Design-Builder's corporate policy;
- 5) Cost of rental, operation, maintenance or repair of temporary office facility, any equipment or tools used specifically in connection with the Work, except that no costs shall be charged to MTA without prior written approval of MTA;
- 6) Net premiums for additional insurance coverage(s) procured by the Design-Builder solely at the request of MTA, solely in connection with the subject Change Request and not otherwise included in the insurance procured by Design-Builder to satisfy the requirements of GP 7.06 – "Insurance");
- 7) Cost of required licenses, permits, and fees obtained/payable in connection with the performance of the subject Change request, and only to the extent that such costs would not otherwise be incurred as part of the Work without regard to such Change Request; and
- 8) Cost of required software and hardware to the extent that such software and hardware would not otherwise be required and the costs thereof would not otherwise be incurred as part of the Work without regard to such Change Request, and subject to the prior written approval of MTA.

e. Subcontractor Charges

Allowable subcontractor charges shall be determined on the same basis as allowable Design-Builder costs except that each subcontractor shall have its labor rates, overhead rate and fixed fee separately determined and agreed to by MTA.

f. Certain Fixed Fees

The fixed fee for the Design Work is set forth in the Notice of Award. The fixed fee for any additional Design Work, made necessary by any Change Request directed by MTA to be performed on a time and material basis shall not exceed ten percent (10%) of the estimated direct labor plus applicable overhead as agreed to by MTA and the Design-Builder. In addition, the Design-Builder may be allowed a

fixed G&A fee on subcontractor(s) which amount shall be negotiated and shall not exceed five percent (5%) of the subcontractor costs.

g. Maximum Fees and Overhead

The applicable maximum amount obligated, fixed fee, provisional and capped overhead amounts (if any), and partner, principal or officer charges will be specified in the Notice of Award.

h. Construction Labor

(1) Wages - Labor hours by craft and class for employees directly engaged in the Work, extended by the then current actual rates required by labor contract and/or applicable law, and applicable to the time period the changed work is to be performed, but excluding the premium portion of overtime. The Design-Builder must obtain MTA approval for compensation at rates higher than those required by law.

(2) Burden - Labor burden as required by labor contract and/or applicable law for each craft and class, which may include vacation allowance, health and welfare, pension, apprenticeship programs, social security, unemployment insurance and worker's compensation insurance.

i. Materials - All materials incorporated into the changed Work, at Design-Builder's net cost, including any applicable discounts, including freight, but excluding all taxes not applicable to MTA.

j. Overhead - Ten percent (10%) of the total Labor (Wages and Burden) as set forth in subparagraph h above, which shall be in lieu of any costs associated with all supervision and administration above the Foreman level, such as the General Foreman, Assistant Superintendents, Superintendents, and the Project Superintendent, as well as Engineers, Draft-persons, Accountants, Clerks, Timekeepers, Office Managers and all others on staff. This overhead amount shall also be in lieu of costs for office supplies; office space; drinking water; temporary heat, light and power; field toilets; cost of services, material and/or equipment not incorporated into the Work or directly associated with the Work; small tools (less than \$500.00 each); reproduction costs; premiums for all insurances (including but not limited to, fire, personal, general and public liability), bonds, and all home office costs.

k. Profit

a) On Labor and Overhead - Ten percent (10%) of the sum of Labor, as set forth in subparagraph h. above, and Overhead, as set forth in subparagraph j. above.

- b) On Materials - Five percent (5%) on Materials purchased directly by the Design-Builder, as set forth in subparagraph i. above, which markup shall also provide for any associated material handling costs.
- l. Premium Portion of Overtime - The actual premium portion of overtime charges required by the labor contract and/or applicable law for each craft and class, plus applicable Burden, as set forth in subparagraph h.(2) above. No overhead or profit will be allowed on the premium portion of overtime.
- m. Equipment Rental - Total compensation allowed for equipment used in performing the change work shall be as follows:
 - a) Design-Builder owned equipment - The Design-Builder shall be reimbursed at eighty percent (80%) of the monthly rate specified in the latest edition of the Rental Rate Blue Book published by Equipment Guide-Book Company, divided by one hundred seventy-six (176) for each hour of operation, plus hourly operating costs for each hour of operation, directly applicable to the changed work.
 - b) Leased Equipment - The Design-Builder shall be reimbursed for leased equipment in the same manner as the Design-Builder owned equipment above, except that equipment leased specifically for the change shall be at Design-Builder's net invoiced cost, not to exceed the amount allowed for Design-Builder owned equipment as specified above.
 - c) Transportation Costs for Equipment - Allowable if reasonable and allocable solely to the specific change.
- n. Subcontractor Costs - Such costs shall be detailed in the same manner prescribed for the Design-Builder, except that the first tier subcontractor shall not be allowed any overhead or profit on any of its lower tier sub- subcontractor Work.
- o. For Both Design and Construction Work: Design-Builder Allowance for Markups on Subcontractor Cost - The Design-Builder is allowed a markup of five percent (5%) on all subcontractor costs for the change. This five percent (5%) is the only markup allowed for the Design-Builder on subcontractor costs. In instances involving Design-Builder affiliated subcontractors, this markup will not be allowed. Such markups apply to both Design and Construction Work
- p. Emergency Field Changes - In certain unusual instances, it may be necessary for MTA's Project Manager or MTA Project Consultant to authorize, in writing, immediate emergency field changes. In such instances, only when the written direction to the Design-Builder

designates the change as "emergency", the Design-Builder shall immediately proceed. Within seventy-two (72) hours of the issuance of such emergency field change, the Design-Builder must give written notice to the Procurement Officer that it has commenced work on an authorized emergency field change, and submit its proposal for the change.

- q. Directed Overtime - When MTA directs the Design-Builder to work overtime, for reasons that are not the Design-Builder's responsibility, MTA shall pay the premium portion of overtime as set forth and limited in the subparagraph above entitled "Premium Portion of Overtime" as a result of performing the directed overtime.
- r. Time and Material (T&M) - MTA may for any reason, in its sole judgment, including but not limited to inability to reach agreement on a fixed price for changed Work, direct in writing that any change be performed on a time and material basis. Compensation due the Design-Builder for such changed work shall be determined by MTA review of the Design-Builder's submitted costs incurred after MTA's directive to perform the Work on a T&M basis. The Design-Builder shall be reimbursed for those costs found to be actual, reasonable and necessary, detailed and limited in accordance with the foregoing guidelines for pricing for Change Requests. A provisional payment of seventy-five percent (75%) of the reasonable amount as determined by MTA of the charges submitted by the Design-Builder may be allowed, by MTA in its discretion, pending completion of MTA review.

In the event MTA directs the Design-Builder to perform any change on a time and material basis, the Design-Builder shall, at the end of each day or at such other interval as MTA shall direct in writing, furnish to MTA all the data necessary to establish the cost breakdown elements as required by this General Provision, including:

- (i.) daily time slips showing the name, badge number, social security number, the quantity of hours, the character of duties, and the wages paid to each employee for such Work,
- (ii.) a memorandum specifying the actual labor burden paid;
- (iii.) supporting data (e.g. purchase orders, invoices, payment records) showing the amount and character of the materials installed and used solely in the performance of the change, apparatus rented in connection therewith, from whom they were purchased or rented, and the amount paid therefore, and;
- (iv.) a memorandum detailing costs of approved subcontractors (with copies of subcontractor invoices attached, supported by the backup detailed in items (i.) through (iii.) of this subparagraph).

The failure of the Design-Builder to furnish any of the above listed items in a timely manner shall constitute a conclusive and binding waiver by

the Design-Builder for any payment based thereon or associated therewith. The acceptance and/or signing of such time and material records by MTA shall not constitute any agreement by MTA that such Work is changed work, whether or not a specific reservation of rights is noted at the time the records are accepted and/or signed.

- s. Contract Modifications - When mutual agreement as to scope, price and schedule impact has been achieved on a change, the change will be incorporated into the Contract via a Modification issued to the Design-Builder by MTA.
- t. Cost Determination - The costs and applicable percentages, as detailed in this GP 5.01, shall be the only amounts allowable to determine the price of a change. The provisions of sub-part 31.2 *et seq.* of the Federal Acquisition Regulations shall be used to determine the allowability and allocability of the proposed costs (either increases or decreases) for the changed Work, except that, those regulations notwithstanding, state and local taxes on net income shall not be allowed. All cost determinations shall include only those costs that are deemed by MTA as necessary and reasonable.

Should an item of Work be partially or totally deleted, the Contract Price may, at MTA's sole option, be decreased by the amount for that item in the MTA approved progress payment breakdown of the total Contract Price. Cost determination for claimed costs associated with delay shall be in accordance with GP 3.06"-Design-Builder Damages for Delay".

- u. Disputes - If the Design-Builder does not agree with any decision of MTA with respect to authorized and directed changed Work, the Design-Builder shall nonetheless diligently perform all such work without delay. Any associated claim from the Design-Builder will be negotiated as appropriate and any resultant modification then issued. Any failure by the Design-Builder to diligently perform such work without delay will be deemed a material breach.

CHANGE REQUEST COST SUMMARY

CONTRACT NO. _____

Estimated Date: _____

CHANGE REQUEST NO. _____

PROJECT: _____

	Design-Builder	Sub-Contractors	Total
<u>MATERIALS</u>			
Raw Material Cost	\$0		
Overhead	5.00%	\$0	\$0
Material Total	\$	\$0	\$
<u>LABOR</u>			
Man-hours	0	0	0
Raw Labor Cost	\$0	\$0	\$0
Overhead	\$0	\$0	\$0
Labor Total	\$0	\$0	\$0
<u>EQUIPMENT/OTHER</u>			
	\$0	\$0	\$0
Sub Total	\$	\$0	\$
G.C. Markup on Subs	5.00%	\$0	\$0
Grand Total:	\$	\$0	\$

CHANGE REQUEST COST DETAIL

CONTRACT NO. _____

CHANGE REQUEST NO. _____

PROJECT NO. _____

GC/SUB: _____

Component /Description	Materials				Labor			Equip/Other		Total
	Qty	U/M	U/C	Amt.	M/hrs.	Rate	Amt.	Rate	Amt.	
Task # (Description of Task)										
<u>Material / Basis:</u>				\$0					\$0	
				\$0					\$0	
				\$0					\$0	
				\$0					\$0	
				\$0					\$0	
				\$0					\$0	
Material Totals				\$0					\$0	
<u>Labor / Basis:</u>					0	\$0	\$0			\$0
					0	\$0	\$0			\$0
					0	\$0	\$0			\$0
							\$0			\$0
							\$0			\$0
							\$0			\$0
Labor Totals					0		\$0			\$0
<u>Equipment / Basis:</u>							\$0	\$0	\$0	
							\$0	\$0	\$0	
							\$0	\$0	\$0	
							\$0	\$0	\$0	
							\$0	\$0	\$0	
Equipment Totals							\$0	\$0	\$0	
Component Totals				\$0	0		\$0	\$0	\$0	\$0

GP 5.02 VALUE ENGINEERING CHANGE PROPOSALS

- A. The Design-Builder, at any time, is encouraged to submit cost reduction proposals that may change the Technical Specifications, Contract Drawings or other requirements of the Contract. Such proposals shall be identified as Value Engineering Change Proposals (“VECP”) and each one shall be individually and sequentially numbered. For a VECP to be acceptable under this General Provision, it shall:
- (1) be identified by the Design-Builder as a VECP;
 - (2) require a change to this Contract; and
 - (3) decrease the Contract Price.
- B. Each VECP that the Design-Builder submits shall be of sufficient detail to clearly define the proposed change, including:
- A description of the difference(s) between the existing and the proposed Contract requirements and the comparative advantages and disadvantages of each difference;
 - Include an estimate of any impacts on costs of maintenance and operations arising from the VECP;
 - Identify proposed changes to the Contract requirements necessary if the VECP is accepted;
 - Provide the impact on the Detailed Contract Schedule;
 - A detailed estimate of the amount of the Design-Builder’s gross savings that would result in accordance with the General Provision entitled "Changes;"
 - State the period of time for which the VECP is valid.
- C. MTA may accept or reject part or all of any VECP at its sole discretion by giving the Design-Builder written notice thereof. Until such notice is issued, the Design-Builder shall remain obligated to perform in accordance with the then current Terms and Conditions of the Contract. MTA will endeavor to process VECPs expeditiously. However, MTA shall not be liable for any delay in acting upon any proposal submitted pursuant to this General Provision. The decision of MTA as to acceptance of any such VECP shall be final and shall not be subject to claims or suits.
- D. When a VECP submitted pursuant to this General Provision is accepted:
- An adjustment in the Contract Price and in any other affected provisions of the Contract shall be made and the Contract modified in accordance with this General Provision and the subparagraph entitled "Compensation for Changes" in the General Provision entitled “Changes” and other applicable articles and general provisions of this Contract;
 - The net savings resulting from the VECP change shall be shared between the Design-Builder and MTA on the basis of fifty percent (50%) for the Design-Builder and fifty percent (50%) for MTA. Net savings shall be determined by deducting from the Design-Builder’s gross savings, the Design-Builder’s reasonable cost of developing and implementing the VECP (including any amount attributable to a subcontractor) both based on the cost methods detailed in the subparagraph entitled "Compensation

for Changes" in the General Provision entitled "Changes" and as agreed to by MTA. The Contract Price shall be reduced by the sum of 50% of the net savings; and

- The Design-Builder is entitled to share in the instant contract savings only, to the full extent provided for in this General Provision. The term "instant contract" shall not include any supplemental agreements to or other modifications of this Contract, executed subsequent to acceptance of the particular VECP.
- E. The Design-Builder shall use its best efforts to include Value Engineering arrangements in any subcontract, which in its judgment, appears to offer sufficient value engineering potential.

GP 5.03 DEFECTIVE PRICING PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

- A. The Design-Builder shall submit to MTA, by not later than the date of submission of the Design-Builder's first invoice, a Certificate of Current Cost or Pricing Data, in the form set out in GP 5.05, breaking down the cost items contained within its lump sum price for all of the Work, together with a certificate in the form appearing after GP 5.04, executed by an authorized officer of the Design-Builder, certifying as to the accuracy and completeness of the information appearing therein. 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 Design-Builder 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, or (2) a subcontractor or prospective subcontractor furnished the Design-Builder cost or pricing data that were not complete, accurate, and current as certified in the Design-Builder'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 associated with such negotiation or cost reimbursement shall be reduced accordingly and a Modification issued 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 Design-Builder, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Design-Builder; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- C. If the Procurement Officer determines under paragraph A. of this General Provision that a price or cost reduction should be made, the Design-Builder waives the following defenses:
- The Design-Builder 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;
 - The Procurement Officer should have known that the cost or pricing data in issue were defective even though the Design-Builder or subcontractor took no affirmative action to bring the defect to the attention of the Procurement

Officer;

- 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
 - The Design-Builder or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- D. Except as prohibited below, 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:
- The Design-Builder certifies to the Procurement Officer that, to the best of the Design-Builder's knowledge and belief, the Design-Builder is entitled to the offset in the amount requested; and
 - The Design-Builder proves that the defective 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 to MTA before such date.
- E. An offset shall not be allowed if:
- The defective data was known by the Design-Builder to be defective when the Certificate of Current Cost or Pricing Data was signed; or
 - MTA proves that the facts demonstrate that the Contract Price would not have increased in the amount to be offset even if the defective data had been submitted before the date of agreement on price.

GP 5.04 CONTRACT PRICE ALLOWANCES

- A. The Design-Builder shall maintain records of the costs of performing Work covered by a Contract Price Allowance calculated in accordance with GP 5.01(E)(2)(r), except where such Work is performed on the basis of a fixed negotiated price, and include such costs and the supporting records in its progress payment requests.
- B. If the actual costs of performing Work covered by a Contract Price Allowance are greater or less than the Contract Price Allowance, the Contract Price will be modified by the amount of such difference.

GP 5.05 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS

- A. This clause 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:
- Based on adequate price competition;
 - Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - Set by law or regulation.

- B. If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this Contract, was increased by any significant amount because: (1) the Design-Builder 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; or (2) a subcontractor or prospective subcontractor furnished the Design-Builder cost or pricing data that were not complete, accurate, and current as certified in the Design-Builder'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. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this subparagraph 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 Design-Builder, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Design-Builder; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- D. If the Procurement Officer determines that a price or cost reduction should be made, the Design-Builder agrees not to raise the following matters as a defense:
1. The Design-Builder 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;
 2. The Procurement Officer should have known that the cost or pricing data in issue were defective even though the Design-Builder or subcontractor took no affirmative action to bring the character of the data to the attention of the Procurement Officer;
 3. The Contract was based on an agreement about the cost of each item procured under the Contract; or
 4. The Design-Builder or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- E. Except as prohibited herein, 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:
- The Design-Builder certifies to the Procurement Officer that, to the best of the Design-Builder's knowledge and belief, the Design-Builder is entitled to offset in the amount requested; and
 - The Design-Builder 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 defective data were not submitted to MTA before such date.
- F. An offset shall not be allowed if:

- The defective data was known by the Design-Builder to be defective when the Certificate of Current Cost or Pricing Data was signed; or
- MTA proves that the facts demonstrate that the Contract Price would not have increased in the amount to be offset even if the defective data had been submitted before the date of agreement on price.

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 Procurement Officer, or to the Procurement Officer's representative in support of (Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., order no.) are accurate, complete, and current as of (Insert the day, month, and year when price negotiations were concluded and price agreement was reached.) This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and MTA that are part of the proposal.

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.)

CHAPTER 6 – SECURITY FOR THE PERFORMANCE OF THE WORK

GP 6.01 PERFORMANCE BOND

- A. The Design-Builder shall furnish to MTA a Performance Bond within fifteen (15) days of Notice of Award, which shall be for 50% of the Contract Price as set forth in the Notice of Award. The Performance Bond shall be in the exact form as on the following pages.
- B. The Design-Builder's Performance Bond, when submitted, shall be accompanied by a current Certificate of Qualifications pursuant to Section 1111 of the Insurance Law of the State of New York, and the surety thereon shall be a Corporate surety licensed to do business in the State of New York, with an approved capacity to exceed the total amount of the Contract and in good standing under the laws of the State. Further, in order to be approved by MTA, a surety must have an underwriting limitation of acceptable to MTA and be rated by A.M. Best and Co., at A- or higher.

GP 6.02 LABOR AND MATERIAL BOND

- A. The Design-Builder shall furnish to MTA a Labor and Material Payment Bond within fifteen (15) days of Notice of Award, which shall be for 50% of the Contract Price as set forth in the Notice of Award. The Labor and Material Bond shall be in the exact form as on the following pages.
- B. The Design-Builder's Labor and Material Bond, when submitted, shall be accompanied by a current Certificate of Qualifications pursuant to Section 1111 of the Insurance Law of the State of New York, and the surety thereon shall be a Corporate surety licensed to do business in the State of New York, with an approved capacity to exceed the total amount of the Contract and in good standing under the laws of the State. Further, in order to be approved by MTA, a surety must have an underwriting limitation of no less than \$1,000,000 and be rated by A.M. Best and Co., at A- or higher.

GP 6.03 PAYMENT GUARANTEE

- A. In the event that the surety has made payment(s) pursuant to and in accordance with the Labor and Material Payment Bond in the full penal sum of the bond and any additional claim(s) pursuant to Section 137 of the State Finance Law are made, MTA shall, in accordance with the terms of GP 6.03, guarantee payment of all demands for (a) wages and compensation for labor performed and/or services rendered in connection with the Work and (b) materials, equipment and supplies provided in connection with the Work, whether incorporated into the Work or not, when demands have been filed with MTA as provided hereinafter by any person, firm, or corporation which furnished services, labor, material, equipment, supplies or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of MTA or the Design-Builder.
- B. The provisions of the guarantee set forth in GP 6.03A are subject to the following limitations and conditions.
 - 1. The guarantee is made for the benefit of all beneficiaries as defined in GP

6.03A, provided that those beneficiaries strictly adhere to the terms and conditions of GP 6.03.

2. Nothing in GP 6.03 shall prevent a beneficiary providing labor, services or material for the Work from suing the Design-Builder for any amounts due and owing the beneficiary by the Design-Builder.
 3. All demands made against MTA pursuant to GP 6.03 shall be made within four (4) months from the date payment is due on the invoice submitted by the beneficiary to the Design-Builder for labor or services done or for materials, equipment or supplies delivered, or, if the demand is for wages, four (4) months from the date wages were due to be paid to the beneficiary.
 4. All demands made against MTA by such beneficiary shall be presented to the MTA Procurement Officer along with all written documentation concerning the demand which the MTA Procurement Officer deems appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to the Design-Builder for payment; the notarized statement of the beneficiary that the demand is due and payable; that a request for payment has been made of the Design-Builder and that the demand has not been paid by the Design-Builder within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and the Design-Builder concerning such demand. MTA shall notify the Design-Builder that a demand has been made. The Design-Builder shall inform MTA of any defenses to the demand, and shall forward to MTA any documents MTA requests concerning the demand.
 5. MTA shall make payment only if, after considering all defenses presented by the Design-Builder, it determines that the payment is due and owing to the beneficiary making the demand.
 6. MTA will not initiate the payment process of GP 6.03 or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues MTA prior to receiving a written notice from MTA that it will not pay the demand.
 7. No beneficiary shall be entitled to interest from MTA, or to any other costs, including but not limited to, attorneys' fees.
- C. Upon receipt by MTA of a demand pursuant to GP 6.03, MTA may withhold from any payment otherwise due and owing the Design-Builder under this Contract an amount sufficient to satisfy the demand.
- D. In the event MTA determines that the demand is valid, MTA shall notify the Design-Builder of such determination and the amount thereof, and direct the Design-Builder to immediately pay such amount to the beneficiary. In the event the Design-Builder, within seven (7) days of receipt of such notification from MTA fails to pay the beneficiary, such payment shall constitute an automatic and irrevocable assignment of payment by the Design-Builder to the beneficiary for the amount of the demand determined by MTA to be valid. The Design-Builder, without further notification or

other process herein gives its unconditional consent to such assignment of payment to the beneficiary and authorizes MTA on its behalf to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

- E. In the event that the amount otherwise due and owing to the Design-Builder by MTA is insufficient to satisfy such demand, MTA may, at its option require payment from the Design-Builder of an amount sufficient to cover such demand and exercise any other right to require or recover payment which MTA may have under law or contract.
- F. In the event MTA determines that the demand is invalid, any amount withheld pending MTA's review of such demand shall be paid to the Design-Builder, provided however, no lien has been filed. In the event a lien has been filed, MTA may continue to withhold payment to the Design-Builder as set forth in subparagraph C above and otherwise exercise its rights under the Contract Documents.
- G. The provisions of GP 6.03 shall not prevent MTA and the Design-Builder from resolving disputes in accordance with the Contract, where applicable.
- H. In the event MTA determines that the beneficiary is entitled to payment pursuant to GP 6.03, such determination and any defense and counterclaims raised by the Design-Builder shall be taken into account in evaluating the Design-Builder's performance.
- I. Nothing in this Chapter shall relieve the Design-Builder of the obligation to pay the claims of all persons with valid and lawful claims against the Design-Builder relating to the Work, and the Design-Builder agrees to indemnify MTA for all such claims.
- J. The Design-Builder shall not require any performance, payment or other bonds of any subcontractor if the Contract does not require such bonds of the Design-Builder.
- K. The payment guarantee made pursuant to GP 6.03 shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford the person furnishing labor or materials to the Design-Builder or the subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against MTA on the payment guarantee provided by GP 6.03 within the one (1) year limitations period set forth in Section 137(4)(b) of the State Finance Law.

FORM OF PERFORMANCE BOND

BOND NO:

of _____, a corporation created and existing under the laws of the State of _____, ("Principal") and _____, a corporation created and existing under the laws of the State of _____ having its principal office in _____ and authorized to do business in the State of New York ("Surety") are held and firmly bound to The Metropolitan Transportation Authority, a New York Public Benefit Corporation ("MTA"),

and to its successors and assigns, in the sum of _____ Dollars (\$_____) lawful money of the United States, for the payment of which said sum of money, the Principal binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally;

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with MTA for:

Contract #6240
Design – Build Services for LIRR Expansion Project from Floral Park to Hicksville

which is incorporated herein by reference as though fully set forth in this bond and which is made a part of this bond;

NOW, THEREFORE, the conditions of this obligation are such that, if the Principal, shall well and faithfully comply with and perform all of the terms of the Contract and all changes, modifications, amendments, additions and alterations to the Contract that may be made after the date of this Bond, according to its terms and its true intent and meaning, and shall fully indemnify and save harmless MTA from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay MTA for all outlay and expense which MTA may incur in making good any such default, then this obligation shall be null and void, otherwise the same to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees, if requested to do so by MTA, to fully perform and complete all of the Work under the Contract, pursuant to all of the terms, conditions, and covenants thereof, if for any reason, the Principal fails or neglects to fully perform and complete such work. The Surety further agrees to commence Work of completion within twenty (20) days after written notice is sent by MTA and to complete such Work with a Contractor other than the Principal within such time as MTA may reasonably fix.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition precedent or subsequent thereof, or by settlement or compromise of any claim or dispute relating thereto, or by any assignment, subcontract or other transfer of the Work or any part thereof, or of any Work to be performed or any monies due or to become due thereunder; and the Surety hereby waives notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers.

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

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety in this Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other rearrangement of the Principal for the benefit of creditors. The Surety, for value received, hereby stipulates and agrees that no demand made under this Bond shall constitute a waiver of the right of MTA to make a subsequent demand under this Bond, subject to the limitation of the amount obligated.

This Bond shall be construed and enforced in accordance with the laws of the State of New York.

It is further expressly agreed that the acceptance of this Bond by MTA shall in no way, for any purpose, limit or be claimed to limit the liability of the Principal under the Contract, but such liability shall remain in all respects to the same extent as its provided for in the Contract.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and signed by their proper officers, this _____ day of _____, 20__.

Corporate Seal of Principal

Signed and delivered by the
Principal in the presence of
Attest:

(Full legal name of Principal)

BY: _____

Title: _____

TITLE: _____

(Corporate seal of Surety)

Signed and delivered by Surety
in the presence of
Attest:

(Full legal name of Surety)

BY: _____

Title: _____

TITLE: _____

(Add Appropriate Acknowledgments)

ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION

STATE OF _____)
)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ resides at _____ that he is the _____ of _____ one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public

ACKNOWLEDGMENT BY PRINCIPAL, IF A PARTNERSHIP

STATE OF _____)
)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally appeared _____, to me known and known to me to be one of the members of the firm of _____ described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

Notary Public

THE METROPOLITAN TRANSPORTATION AUTHORITY
LABOR AND MATERIAL PAYMENT BOND

It is hereby agreed that, _____
of _____
(Hereinafter called the "Principal")

and _____
of _____
(Hereinafter called the "Surety")

are held firmly bound to The Metropolitan Transportation Authority, a New York Public Benefit Corporation (hereinafter called MTA), for the use and benefit of claimants as herein below described, in the amount of _____ Dollars (\$_____) good and lawful money of the United States of America, for the payment of which sum of money, the Principal binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has entered into a Contract with MTA for: Contract #6240
Design – Build Services for LIRR Expansion Project from Floral Park to Hicksville

this is incorporated herein by reference as though herein set forth in full.

Now, therefore, the conditions of this obligation are such, that if Principal shall promptly pay all monies due to all persons furnishing labor or materials to it or its subcontractors in the prosecution of the Work provided for in said Contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of Section 137 of the New York State Finance Law to the same extent as if they were copied at length herein; and further, provided, the place of filing of any suit or action on this bond shall be in the county which the said Contract was to be performed, or if said Contract was to be performed in more than one county, then in any such county, and not elsewhere.

No suit or action shall be commenced hereunder by any claimant:

- (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the following: The Principal, MTA, and the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.

Such notice shall be served by mailing the same by registered mail or certified mail, return receipt requested, postage prepaid, in an envelope addressed to the Principal, MTA and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

- (b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, 20__.

(Corporate seal of the
Principal if a corporation)

(Full legal name of the Principal)

Signed and delivered by the
Principal in the presence of
Attest:

By: _____

Secretary

Title: _____

(Corporate seal of Surety)

(Full legal name of the Surety)

By: _____

Signed and delivered by Surety
in the presence of Attest:

Title: _____

Title

ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION

STATE OF _____)
)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____,
before me personally came _____ resides at
_____ and is the of _____
_____ one
of the corporations described in and which executed the foregoing instrument; and knows the seal of
said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed
by the order of the Board of Directors of said corporation; and that the signature is affixed thereto by
like order.

Notary Public

ACKNOWLEDGMENT BY PRINCIPAL, IF A PARTNERSHIP

STATE OF _____)
)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally appeared _____
_____, to me known and known to me to be one of the members of
the firm of _____ described in
and who executed the foregoing instrument, and he acknowledged to me that he executed the same
as and for the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT BY PRINCIPAL, IF AN INDIVIDUAL

STATE OF _____)
)
COUNTY OF _____) ss.:

On the _____ day of _____, 20_____, before me personally appeared _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed same.

Notary Public

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

CHAPTER 7 –DESIGN-BUILDER’S LIABILITY AND INSURANCE

GP 7.01 INDEMNIFICATION

- A. The Design-Builder shall indemnify and save harmless the Indemnified Parties (as hereinafter defined), to the fullest extent permitted by law, from loss and liability upon any and all claims and expenses, including, but not limited to, reasonable attorneys' fees, on account of any injuries to persons or any damage to property arising out of, or sustained in connection with, the non-compliance by the Design-Builder with any of the terms and conditions of the Contract, or the performance of any portion of the Work, including (without limitation) the design of any portion of the Project, irrespective of the actual cause of the accident and irrespective of whether it shall have been due in part to negligence of the Design-Builder or its subcontractors or the negligence of the Indemnified Parties, or of any other persons.
- B. The term "loss and liability", as used herein, shall be deemed to include, but not be limited to, liability for the payment of workers' compensation benefits under the Workers' Compensation Law of the State of New York, or liability under the Federal Employers' Liability Act or similar statutes.
- C. Except as otherwise provided in Paragraph A above, the liability of the Design-Builder under this General Provision is absolute and is not dependent upon any question of negligence on its part or on the part of its agents, officers, employees or subcontractors. The approval of MTA of the methods of doing the Work, or the failure of MTA to call attention to improper or inadequate methods or to require a change in methods or to direct the Design-Builder to take any particular precautions or to refrain from doing any particular thing shall not excuse the Design-Builder in the event of injury to persons or damage to property.
- D. The Design-Builder's obligations to indemnify and hold harmless shall not be deemed limited or discharged by the procurement of any insurance.
- E. Without limiting the generality of the foregoing, the Design-Builder's obligation to indemnify and hold harmless specifically includes any suits, claims, actions, damages and costs of every name and description resulting from any spill or release or threatened spill or release of a Hazardous Material (i) attributable to the negligence, willful misconduct or breach of contract by the Design-Builder, a Subcontractors or any other person for whose acts the Design-Builder is responsible, or (ii) which was brought onto a Site by the Design-Builder, a Subcontractor or any other person for whose acts the Design-Builder is responsible.
- F. The Design-Builder's obligations to indemnify and hold harmless shall not extend to indemnifying and holding an Indemnified Party harmless from claims and expenses which arise out of the sole negligence of the Indemnified Party.
- G. If any damage shall occur to any property of the Indemnified Parties (except that reasonably associated with the Work and then only that which is specifically required by this Contract) on account of the Work, and the Design-Builder is responsible therefor, MTA shall have the right to cause such damage to be repaired and to charge the expense of such repairs to the Design-Builder. In the event that such Work is performed by MTA, then MTA may deduct the amount of such expense that may be incurred in repairing any such damage from any monies due or to become due to the Design-Builder under this Contract or any other agreement between the Design-Builder and MTA.

- H. If at any time, claim shall be made by any person or corporation against the Indemnified Parties for any such injury or damage, or for any infringement of patents or copyrights as hereinafter provided, and if final payment has not yet been made under the Contract, then the amount of such claim or so much thereof as may be deemed reasonable by MTA may be retained by MTA out of any monies then due or thereafter becoming due to the Design-Builder under the Contract (in addition to other sums, if any, elsewhere herein authorized to be so retained) as security for the payment of such claim or claims. In lieu of such retainage, MTA may permit the posting of a bond, in form satisfactory to it, for the full amount of such claim or claims, such bond to be held until such claim or claims are satisfied or otherwise discharged.

GP 7.02 INDEMNIFIED PARTIES

The term Indemnified Parties, whenever referred to in this Contract shall consist of the following parties, including their officers, directors, employees, agents, subsidiaries and affiliates, and each individually is an Indemnified Party”:

The Metropolitan Transportation Authority
The MTA Capital Construction Company
The Long Island Rail Road Company
MTA Bus Company
Metro North Commuter Railroad
New York City Transit Authority
NYSDOT and Commissioner of Transportation
The State of New York
New York & Atlantic Railway
Triborough Bridge & Tunnel Authority
The City of New York
If MTA has retained an MTA Project Consultant, such Railroad Project Consultant

GP 7.03 RESPONSIBILITY FOR INJURIES TO PERSONS AND PROPERTY

- A. The Design-Builder shall be solely responsible for (1) all injuries (including death) to persons, including, but not limited to, employees of the Design-Builder and subcontractors and Indemnified Parties, and (2) damage to property, including, but not limited to, property of the Indemnified Parties, the Design-Builder or its subcontractors. The liability hereunder shall be limited to such injuries or damage occurring on account of, or in connection with, the performance of the Work, whether or not the occurrence giving rise to such injury or such damage happens at the Site or whether or not sustained by persons or to property while at any work site.
- B. The Design-Builder’s liability hereunder includes any injury (including death) or damage to property related to the performance of, including the failure to perform the Work under the Warranty provisions of the Contract and miscellaneous incidental Work.

GP 7.04 RISK OF LOSS TO THE WORK

- A. The Design-Builder assumes risk of loss or damage to the Work occurring prior to Final Completion of the Work (or acceptance of a Project Element as applicable) to the fullest extent permitted by applicable law, irrespective of whether such loss or damage arises from

acts or omissions (whether negligent or not) of the Design-Builder, MTA, the Railroad or third persons, or from any cause whatsoever. When the risk of loss to the Work or Project Element is transferred to MTA, MTA shall thereafter assume responsibility for the care, protection and ordinary upkeep (excluding Design-Builder's Warranty obligations) for said Work (or Project Element as applicable), except to the extent that Design-Builder remains responsible for uncompleted Work or is otherwise responsible for loss or damage as provided in GP 7.04.

- B. In the event MTA accepts a Project Element pursuant to GP 3.03A, risk of loss to the Project Element shall transfer to MTA, except that the Design-Builder shall remain liable for any damage to the Project Element to the extent caused by the acts or omissions to act of the Design-Builder in performing other portions of the Work or completing the Project Element.
- C. The Design-Builder's obligation hereunder is to immediately repair, replace and make good such loss or damage so as to restore the Work to the same character and condition as before the loss or damage occurred in accordance with the Contract without cost to MTA.
- D. Risk of loss or damage to work trains, cranes, or special equipment supplied and operated by MTA shall be on MTA, but the Design-Builder shall be responsible for loss or damage thereto arising out of Design-Builder's failure to fulfill a Contract obligation hereunder or the negligence or willful act of the Design-Builder, its subcontractors and suppliers.
- E. The Design-Builder shall exercise due care and diligence to ensure that all Work and materials whether temporary or permanent (including items supplied by the Indemnified Parties) are at all times thoroughly protected from vandalism or theft, the weather, and any and all other damage prior to acceptance of the Work. The Design-Builder shall provide watchmen and labor, materials, protective features such as tarpaulins, boards, boxing, frames, canvas guards, fireproofing, protective coatings and other safeguards as are necessary or as may be directed by MTA. Any loss or damage resulting from the Design-Builder's failure to comply herewith shall be corrected or repaired by and at the Design-Builder's sole expense.

GP 7.05 PENALTIES

In addition to the indemnity provisions provided for herein, the Design-Builder shall be responsible for, and shall defend, indemnify, and hold harmless MTA and the Indemnified Parties from all fines, penalties, costs, and loss of every kind whatsoever, which may arise or result from, or by reason of the violation of any Federal, State or local statute, ordinance, rule or regulation, or codes, by the Design-Builder and each of its subcontractors and suppliers, and other lower tier contractors and subcontractors, and each of the respective officers, agents, and employees, in connection with the performance of the Work.

GP 7.06 INSURANCE

The Design-Builder shall procure and maintain during the term of the Contract, as such term may be extended from time to time, the required insurances set forth in Appendix B and otherwise comply with all obligations of the Design-Builder as set forth therein.

CHAPTER 8 – TERMINATION

GP 8.01 TERMINATION FOR CONVENIENCE

- A. MTA shall have the right to terminate the Contract in whole or in part at any time, irrespective of whether the Design-Builder is in default, by giving the Design-Builder written notice to such effect, which notice shall specify the termination date. Upon any such termination, the Design-Builder shall be deemed to have waived any associated claims for damages, including loss of anticipated profits. As the sole right and remedy of the Design-Builder, MTA shall pay the Design-Builder in accordance with paragraph C below. 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.
- B. Upon receipt of any such notice from the Procurement Officer unless the notice provides otherwise, the Design-Builder and all its subcontractors and suppliers 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 materials, equipment, and apparatus which may be canceled without undue cost. The Design-Builder shall notify MTA of any commitment which cannot be canceled without undue cost and MTA shall have the right to accept delivery or to reject delivery and pay the agreed upon costs;
 3. Place no further orders or subcontracts for materials, services, 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 paragraph 1 above;
 4. Assist MTA, as specifically requested in writing, in the maintenance and protection of the property used for the Work under the Contract.
- C. Subject to compliance with the foregoing and any other applicable provision of the Contract, MTA, upon any such termination, shall pay the Design-Builder the following:
1. All amounts due, including retentions, and not previously paid to the Design-Builder for Work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice;
 2. The reasonable costs incurred pursuant to subparagraphs B.1 through B.4 above;
 3. Any other reasonable costs, including demobilization costs, incidental to such termination of Work.
 4. Profit in accordance with General Provision entitled "Changes" for all Work satisfactorily performed and accepted by MTA.
- D. If requested by MTA, the Design-Builder shall immediately assign those subcontracts that MTA designates to MTA, in accordance with the General Provisions entitled "Subcontracting" and "Design Professionals Subcontracts".

- E. The Design-Builder shall submit to MTA a cost statement for the aforesaid amount in such reasonable detail as MTA shall request, within sixty (60) days after such date of termination. The Design-Builder, subject to negotiation, investigation and verification confirming that the amounts claimed are fair and reasonable, shall negotiate a settlement of the cost statement with MTA subject to approval by MTA which approval shall not be unreasonably withheld. MTA will finalize the settlement, issue a contract modification which incorporates the terms of the settlement and pay the amount of the settlement to the Design-Builder, less an amount necessary to satisfy any claims, liens or judgments against the Design-Builder. Neither MTA nor MTA Project Consultant shall be liable to the Design-Builder for any damages to the Design-Builder resulting from such termination or for loss of anticipated profits with respect to the remainder of the Work.

GP 8.02 DESIGN-BUILDER'S DEFAULT

If the Design-Builder fails to begin the Work, or fails to perform any changed Work authorized by MTA, whether or not disputed, or if it abandons the Work or assigns or sublets the Work, otherwise than as herein specified, or if at any time performance is unnecessarily or unreasonably delayed, or if the Design-Builder is violating any of the provisions or covenants of this Contract or is not executing the same in good faith and in accordance with this Contract or if the Work be not substantially completed within the time(s) prescribed or within the time(s) to which such completion may be contractually extended, or if the Design-Builder becomes insolvent, or admits in writing its inability to pay its debts generally as they become due, or files or consents to the filing of a petition in bankruptcy or a petition to take advantage of any insolvency act, or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of the whole or any substantial part of its property, or on a petition in bankruptcy filed against it, be adjudicated a bankrupt, or files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law, then and in any of such cases the Design-Builder shall be in default, and:

- A. The Procurement Officer may notify the Design-Builder in writing not to begin or not to resume or to discontinue all Work or any part thereof. MTA shall thereupon have the right to require the Surety to fully perform and complete the Work, and may also proceed as it shall deem proper upon the Design-Builder's bond or other security.
- B. In lieu of requiring the Surety to fully perform and complete the Work, MTA shall have the right to contract for the completion of the Work or any part thereof or to place persons as it may deem advisable, by contract or otherwise, to perform and complete the Work herein described, and to procure from the Design-Builder and its subcontractors, materials, plant, tools, equipment, supplies and its storage areas all as associated with the Work. The Design-Builder shall in any and every such case in which MTA shall complete the Work or any part thereof pay to MTA the expense of such completion, including the cost of re-bidding this Contract, and any additional sums of money specified in this Contract including any applicable specified liquidated damages. The expenses so charged and the liquidated damages may be deducted by and paid to MTA out of such monies as would have been payable to the Design-Builder if it had completed the Work. If such expenses plus the liquidated damages shall exceed the remaining dollar amount not paid under this Contract (total contract amount less total amount paid), the Design-Builder shall pay the amount of such difference with interest at current prime rate to MTA. If such expense and liquidated damages shall be less than the amount which would have been payable under this Contract for the same

Work as if this Contract had been completed by the Design-Builder, the Design-Builder shall forfeit all claim to the difference.

- C. MTA may also (i) bring any suit or proceeding for specific performance or for injunction or to recover damages or to obtain any other relief or for any other purpose proper under this Contract and/or (ii) exercise any other right or remedy available at law or in equity, or under the Contract. MTA shall retain all rights and remedies under this Contract to their fullest extent notwithstanding any specific provision or article. All rights and remedies available to MTA hereunder are cumulative, and the exercise (or failure to exercise) any specific right or remedy shall not preclude the exercise of any other right or remedy.

- D. If MTA chooses to do so, or in the event that a court of competent jurisdiction determines that MTA incorrectly terminated the Work or any part thereof pursuant to this General Provision, MTA reserves the right to revise the termination to be a Termination for Convenience, pursuant to GP 8.01 – “Termination for Convenience”.

CHAPTER 9 – DISPUTES AND CLAIMS

GP 9.01 CLAIMS AND DAMAGES

- A. The Design-Builder shall indemnify and hold MTA and the Railroad harmless from any and all claims or judgments for damages and from costs and expenses to which MTA and the Railroad may be subjected or which it may suffer or incur by reason of the Design-Builder's failure to promptly comply with MTA's directions.
- B. Should the Design-Builder sustain any damage through any act or omission of any other contractor having a contract with MTA or the Railroad, or through any act or omission of a subcontractor of such contract, the Design-Builder shall have no claim against MTA or the Railroad for such damage, but shall have a right to recover such damage from the other contractor under the provision similar to the following provisions which have been or will be inserted in the contracts with such other contractors.
- C. Should any other contractor having or who shall hereafter have a contract with MTA or the Railroad sustain damage through any act or omission of the Design-Builder hereunder or through any act or omission of any subcontractor of the Design-Builder, the Design-Builder agrees to reimburse such other contractor for all such damages and to defend at its own expense any suit based upon such claim. If any such judgment or claim against MTA or the Railroad shall be allowed, the Design-Builder shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and indemnify and hold MTA or the Railroad harmless from and against any and all such claims.
- D. MTA's and the Railroad's right to indemnification hereunder shall in no way be diminished, waived or discharged, by the exercise of any remedy provided for in this Contract or by law.
- E. If the Design-Builder has claims other than those either arising from the provisions of this General Provision or provisions elsewhere in this Contract, the Design-Builder shall give MTA written notice in no event later than five (5) days after the claim arises. Said notice is for the purposes of (1) affording an opportunity to MTA to cancel promptly such order, direction or requirement; (2) affording an opportunity to MTA to keep an accurate record of the materials, labor and other items involved; and (3) affording an opportunity to MTA to take such action as it may deem advisable in light of the Design-Builder's claims.
- F. Accordingly, the failure of the Design-Builder to serve such written notice within five (5) days shall be deemed to be a conclusive and binding determination on its part that the direction, order or requirement of MTA does not involve the performance of extra or additional Work, and shall be deemed to be a waiver by the Design-Builder of all claims for additional compensation or damages by reason thereof.

GP 9.02 CONFLICTS, ERRORS AND OMISSIONS

- A. Any discrepancies shall be promptly brought to the attention of MTA. If there are any discrepancies between the federal or state requirements and other sections of the Contract Documents, the more stringent requirements shall apply.
- B. Omissions from the Contract Documents or the misdescription of details of Work which are necessary to carry out the Work, or which are customarily performed, shall not relieve the

Design-Builder from performing such omitted Work or misdescribed details of the Work, but they shall be performed as if fully and correctly set forth and described in the Contract Documents without additional compensation.

- C. The Design-Builder shall promptly notify MTA in writing of any conflicts, omissions, or misdescriptions of the Work. If the Design-Builder proceeds with any part of the Work affected thereby without the written approval of the Procurement Officer it does so at its own risk and the Work so done shall not be considered Work done under and in performance of the Contract unless and until approved by the Procurement Officer.

GP 9.03 REMEDIES

- A. All legal actions against MTA arising out of this Contract shall be initiated within ninety (90) days following Final Completion of all Work or termination for any reason, whichever is sooner. All rights and remedies relating to all claims, disputes, or legal action filed by the Design-Builder after expiration of that time, shall be deemed waived and any such item shall be deemed settled.
- B. The Design-Builder shall carry on the Work and comply with the Detailed Contract Schedule during the pendency of any claim, dispute, or litigation proceeding unless otherwise directed in writing by MTA.

GP 9.04 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

- A. 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.
- B. The Design-Builder agrees to submit any controversies arising out of the Contract to a New York State Court of competent jurisdiction in New York County or Queens County or in the United States District Court in the Southern or Eastern Districts of New York. The Design-Builder waives any objection it may have to such choice of venue and consents to the jurisdiction of such courts for purposes of adjudicating any such controversies.

CHAPTER 10 – INSPECTION, TESTING AND WARRANTY

GP 10.01 INSPECTION AND TESTING

- A. The Work shall be subject to inspection and test by MTA at all reasonable times and places prior to Final Completion. Any such inspection and test is for the sole benefit of MTA and shall not relieve the Design-Builder of the responsibility of providing quality control measures to assure that the Work strictly complies with the Contract requirements. Any inspection or test by MTA shall not be construed as constituting or implying acceptance. Inspection or test shall not relieve the Design-Builder of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of MTA after acceptance of the completed Work under the terms of the last paragraph of this General Provision, except as hereinafter provided.
- B. The Design-Builder shall, without charge, replace any material or correct any workmanship found by MTA not to conform to the Contract requirements, unless MTA consents to accept such material or workmanship with an appropriate Contract Modification. The Design-Builder shall promptly segregate and remove rejected material from the premises.
- C. If the Design-Builder does not immediately replace rejected material or correct rejected workmanship, MTA may, at its sole determination, (1) by any means, replace such material or correct such workmanship and charge the cost thereof to the Design-Builder or (2) terminate the Contract pursuant to the General Provision entitled "Design-Builder's Default."
- D. The Design-Builder shall immediately furnish, without additional charge, all facilities, labor and material needed for performing such safe and convenient inspection and test as may be required by MTA. All inspection and tests by MTA will be performed in such a manner as not to delay the Work. MTA reserves the right to charge the Design-Builder any costs of inspection or test when material or workmanship is not ready at the time specified by the Design-Builder for inspection or test or when re-inspection or retest is necessitated by prior rejection.
- E. Should MTA desire at any time before Final Acceptance of the Work to make an examination of Work already completed, by removing or tearing out same, the Design-Builder shall, on request, promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the Design-Builder shall be responsible for all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, an adjustment in the Contract Price and Detailed Contract Schedule shall be negotiated to compensate the Design-Builder for the additional Work involved in such examination and reconstruction. Acceptance shall be final and conclusive except for latent defects, fraud, or such mistakes as may amount to fraud, or MTA's rights under any warranty or guarantee.
- F. Final Completion shall also be subject to the Design-Builder furnishing and/or performing the Contract Work in a manner acceptable to MTA.

GP 10.02 WARRANTY

- A. The Design-Builder hereby unconditionally warrants and guarantees to MTA that all Work, including but not limited to, designs, workmanship, material, equipment, devices and apparatus furnished under the Contract shall comply with the Contract requirements including the Technical Specifications, the Professional Standard and generally accepted standards, shall meet the requirements of the Contract Documents and shall be free of any defect of equipment, material or workmanship. The Design-Builder's warranty and all subcontractor and vendor warranties and guarantees shall be assignable by MTA to the Railroad at the MTA's option.
- B. Any review, approval or acceptance of the Design-Builder's designs, plans or specifications by MTA, or payments by MTA for services performed by the Design-Builder or its subcontractors, including any Design Professionals, shall not be deemed to diminish the Design-Builder's warranty of adequacy and sufficiency or otherwise relieve the Design-Builder of any professional liability.
- C. Unless otherwise specified in the Contract Documents, the period of this warranty shall extend for a period of one year from the date of Final Completion of the Work or from MTA's acceptance of a Project Element pursuant to GP 3.03D. The warranty shall be extended for any longer period that the manufacturer of applicable material or equipment may warrant.
- D. The Design-Builder shall, upon written notice from MTA, promptly remedy at its own expense, including all associated costs for removal, shipping and handling, reinstallation, testing, and any other related costs, any such failure to perform, including associated related parts (the "Warranty Work").
- E. The warranty shall be reinstated, but no more than twice, each for a period of one (1) year for any item and any interrelated item(s) that are so remedied (unless a manufacturer of equipment that is installed in the Work warrants a longer period) commencing at the time the defect or nonconformance with the Contract is resolved and the Warranty Work is accepted in writing by MTA.
- F. Neither MTA'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 MTA under this Contract or under law or of any cause of action arising out of the performance of this Contract, and the Design-Builder shall be and remain liable to the MTA in accordance with applicable law for all damages to MTA caused by the Design-Builder or its subcontractors, in whole or part, by performance of any of the services furnished under this Contract.

CHAPTER 11 – COMPLIANCE WITH WORK SITE SECURITY REQUIREMENTS

GP 11.01 COMPLIANCE WITH WORK SITE SECURITY REQUIREMENTS

The Design-Builder shall comply with all Work Site Security Requirements set forth in the Contract Documents.

CHAPTER 12 – NEW YORK STATE PROVISIONS

GP 12.01 NO ASSIGNMENT WITHOUT CONSENT

Pursuant to Section 138 of the New York State Finance Law, the Design-Builder (or its surety) shall not 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 MTA. Any such assignment, transfer, conveyance, sublet or disposal of this Contract as provided in this section shall, without the previous written consent of MTA, revoke and annul this Contract, and MTA 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 Design-Builder has assigned, transferred, conveyed, sublet or otherwise disposed of the same, and the Design-Builder, 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. 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 provided, however, that if the Design-Builder makes such an assignment for the benefit of creditors, MTA (unless it consents to such an assignment in writing), shall be entitled to exercise any or all of its rights and remedies specified in GP 8.02 - "Design-Builder's Default." In the event the Design-Builder seeks and receives the consent of MTA (in writing) to assign the Contract, such consent shall not relieve the Design-Builder from its primary responsibility for satisfactory completion of its obligations under the Contract.

GP 12.02 HIPAA COMPLIANCE

The Design-Builder, 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 MTA or the Railroad shall only be made on Health Insurance Portability and Accountability Act (HIPAA) compliant photocopiers or multifunctional printer/copier/scanner/fax machines.

GP 12.03 SECTION 73(8) OF PUBLIC OFFICER'S LAW

The Design-Builder shall not permit the following persons who are prohibited from working on the Contract pursuant to the New York State Public Officer's Law §73(8) to be employed or receive compensation for such purposes: (1) any person who has served as a state officer or employee shall be prohibited within a period of two years after the termination of such service or employment, and (2) any person who has served as a state officer or employee shall be prohibited for lifetime if such person was directly concerned with the Contract, where such person personally participated during the period of his or her service or employment with the Contract, or if the Contract was under his or her active consideration.

GP 12.04 EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

During the performance of this Contract, the Design-Builder will abide by the following:

- A. The Design-Builder 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 MTA, the Design-Builder 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 Design-Builder's obligations herein.
- C. The Design-Builder 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 Design-Builder 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.

GP 12.05 COMPLIANCE WITH MINORITY/WOMEN OWNED BUSINESS PROGRAM

If the Design-Builder willfully and intentionally fails to comply with the minority and women-owned participation requirements of Article 15-A of the New York State Executive Law or of Appendix A attached hereto, the Design-Builder shall be liable to MTA for liquidated or other appropriate damages on account of a breach of such requirements and MTA shall be entitled to all remedies at law or in equity and as may otherwise be provided for in the Contract.

- A. For purposes of this Contract, MTA hereby establishes an overall goal of 15% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% for New York State-certified Women-owned Business Enterprise ("WBE") participation based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by Minority and Women-owned Business Enterprises ("MWBEs") on the Contract and achieving the MWBE Contract Goals established herein, the Design-Builder should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Design-Builder is encouraged to

contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Only sums paid to MBEs and WBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MBE and WBE participation goals. The portion of a contract with an MBE or WBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MBE or WBE shall be 60% of the total value of the contract. The portion of a contract with an MBE or WBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MBE or WBE shall be the monetary value of fees, or the markup percentage, charged by the MBE or WBE.
- D. The Design-Builder must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - i. Evidence of outreach to MWBEs;
 - ii. Any responses by MWBEs to the Design-Builder's outreach;
 - iii. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - iv. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by MTA with MWBEs; and,
 - v. Information describing specific steps undertaken by the Design-Builder to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.
- E. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- F. In performing the Contract, the Design-Builder shall:
 - i. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs 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. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - ii. The Design-Builder, and each of its subcontractors, shall submit an EEO policy statement to MTA pursuant to GP 12.04.
 - iii. If the Design-Builder, or any of its subcontractors, does not have an existing EEO policy statement, MTA may require the Design-Builder or subcontractor to adopt a model statement which shall include the following language:
 - 1. The Design-Builder will not discriminate against any employee or applicant for employment because of race, creed, color, national origin,

sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

2. The Design-Builder shall state in all solicitations or advertisements for employees that, in the performance of the 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.
3. The Design-Builder 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 Design-Builder's obligations herein.
4. The Design-Builder will include the provisions of Subdivisions (1) through (3) of this Subsection iii and Paragraph "F" of this Section which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

G. Workforce Utilization Report

- a. The Design-Builder shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by MTA on a monthly basis during the term of the Contract.
- b. Separate forms shall be completed by the Design-Builder and any subcontractors.

H. The Design-Builder shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Design-Builder and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

I. The Design-Builder represents and warrants that the Design-Builder has submitted an interim MWBE Utilization Plan, and shall submit an updated MWBE Utilization Plan reflecting its efforts to achieve the applicable MBE/WBE participation goal at such time as shall be required by MTA.

- J. The Design-Builder further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, MTA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Design-Builder is non-responsive.
- K. If the Design-Builder, after making good faith efforts, is unable to achieve the MBE/WBE participation goals stated herein, the Design-Builder may submit a request for a waiver. Such waiver request must be supported by evidence of the Design-Builder's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MBE/WBE participation goals. If the documentation included with the waiver request is complete, MTA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- L. The Design-Builder is required to report on its progress towards the achievement of the MBE/WBE participation goals, as described in Section S of Appendix A of the General Conditions.
- M. If MTA, upon review of the MWBE Utilization Plan, reports described in paragraph L of this section, or any other relevant information, determines that the Design-Builder is failing or refusing to comply with the requirements stated herein, and no waiver has been issued in regards to such non-compliance, MTA may issue a notice of deficiency to the Design-Builder. The Design-Builder must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MBE/WBE participation goals.
- N. Where MTA determines that the Design-Builder is not in compliance with the requirements of this Chapter and the Design-Builder refuses to comply with such requirements, or if the Design-Builder is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals, the Design-Builder shall be obligated to pay to MTA liquidated damages.
- O. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. sums identified for payment to MBEs and WBEs had the Design-Builder achieved the MBE/WBE participation goals; and
 - b. All sums actually paid to MBEs and WBEs for work performed or materials supplied under the Contract.
- P. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by MTA, the Design-Builder shall pay such liquidated damages to MTA within sixty (60) days after they are assessed. Provided, however, that if the Design-Builder has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Design-Builder following the complaint process.

GP 12.06 COMPLIANCE WITH SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE PROGRAM

If the Design-Builder willfully and intentionally fails to comply with the service-disabled veteran-owned businesses participation requirements of Article 17-B of the New York State Executive Law, or of Appendix E attached hereto, the Design-Builder shall be liable to MTA for breach of such requirements and MTA shall be entitled to all remedies at law or in equity and as may otherwise be provided for in the Contract.

- A. For purposes of this Contract, MTA hereby establishes an overall goal of 6% for New York State-certified Service-Disabled Veteran-Owned Business Enterprise (“SDVOB”) participation.
- B. For purposes of providing meaningful participation by Service-Disabled Veteran-Owned Business Enterprise (“SDVOBs”) on the Contract and achieving the SDVOB Contract Goals established herein, the Design-Builder should reference the directory of SDVOBs at the following internet address: https://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf. Additionally, the Design-Builder is encouraged to contact the Division of Service-Disabled Veterans’ Business Development at (518) 474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- C. Only sums paid to SDVOBs for the performance of a commercially useful function, as that term is defined in 9 NYCRR § 252.1, may be applied towards the achievement of the applicable SDVOB participation goals.
- D. The Design-Builder must document “good faith efforts,” pursuant to 9 NYCRR § 252.2, to provide meaningful participation by SDVOBs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - a. Evidence of outreach to SDVOBs;
 - b. Any responses by SDVOBs to the Design-Builder’s outreach;
 - c. Copies of advertisements for participation by SDVOBs in appropriate general circulation, trade, and veteran-oriented publications;
 - d. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by MTA with SDVOBs; and
 - e. Information describing specific steps undertaken by the Design-Builder to reasonably structure the Contract scope of work to maximize opportunities for SDVOB participation.
- E. The Design-Builder represents and warrants that the Design-Builder has submitted an interim SDVOB Utilization Plan, and shall submit an updated SDVOB Utilization Plan reflecting its efforts to achieve the applicable SDVOB participation goal at such time as shall be required by MTA.

- F. The Design-Builder further agrees that failure to submit and/or adhere to such SDVOB Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, MTA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Design-Builder is non-responsive.
- G. If the Design-Builder, after making good faith efforts, is unable to achieve the SDVOB participation goals stated herein, the Design-Builder may submit a request for a waiver. Such waiver request must be supported by evidence of the Design-Builder's good faith efforts to achieve the maximum feasible SDVOB participation towards the applicable SDVOB participation goals. If the documentation included with the waiver request is complete, MTA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- H. The Design-Builder is required to report on its progress towards the achievement of the SDVOB participation goals, as described in Appendix E of these General Provisions.
- I. If MTA, upon review of the SDVOB Utilization Plan, or any other relevant information, determines that the Design-Builder is failing or refusing to comply with the requirements stated herein, and no waiver has been issued in regards to such non-compliance, MTA may issue a notice of deficiency to the Design-Builder. The Design-Builder must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the SDVOB participation goals.
- J. Required Good Faith Efforts. In accordance with 9 NYCRR § 252.2(n), Design-Builder must document its good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:
 - a. Copies of solicitations to SDVOBs and any responses thereto.
 - b. Explanation of the specific reasons each SDVOB that responded to Design-Builder's solicitation was not selected.
 - c. Dates of any pre-bid, pre-award or other meetings attended by Design-Builder, if any, scheduled by MTA with certified SDVOBs whom MTA determined were capable of fulfilling the SDVOB goals set in the Contract.
 - d. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
 - e. Other information deemed relevant to the waiver request.
- K. Monthly SDVOB Contractor Compliance Report In accordance with 9 NYCRR § 252.2(q), Design-Builder is required to report Monthly SDVOB Contractor Compliance to MTA during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on MTA website and should be completed by the Design-Builder and submitted to MTA, by the 10th day of each month during the term of the Contract, for the preceding month's activity to the Point of Contact.

- L. Breach of Contract and Damages. In accordance with 9 NYCRR § 252.2(s), if Design-Builder is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, Design-Builder shall be found to have breached the contract and Design-Builder shall pay damages as set forth therein.

GP 12.07 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 form of exchange, goods sought by MTA and which are substantially produced outside New York State, or services, other than construction services, sought by MTA 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 form of exchange, goods which are sought by MTA and which are substantially manufactured, produced or assembled in New York State, or services which are sought by MTA 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:
- The Metropolitan Transportation Authority
Department of Diversity and Civil Rights
Division of Business Programs/Contract Compliance Unit
2 Broadway, 16th 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 Design-Builder 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 Design-Builder shall consist of and be limited to showing that the Design-Builder 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 Proposer outreach conferences.
3. If the Design-Builder 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 Design-Builder 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 Proposers/proposers located in foreign jurisdictions are advised that MTA may assign or otherwise transfer offset credits created by this Contract to third parties located in New York State and potential Proposers/proposers shall cooperate with MTA in any such efforts.
7. Comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

GP 12.08 PARTICIPATION IN AN INTERNATIONAL BOYCOTT PROHIBITED

Pursuant to Section 139-h of the New York State Finance Law and Section 220-f of the New York State 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 Design-Builder agrees, as a material condition of the award of the Contract, that neither the Design-Builder 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 Design-Builder 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.

GP 12.09 MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Section 165(5) of the New York 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 Design-Builder must certify that it or any individual or legal entity in which the Design-Builder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the Design-Builder 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 MTA and/or its designee. Failure of the Design-Builder to provide the required certification contained in the Invitation for Bid/Request for Proposal/Contract Documents shall render the Design-Builder ineligible for award of the Contract pursuant to Section 165(5)(b) of the New York State Finance Law.

GP 12.10 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 the Railroad, 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 MTA (or applicable public authority) without incurring any penalty or damages on account of such cancellation or

termination, but any monies owing by MTA (or public authority) for goods delivered or work done prior to the cancellation or termination shall be paid.

GP 12.11 NON-COLLUSIVE BIDDING CERTIFICATION

The Design-Builder 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 Design-Builder has not complied with items (1), (2) and (3) of the certification, the Design-Builder's bid/proposal/offer shall not be considered for award nor shall any award be made unless the Procurement Officer or his designee determines that such disclosure was not made for the purpose of restricting competition. The fact that the Design-Builder (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 New York State Finance Law.

GP 12.12 IRAN DIVESTMENT ACT CERTIFICATION

- A. By entering into the Contract, the Design-Builder certifies that it is not on the "Entities Determined To Be Non-Responsive Proposers/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York State Office of General Services ("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 Design-Builder 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 Design-Builder also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before MTA may approve a request for assignment of the Contract.
- B. During the term of the Contract, should MTA receive information that a person (as defined in the New York State Finance Law §165-a) is in violation of its Iran Divestment Act certifications, MTA 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 MTA 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 Design-Builder in default.
- C. MTA 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 Design-Builder should it appear on the Prohibited Entities List hereafter.

GP 12.13 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 Design-Builder's disclosure of prior non-responsibility determinations to MTA. In accordance with

Section 139-k, the Design-Builder shall disclose to MTA 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 Design-Builder fails to disclose accurate or complete information required by Section 139-k(2) or if the Design-Builder's certification pursuant to Section 139-k is found to be intentionally false or intentionally incomplete, MTA may terminate the Contract without costs to the Design-Builder.

GP 12.14 NEW YORK STATE LABOR LAW

The Design-Builder agrees to comply with applicable requirements of the New York State Labor Law. More particularly, if any part of the work under the Contract falls within the purview of the New York State Labor Law, the Design-Builder 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 New York State Labor Law, the Design-Builder agrees and stipulates that no laborer, workman or mechanic in the employ of the Design-Builder, 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 New York State 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 New York State 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 New York State Labor Law; and that each laborer, workman or mechanic employed by the Design-Builder 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 New York State Labor Law. In obedience to the requirements of Section 222-a of the New York State Labor Law, as amended and supplemented, the Design-Builder further agrees that if the provisions of the said Section 222-a are not complied with, the Contract shall be void.

GP 12.15 PREVAILING WAGE RATE AND SUPPLEMENTS

Pursuant to Section 220-d of the New York State Labor Law, if this Contract is for the construction, reconstruction, maintenance and/or repair of a public work, the Design-Builder, 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, workmen 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.

The minimum hourly wage rates and prevailing supplements are available from the office the Industrial Commissioner of the State of New York. 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.

If after entering into the Contract, the Design-Builder (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 Design-Builder, subcontractor or person shall be guilty of a misdemeanor. Upon conviction of a violation of Section 220-d, the Design-Builder, 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 Design-Builder, 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 Design-Builder, subcontractor or other person shall be entitled to receive any sum nor shall MTA pay the same or authorize its payment from the funds under its charge or control to the Design-Builder, subcontractor or such person for work done upon any contract, on which the Design-Builder, subcontractor or such person has been convicted of second offense in violation of the provisions of Section 220-d.

GP 12.16 PROHIBITION AGAINST DISCRIMINATION IN EMPLOYMENT OF NEW YORK STATE CITIZENS IN PUBLIC WORKS CONTRACTS

Pursuant to Section 220-e of the New York State 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 Design-Builder 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 Design-Builder, 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 Design-Builder 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 MTA, 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.

GP 12.17 COMPLIANCE WITH WORKERS' COMPENSATION LAW

Pursuant to Section 142 of the New York State Finance Law, the Design-Builder 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 Design-Builder to provide the required insurance coverage under this section shall render the Contract void and of no effect.

GP 12.18 STEEL COMPONENTS

Pursuant to Section 2603-a of the New York Public Authorities Law, (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 MTA; 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.

GP 12.19 TROPICAL HARDWOODS AND TROPICAL WOOD PRODUCTS

Except as permitted by Section 165(b) of the New York State Finance Law, MTA 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 New York State Finance Law) by the Design-Builder 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 the New York 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.

GP 12.20 RECYCLED PRODUCTS

The Design-Builder shall supply MTA with products that comply with Section 2878-a of the New York Public Authorities Law, which requires that all products purchased by MTA 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 the New York State Economic Development Law, and which meets the requirements of Section 27-0717(2) of the New York State Environmental Conservation Law.

GP 12.21 NOTICE REGARDING TOXIC SUBSTANCES

Pursuant to Section 876 of the New York State Labor Law and Federal law, the Railroad and MTA must (a) advise their 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 the Railroad and MTA facilities. To facilitate the Railroad's and MTA's notice to its employees, if this Contract involves the use or sale of toxic substances, the Design-Builder shall, during the Contract (including any purchase orders):

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

The MTA Capital Construction Company
Attn: Corporate Safety Department
2 Broadway
New York, New York 10004

- B. SDS shall contain all health hazard information as required under Federal OSHA Regulations:

Identity of manufacturer, with emergency telephone number.
Hazardous ingredients, with specific work exposure limits.
Physical and chemical characteristics.
Physical hazards.
Reactivity data.
Health hazards, with target organs.
Precautions for safe handling and use (including emergency procedures).
Control measures used to reduce potential harmful exposure.
Emergency first aid procedures.
Spill or leak clean-up procedures.
Waste disposal information.

- C. Manufacturer's product labeling shall include the following:

Identity of chemical compound.
Identity of manufacturer and emergency telephone number.
Health Hazards with target organs.
Storing and handling instructions.
Protective equipment, including protective equipment symbols.
First Aid instructions.
Spill or leak clean-up procedure.

- D. 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. MTA 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 MTA Safety Department, MTA reserves the right to terminate the Contract.

- E. Submittal of a SDS does not constitute the acceptance of the product by MTA. If the Design-Builder fails or refuses to comply with these provisions, MTA may declare the Design-Builder to be in default and exercise its rights under the termination provisions of the Contract.

GP 12.22 DIESEL EMISSIONS REDUCTION ACT

The Design-Builder 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 New York State Environmental Conservation Law, and its implementing regulations.

In accordance with DERA, the Design-Builder:

- A. Will use ultra-low sulfur diesel fuel (≤ 15 ppm) in all heavy-duty diesel vehicles (>8500 lbs. G.V.W.R.) ("HDVs") employed at or on Railroad/MTA job sites in rendering services or providing materials or equipment hereunder unless said vehicles are otherwise exempt.
- B. Represents that all of its affected vehicles will meet the Particulate Matter (PM) and Oxides of Nitrogen (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 NO_x at the highest classification level for emission control strategies that is applicable to the particular engine and application ("Best Available Retrofit Technology" or "BART"), 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).

If the Design-Builder 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 Design-Builder will present same to the Railroad/MTA during negotiations or with its bid/proposal documents.

The Design-Builder understands and acknowledges that the Railroad/MTA is required to submit an annual report detailing compliance with DERA by the Railroad/MTA and the Design-Builder. The Design-Builder agrees that it will provide, no later than September 1st of each calendar year, the following information as to any covered vehicles performing work on any Railroad/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.

GP 12.23 COMPLIANCE WITH EXECUTIVE ORDER 134

If the Contract involves the use or sale of cleaning products, in the performance of this Contract, the Design-Builder shall comply with New York State Executive Order 134, which requires MTA 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.

GP 12.24 COMPLIANCE WITH EXECUTIVE ORDERS 111 AND 142

In the performance of this Contract, the Design-Builder shall comply with New York State Executive Orders 111 and 142, which require MTA to

- A. with respect to energy efficiency:
 - (i) 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;
 - (ii) in the design, construction, operation and maintenance of new Railroad or MTA 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;
 - (iii) in the construction of new Railroad or MTA buildings, achieve 20% improvement in energy efficiency performance relative to levels required by New York State's Energy Conservation Construction Code, as amended;
 - (iv) in the substantial renovation of existing Railroad or MTA 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 Railroad or MTA 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 the Railroad's or MTA's purchase of energy generated from wind, solar, thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuels cells;
- E. with respect to the Railroad or MTA 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.

GP 12.25 BREACH OF SECURITY OF PRIVATE INFORMATION

Pursuant to Section 208 of the New York State Technology Law, if this Contract involves the ownership, licensing or maintenance of computerized data that includes private information, the Design-Builder shall immediately notify MTA 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.

GP 12.26 CONTRACTS WITH FOREIGN BUSINESS ENTERPRISES

The Design-Builder is hereby notified that pursuant to Section 165(6) of the New York State Finance Law, if the Design-Builder'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 Design-Builder may not be awarded the Contract unless the MTA waives the requirements of Section 165(6).

GP 12.27 DESIGN-BUILDER AND SUBCONTRACTOR DISCLOSURE OBLIGATIONS UNDER NEW YORK PUBLIC AUTHORITIES LAW 1269-G

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

- A. Comply with the requirements of Section 1269-g of the New York Public Authorities Law, as amended and supplemented, and with rules and regulations that the Railroad and/or MTA may adopt pursuant to Section 1269-g(6).
- B. No later than ninety (90) days from the effective date of this Contract, the Design-Builder shall file with MTA a certification signed by an officer of Design-Builder and sworn to under penalties of perjury that the Design-Builder 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 Design-Builder posted and distributed and a description of how that it has been posted and distributed.
- C. At such time as the Railroad and/or MTA have posted on their public internet websites, currently www.lirr.org and www.mta.info, sample statements, displays and other materials that provide the information required by Section 1269-g, the Design-Builder may use the Railroad's and/or MTA's sample statements, displays and other materials in complying with Section 1269-g. Until the Railroad and/or MTA have posted such information, it is the Design-Builder'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 the Railroad 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 New York State Finance Law, and the role of that act in preventing and detecting fraud and abuse in work paid for by the Railroad and/or MTA or with funds originating from the Railroad 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 New York State Finance Law (the New York False Claims Act) pursuant to Section 191 of the New York State Finance Law, or who report illegal conduct that threatens the health or safety of the public pursuant to Section 740 of the New York State Labor Law.
- D. The Design-Builder 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 New York Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that MTA 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 Design-Builder 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 Design-Builder shall file with MTA 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 Design-Builder posted and distributed and a description of how that information has been posted and distributed.
- F. Material compliance by the Design-Builder with these provisions of the Contract and with Section 1269-g shall be a material condition of payment. The Design-Builder 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 Design-Builder shall include a certification signed by an officer of the Design-Builder and sworn to under penalties of perjury certifying that the Design-Builder and every subcontractor has continued to comply with the requirements of Section 1269-g of the New York Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that MTA may adopt pursuant to Section 1269-g(6).

GP 12.28 STATE COMPTROLLER APPROVAL

The Design-Builder acknowledges that, pursuant to New York State Public Authorities law Section 2879-a and the regulations promulgated thereunder, the New York State Comptroller may, at his election, determine that the Contract is subject to the Comptroller's prior approval. Anything herein to the contrary notwithstanding, the Design-Builder agrees that if in accordance with Section 2879-a of the New York State Public Authorities Law and such regulations, MTA receives notice from the State Comptroller that he has determined that the Contract is subject to the State Comptroller's prior written approval

(a) 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 State Comptroller, shall not be valid, effective or binding upon MTA until the earlier of (i) the State Comptroller's approval of the Contract (or such amendment, as the case may be), or (ii) ninety (90) days after the submission of the Contract (or such amendment, as the case may be) to the State Comptroller for approval if the Comptroller has not approved or disapproved the Contract (or such amendment) within that time, and

(b) if, after review, the State Comptroller determines to disapprove the Contract, MTA shall have the right, at its election, to re-submit the Contract to the State Comptroller with such changes therein as shall be agreed upon by MTA and the Design-Builder to address the reasons for the State Comptroller's prior disapproval, or (ii) to declare, by written notice to the Design-Builder (either after initial disapproval by the State Comptroller or after re-submission of the Contract and subsequent further disapproval by the State Comptroller) that the Contract is null and void ab initio, and upon such declaration the Contract shall be considered null and void ab initio, as if it had never been executed, and in such instance neither the Railroad, the MTA, nor the State of New York shall have any further liability to the Design-Builder on account of or under the Contract, or as a result of such declaration.

GP 12.29 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.

GP 12.30 COMPLIANCE WITH APPLICABLE LAW

The Design-Builder shall comply with (i) all applicable Federal and, New York State laws applicable to the performance of the Contract., and (iii) where so directed in writing by MTA, with the provisions of any municipal or local law applicable to the performance of the Contract as if the Work was being performed for the benefit of a private corporation.

CHAPTER 13 – COMMUNITY BENEFITS FUND

GP 13.01 COMMUNITY BENEFITS FUND

The Contract Price is inclusive of an allowance for a Community Benefits Fund in the amount of \$20,000,000 (“Community Benefits Fund”) whereby payments will be made to third parties or to the Design-Builder to fund additional work to provide certain community benefits or initiatives that are not otherwise required to be provided by the Design-Builder pursuant to the Contract or otherwise required of the Design-Builder or MTA as a matter of legal obligation. Payments may also be made from the Community Benefits Fund to reimburse municipalities and Nassau County for Project-related services requested by MTA. The Community Benefits Fund will be administered in a manner and consistent with guidelines and procedures to be established by MTA. No funds of the Community Benefits Fund may be allocated or committed by the Design-Builder without the consent of MTA, including its approval of the terms of any agreement between the Design-Builder and a recipient of funds. Decisions on specific uses of funds will be made by MTA on a case by case basis, and shall take into account the limited amount of the allowance and the views of interested stakeholders. MTA shall have final authority to determine how to use the funds. Any agreement with a Community Benefits Fund recipient shall include provisions requiring documentation reasonably acceptable to MTA as to the use and actual disbursement of funds. To the extent that any proposed expenditure of funds requires environmental review, such review shall be arranged by MTA at MTA’s expense and undertaken in accordance with applicable law. No grants or awards utilizing MTA funds shall be made for a purpose which would not be authorized if made directly by MTA consistent with its powers under the New York State Public Authorities Law or which would otherwise be prohibited by applicable law or regulations. Design-Builder’s administrative costs in connection with the implementation of the Community Benefits Fund are included in the Contract Price. Any third party costs incurred by MTA in connection with required environmental review shall be reimbursable from the Community Benefits Fund.

CHAPTER 14 – PROJECT LABOR AGREEMENT

GP 14.01 PROJECT LABOR AGREEMENT

The Design-Builder acknowledges that the Project is covered by a certain Project Labor Agreement, dated September 17, 2013, as amended (as so amended, the “PLA”) between the Railroad and the Building and Construction Trades Council of Nassau and Suffolk Counties. Accordingly, the Design-Builder agrees that, at all times during the performance by it of the Work required under the Contract and in connection with all elements of such Work, (i) it shall comply with the terms and conditions of the PLA, and (ii) it shall not take any action or omit to take any action so as to cause the Railroad to be in default of the terms and conditions of the PLA.

CHAPTER 15 – ENVIRONMENTAL IMPACT STATEMENT

GP 15.01 ENVIRONMENTAL IMPACT STATEMENT

The Design-Builder agrees that the scope of the Work to be performed by it under the Contract includes those mitigation measures identified in the Technical Provisions of the Contract. The Design-Builder agrees that in performing all Work required under the Contract, it shall not act in any manner that is contrary to, or in conflict with, the Final Environmental Impact Statement, dated April 12, 2017, for the Project.

CHAPTER 16 – MONTHLY EMPLOYMENT UTILIZATION REPORT

GP 16.01 REPORT SUBMISSION

The Design-Builder shall submit, on a monthly basis, no later than the tenth day of each month for the preceding month, a Monthly Work Force Utilization Report, SDHR Form - 257, New York State Division of Human Rights for non-Federally funded Contracts. A sample monthly report is included herein for informational purposes only. The Design-Builder shall obtain and submit all Monthly Work Force Utilization Reports electronically online with the New York State Contract System (“NYSCS”) <https://ny.newnycontracts.com>, including information on payments made during the prior month towards meeting the Design-Builder’s approved MWBE Utilization Plan, and shall cause all MWBE subcontractors to confirm receipt of such payments online with NYSCS.

**LONG ISLAND RAIL ROAD
MONTHLY WORK FORCE UTILIZATION REPORT
CONSTRUCTION
(INSTRUCTIONS FOR COMPLETION)**

PURPOSE:

The *Monthly Work Force Utilization Report* is prepared by all construction contractors and subcontractors to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government (e.g. U.S. Department of Labor) for reporting equal employment opportunity data. The report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professional and office clerical field office staff working on the contract shall also be reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (month/year).
3. **Contractor or subcontractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code).
4. Contractor or subcontractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
5. **Contract Amount** is dollar amount based on terms of the contract.
6. **Contract number** is the agency assigned number given to the contract (seven digits).
7. **Location of work** including county and zip code where work is performed.
8. **Contract start date** is month/day/year work on contract actually began.
9. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

JOB OR TRADE CATEGORIES:

A field office staff category plus ten job categories are printed on the form. These are trades commonly used in construction. The categories are intended to be general in nature, and may include several occupational job titles. *IF trades other than those identified are required to perform work on the contract, this work should be combined and reported in the "Other" category.* Work level designations of foreman/supervisor (F), journey worker (J), and apprentice/trainee (A) are included as separate entries for each standard job category; hours worked must be recorded opposite the appropriate work level for each.

TOTAL HOURS WORKED DURING REPORTING PERIOD:

Report the total hours worked by *all* employees during the reporting period, regardless of ethnicity, under each job category in column (1) for males (M) and column (2) for females (F). In columns (3) thru (10) report the total hours worked by male and female *minority group members* of one of the following defined groups:

- **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

MINORITY % = sum of all employment of minority group members (M and F) in the job category divided by the total hours worked by all employees in that job category (column 1 + column 2).

FEMALE % = total hours worked by all female employees in the job category (column 2) divided by the total hours worked by all employees in that job category (column 1 + column 2).

TOTAL NUMBER OF EMPLOYEES: record the *total number of all persons employed* during the reporting period, regardless of ethnicity; report the numbers of male (M) and female (F) employees separately.

TOTAL NUMBER OF MINORITY EMPLOYEES: record the *total number of minority persons employed* during the reporting period; report the numbers of minority male (M) and minority female (F) employees separately.

GRAND TOTALS: column totals should be calculated for all job categories combined. Total minority and female percentages should be calculated as shown above, based on the column grand totals.

SUBMISSION:

The monthly work force utilization report is to be completed by *both* prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The prime *contractor* shall complete a report for its own work force, collect reports completed by each subcontractor, and prepare a summary report for the entire combined contract work force. The reports shall include the total work hours for all employees in each work category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 142 of Title 5 of the NYCRR* pursuant to *Article 15-A of the Executive Law*.

[Form on Next Page]

MONTHLY WORK FORCE UTILIZATION REPORT - FORM WF-257 - CONSTRUCTION

Agency _____ Code _____ Reporting Period _____

Contractor Firm Name _____ Address _____ City _____ State _____ ZIP _____

Federal ID/Project No. Circle One: Prime Contractor Subcontractor	Contract No. _____ Location of Work _____ County _____ ZIP _____
Contract Amount \$ _____	Contract Start Date _____ Percent of Job Completed _____

**F=Foreman/Supervisor
 J=Journey Worker
 A=Apprentice/Trainee

Total Hours Worked During Reporting Period

Job/Trade Category**		Total Hours Worked During Reporting Period												Total Number of Employees		Total Number of Minority Employees		
		Total Hours Worked All Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native		Minority %	Female %	M	F	M	F	
		M	F	M	F	M	F	M	F	M	F							
Field/Office Staff																		
	Professionals																	
	Office/Clerical																	
Laborers	F																	
	J																	
	A																	
Equipment Operators	F																	
	J																	
	A																	
Surveyors	F																	
	J																	
	A																	
Truck Drivers	F																	
	J																	
	A																	
Iron Workers	F																	
	J																	
	A																	
Carpenters	F																	
	J																	
	A																	
Cement/Masons	F																	
	J																	
	A																	
Painters	F																	
	J																	
	A																	
Electricians	F																	
	J																	
	A																	
Plumbers	F																	
	J																	
	A																	
Other	F																	
	J																	
	A																	
GRAND TOTAL																		

Company Official Name _____ Title _____
 Company Official Signature _____ Date _____ Telephone No. _____

APPENDIX A

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PROGRAM
SUBMISSION REQUIREMENTS
(Request for Proposals)**

A. NEW YORK STATE LAW AND REGULATIONS

Proposers are advised that this contract is subject to the provisions of Article 15-A of the New York Executive Law (the “State MBE/WBE Law”) and implementing regulations set forth in Chapter XIV, Parts 140 to 145 of Title 5 NYCRR (the “Regulations”) establishing a policy and program of the State to promote equality of economic opportunity for business enterprises owned by minority group members and women. It is the policy of The Metropolitan Transportation Authority (“MTA”) and its subsidiary and affiliated agencies that Minority and Women-Owned Business Enterprises (“MBE/WBEs”), which are certified as such by Empire State Development, Division of Minority and Women’s Business Development (“DMWBD”), are provided the maximum feasible opportunity to participate in the performance of this contract. Each proposer shall take all necessary and reasonable steps to ensure that MBE/WBEs participate and perform work on this contract. A copy of the applicable State MBE/WBE Law and Regulations is available upon written request to the MTA Agency Manager. The MTA Agency Manager works for the MTA Agency sponsoring or awarding this contract.

For this Contract, the MTA Agency Manager’s name, telephone number and address are:

Name: Mark Roche

Telephone No.: 212-878-7459

Address: The MTA Capital Construction Company
2 Broadway
New York, New York 10004

B. CONTRACT PROVISIONS

The successful proposer and the MTA Agency agree as a condition for the award of this contract, to be bound by the provisions of the State MBE/WBE Law and the accompanying Regulations. This Appendix summarizes the relevant provisions of the State MBE/WBE Law and the Regulations. Unless otherwise stated, all terms used in this Appendix shall have the meaning ascribed to them in the State MBE/WBE Law and the Regulations. In the event there is a difference between what is set forth in this Appendix and what is set forth in the State MBE/WBE Law and the Regulations, which are incorporated herein by reference, the State MBE/WBE Law and the Regulations shall govern. The term contractor refers to contractor or consultant, and the term subcontractor refers to subcontractor or subconsultant.

C. GOALS

The respective goals specified for the utilization of minority and women-owned business enterprises

expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of this contract are:

15% for MBE

and

15% for WBE

These goal percentages are subject to the requirements of the State MBE/WBE Law, the Regulations and the provisions of this contract. In the event the successful proposer's proposed level of MBE/WBE participation is less than this prescribed level of MBE/WBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph L below.

The MTA Department of Diversity and Civil Rights, acting on behalf of the MTA Agency, is responsible for determining compliance by the proposer/offeror with MBE/WBE requirements established in this contract. The successful proposer/offeror shall make all MBE/WBE-related submissions required by this contract to the MTA Agency Manager with a copy to the MTA Department of Diversity and Civil Rights, to the attention of:

Name: Vikas Gera Compliance Manager, [REDACTED]
The Metropolitan Transportation Authority
Department of Diversity and Civil Rights
2 Broadway, 16th Floor
New York, NY 10004

D. STATE DIRECTORY

1. In accordance with the State MBE/WBE Law, DMWBD is empowered and requires its director (the "Director"), among other things, to promulgate a directory (the "State Directory") of minority and women-owned business enterprises certified pursuant to the Regulations ("certified businesses"). The State Directory may be accessed on line at: www.empire.state.ny.us.
2. Under the State MBE/WBE Law and Regulations, proposers can only use MBEs and WBEs listed in the State Directory to satisfy the goals in the contract. For the purpose of the federal government's Disadvantaged Business Enterprise ("DBE") Program, the MTA Department of Diversity and Civil Rights has certified certain minority and women-owned business enterprises as DBEs. A firm certified by the MTA Department of Diversity and Civil Rights as a DBE for the federal DBE program, which is not listed in the State Directory may not be used to satisfy MBE/WBE goals established for this contract. **YOU MUST USE THOSE FIRMS IN THE STATE DIRECTORY.**

E. PROMPT PAYMENT TO SUBCONTRACTORS AND RETAINAGE

For public work contracts, the prime contractor is required by law to pay all subcontractors, including each MBE/WBE subcontractor under this prime contract for the work performed under its subcontract no later than seven (7) Calendar Days from the receipt of any payment the prime

contractor receives from the MTA Agency for work performed by the subcontractor, and to pay interest at the rate required by law if payment is not made within the aforesaid seven (7) Calendar Days.

For all contracts other than public work contracts, the prime contractor agrees to pay all subcontractors under this prime contract for the satisfactory performance of their subcontracts no later than thirty (30) days from the receipt of each payment the prime contractor receives from the MTA Agency for work performed by the subcontractor.

If this prime contract includes retainage, the prime contractor may not retain more than the lesser of five percent (5%) or the retainage percentage provided in the contract between the MTA Agency and prime contractor, except that the prime contractor may retain not more than ten percent (10%) of each payment to the subcontractor where, prior to entering into a subcontract with the prime contractor, the prime contractor requested that the subcontractor provide a performance bond and a payment bond for subcontractors, labor and/or material suppliers, each in the full amount of the subcontract and the subcontractor was unable or unwilling to provide such bonds.

The prime contractor must return retainage to any subcontractors within thirty (30) days of receiving a payment from the MTA Agency which returns the prime contractor's retainage for work satisfactorily performed by the subcontractor.

F. MBE/WBE UTILIZATION PLAN

1. A proposer is required to include in its technical proposal an interim MBE/WBE Utilization Plan. The MBE/WBE Utilization Plan shall include the name, address, telephone number and Federal identification number of the proposer. The MBE/WBE Utilization Plan description shall include a statement that the proposer will achieve the MBE/WBE goals or use good faith efforts to do so as specified in this Appendix and shall show for each MBE/WBE firm: (i) the name, address and Federal identification number of the MBE/WBE the proposer intends to use if awarded this contract, (ii) a description of the services/work to be performed by the MBE/WBE and, (iii) the estimated or, if known, actual dollar amounts to be paid to the MBE/WBE firm, and (iv) the approximate performance dates of each component of the contract to be performed by each such MBE/WBE firm.
2. A proposer is required to submit with its cost proposal a properly completed and executed interim "MBE/WBE Utilization Plan Form" (Form 15A.1) and an Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4) for each MBE/WBE firm identified on Form 15A.1. The cost proposal shall include the dollar value and cost breakdown of each subcontract for each MBE/WBE identified in the technical proposal. Proposers have been furnished with these forms in the solicitation document. Additional forms may be obtained from the MTA Department of Diversity and Civil Rights. The MTA Agency, in its sole discretion, may extend the submission period for a reasonable time.
3. The successful Proposer shall be required to supplement the MBE/WBE Utilization Plan during the course of performance of the Contract to reflect its good faith efforts to include MWBEs in the performance of the Contract. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MBE/WBE Utilization Plan and submitted to MTA.

4. If a proposer is a joint venture, or has a teaming agreement, or other similar arrangement that includes a MBE/WBE, and proposes to include such MBE/WBE participation in its proposal for meeting the goals, it must submit the following to the MTA Agency Manager for review and approval:
 - a. The name, address, telephone number and Federal identification of each partner or party to the agreement;
 - b. The Federal identification number of the joint venture or entity established to respond to this solicitation, if applicable;
 - c. A copy of the agreement establishing the joint venture, team, or other similar arrangement. If that agreement does not specify and describe the percentage of interest owned by each party to the agreement and the value contributed/added by each party, you must provide copies of other document(s) which provide the missing information; and
 - d. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, the teaming agreement or other similar arrangement.
5. If a revised scope of services or cost proposal is requested by the MTA Agency Manager, unless otherwise approved in writing in advance by the MTA Agency Manager, a revised MBE/WBE Utilization Plan Form (Form 15A.1) and the accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4) for each MBE/WBE firm identified on the Form 15A.1, must be submitted which: (i) achieves the percentage goals set forth in paragraph C, and (ii) provides for the proposer to use the same MBE/WBE firms specified in its original MBE/WBE Utilization Plan Form (Form 15A.1) or as specified in paragraph J .
6. By listing a firm on its MBE/WBE Utilization Plan Form (Form 15A.1) and submitting the accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), the proposer is representing the following:
 - a. It intends to use the firm for the work specified in the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), including any change order work required to perform the specified work;
 - b. On the basis of information known to it and after reasonable inquiry, it believes such firm is a certified MBE/WBE and is technically and financially qualified to perform the work specified and that the firm is available to perform the work;
 - c. If it is awarded the contract, it will enter into a subcontract with such MBE/WBE (or an approved substitute), subject to the terms and conditions of this contract, and provided that the MBE/WBE is certified by the NYS DMWBD for the work described and at the price set forth in the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4);
 - d. It will not substitute another firm for a MBE/WBE firm listed in its MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), unless the MTA Agency

provides prior written approval in accordance with paragraph O below; and

- e. If proposer is a MBE/WBE and lists itself on the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), that it will perform the work specified therein with its own workforce; and
- f. If the proposer is part of a joint venture, or has a teaming agreement, or other similar arrangement with a certified MBE/WBE, its value added or participation is equal to the percentage of the goals set forth in proposal.

G. DESIGN-BUILDER'S OBLIGATION TO MEET MBE/WBE GOALS

A contractor is contractually obligated to make good faith efforts to meet the MBE/WBE goals established in paragraph (C) of this Appendix A . If contractor is unable for any reason to meet the goal or utilize a previously identified MBE/WBE firm in an approved plan, the contractor must promptly give written notice to the MTA Department of Diversity and Civil Rights with details of deficiency and the plan to remedy the deficiency. Any request by a contractor for a waiver of goals contained in its approved MBE/WBE Utilization Plan must be made in accordance with paragraph J of this Appendix. A contractor remains obligated to make good faith efforts to meet the goals in its approved MBE/WBE Utilization Plan using the certified MBE/WBE firms identified in its Plan, absent the contractor having been granted a waiver.

H. CREDIT TOWARD MBE/WBE GOALS

No credit toward meeting either or both the MBE or WBE goal will be allowed unless the DMWBD has certified a firm as a MBE or WBE. Only the value of the commercially useful function, as that term is defined in 5 NYCRR § 140.1, actually performed by the MBE or WBE will be counted toward the respective goal.

1. The MTA Department of Diversity and Civil Rights will credit expenditures to a MBE/WBE contractor toward MBE/WBE goals, only if the MBE/WBE provides an actual service other than acting as an intermediary between a supplier and customer. Contractors using MBE or WBE firms merely to pass through funds and invoices will not be given credit toward the goal. Contractors are prohibited from claiming credit toward the goal from any such uses of MBE or WBE firms.
2. A prime contractor which is certified as a MBE may use the work it performs to meet the MBE goal and a prime contractor which is certified as a WBE may use the work it performs to meet the WBE goal.
3. A firm which is certified both as a MBE and a WBE may be counted towards either a MBE goal or a WBE goal but such participation may not be counted towards both goals or divided between the MBE goal and the WBE goal.
4. The portion of a contract with an MBE or WBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MBE or WBE shall be 60% of the total value of the contract. The portion of a contract with an MBE or

WBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MBE or WBE.

I. DEFICIENCIES IN PROPOSER MBE/WBE UTILIZATION PLAN

Within twenty (20) days of receipt of a proposer's MBE/WBE Utilization Plan, and any amendment thereto, the MTA Agency Manager will send a written notice to the proposer of acceptance or deficiency of the Plan. If the notice specifies a deficiency, within seven (7) business days after receipt, the proposer must deliver to the MTA Agency Manager a written response to the notice of deficiency. Failure to timely respond may be grounds for disqualification.

The MTA Agency Manager may agree in writing to allow (i) additional time to submit, or (ii) additional submissions after the seven (7) business day period, based upon its determination that the proposer is making a good faith attempt to submit a response or to correct the deficiencies.

J. WAIVERS

1. When to Request a Total or Partial Waiver:

- a. If the contract has not yet been awarded, a proposer may request a waiver simultaneously with the proposer's submission of its MBE/WBE Utilization Plan, if that plan fails to demonstrate that the firm will meet the goals.
 - b. If a proposer's remedy to a notice of deficiency of the MBE/WBE Utilization Plan is not timely provided or is found by the MTA Agency to be inadequate, the proposer shall request a waiver within five (5) business days of request by the MTA Agency.
 - c. If the contract has been awarded to the firm and its MBE/WBE Utilization Plan has been approved, the contractor shall request a waiver at the earlier of the following: a) promptly after the contractor realizes that it will not meet the goals; or b) prior to the submission of request for final payment on the contract.
2. Waiver Form: A request for a waiver must be made by submitting a completed "Request for Total or Partial Waiver of MBE/WBE Goals Pursuant to MBE/WBE Utilization Plan Form" (Form 15A.2) and the information specified therein. Additional forms are available upon request from the MTA Agency Manager.
3. Evaluation of Requests: The MTA Department of Diversity and Civil Rights will evaluate and determine whether to grant a request for a total or partial waiver of goal requirements in accordance with the Regulations and on the basis of the information provided on Form 15A.2 and such other information as the MTA Department of Diversity and Civil Rights deems relevant. The goals set by the MTA Department of Diversity and Civil Rights are based on the criteria set forth in the Regulations. The MTA Department of Diversity and Civil Rights will consider whether the Proposer made good faith efforts to identify and afford subcontracting opportunities to MBEs and WBEs, which were technically and financially qualified to perform the work specified, available to perform the work, and submitted competitive proposals.

4. A contractor requesting a waiver shall submit its written request to the MTA Agency Manager, with a copy to the MTA Department of Diversity and Civil Rights. Requests for a waiver shall include a copy of all documentation supporting the request as specified in the Regulations and in Form 15A.2. The contractor and/or subcontractor shall supply any additional information and/or documentation applicable to the request for a waiver that the MTA Agency Manager or the MTA Department of Diversity and Civil Rights requests. Contractors and/or subcontractors that intend to file a post-award request for a waiver will be subject to all pre-award MBE and WBE requirements set forth in the contract documents.

K. GOOD FAITH EFFORTS

The MTA Department of Diversity and Civil Rights shall not grant any automatic waivers of goal requirements but may consider any criteria it determines relevant or which a Proposer submits to document its good faith efforts, provided that the criteria set forth in the Regulations (*see* Section 142.8) will, at a minimum, be considered for purposes of determining whether a Proposer has documented good faith efforts.

L. DISQUALIFICATION OF PROPOSER

The MTA Agency may disqualify a proposer as non-responsible: (i) for failure to submit a MBE/WBE Utilization Plan; (ii) for failure to respond to deficiencies in the MBE/WBE Utilization Plan notice in accordance with paragraph I above; or (iii) upon a determination that the proposer's MBE/WBE Utilization Plan does not show that the goal requirements will be met and the proposer has not documented that it has made good faith efforts to develop a MBE/WBE Utilization Plan that satisfies the goal requirements. The MTA Agency shall issue to a disqualified proposer a notice of disqualification and statement of reasons for its final decision. The disqualified proposer may request a hearing in accordance with the procedures outlined in Executive Law Article 15-A and the Regulations. See paragraph M, below.

M. COMPLAINTS BY A PROPOSER

A proposer who has received a written notice of disqualification prior to the award of a contract, as outlined above, may file a complaint with the Executive Director of the DMWBD ("Director") within five (5) days of receiving such a notice. The proposer shall serve a copy of its complaint upon the Director and the MTA Agency by personal service or certified mail, return receipt requested.

After the contract has been awarded, a contractor who is notified by the MTA Agency that its MBE/WBE Utilization Plan is deficient may file a complaint within twenty (20) days of such notice with the Director asserting that the MTA Agency unreasonably: (i) denied in whole or part a request for waiver of a goal; (ii) determined that the contractor has not acted in good faith, has failed, or is failing or refusing to comply with a goal; or (iii) failed to grant or deny a request for waiver within twenty (20) days of its receipt of a completed Form 15A.2.

The procedure and requirements for filing and resolving such a complaint are set forth in the Regulations.

N. REMEDIES FOR DESIGN-BUILDER'S FAILURES

In the event of a contractor's willful and intentional failure to comply with the State MBE/WBE Law, the Regulations or the provisions of this contract governing MBE/WBE participation requirements, and in the event the MTA Agency elects not to follow the procedures set forth in paragraph U below, the Design-Builder shall be liable to the MTA Agency for liquidated damages in an amount equal to the difference between the dollar amount of MBE/WBE participation set forth in the contract or the Design-Builder's approved MBE/WBE Utilization Plan and the actual dollar amount credited by the MTA Agency for such participation. Such a willful and intentional failure on the part of the contractor shall also constitute a breach of this contract and the MTA Agency may avail itself of such other remedies as are provided in the contract or at law or equity on account of such breach.

O. MBE/WBE MODIFICATIONS

In the event that a contractor wishes to modify its MBE/WBE Utilization Plan (Form 15A.1) after its submission or after a contract is awarded, then the contractor must notify the MTA Agency Manager, in writing, and request approval for the modification. A prime contractor may not, without the MTA Agency's prior consent, terminate for convenience a MBE or WBE subcontract approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or MBE/WBE firms, which differ from those identified on the approved MBE/WBE Utilization Plan (Form 15A.1). When a MBE/WBE subcontractor or subconsultant is terminated or fails to complete its work for any reason, the prime contractor must make good faith efforts to find another MBE/WBE subcontractor to substitute for the original MBE/WBE. These good faith efforts must be directed at finding other MBE/WBEs to perform at least the same amount of work under the contract as the former MBE/WBE to the extent needed to meet the contract goal. The contractor must provide the MTA Agency Manager with any and all documentation and information as may be requested with respect to the modification, which, at a minimum must include the documentation detailed in Section 142.8(a) of the Regulations. If the MTA Department of Diversity and Civil Rights determines that the prime contractor failed to make good faith efforts, the MTA Agency may avail itself of the remedies included in this contract.

P. EEO/NON-DISCRIMINATION

1. The proposer agrees as a precondition to entering into a valid and binding contract, not to discriminate against any employee or applicant for employment for work under this contract, or any subcontract hereunder, by reason of race, creed, color, national origin, sex, age, disability or marital status, and that it shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on this contract. The proposer agrees to undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The proposer shall submit prior to the award of this contract, an equal employment opportunity ("EEO") policy statement to the MTA Agency within seven days of receiving

a notice of selection. The proposer's EEO policy statement must include the following language:

- a. The Design-Builder will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on the contract.
 - b. The Design-Builder will 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.
 - c. At the request of the MTA Agency, the Proposer 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 and that such employment agency, labor union or representative will affirmatively cooperate in the implementation of the Design-Builder's obligations herein.
 - d. Except for construction contracts, prior to an award of a contract, the proposer shall submit to the MTA Agency a staffing plan of the anticipated work force to be utilized on the contract or, when required, information on the Design-Builder's total work force, including apprentices, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the MTA Agency. The information must be submitted on the Staffing Plan Form, attached below in this Appendix A.
 - e. After the award of the contract, the contractor shall submit to the MTA Agency a workforce utilization report, in a form and manner required by the MTA Agency, of the work force actually utilized on the contract, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the MTA Agency.
 - f. The Design-Builder shall include these provisions in every subcontract for work performed in connection with this contract in such manner that the requirements of these provisions will be binding on each subcontractor as to work in connection with the contract, including the requirement that subcontractors shall 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, and when requested, provide to the Design-Builder information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the contract.
3. Upon a written request, the MTA Department of Diversity and Civil Rights shall supply contractors with labor force availability data, for specific job titles that fall within the relevant occupational categories. Contractors may use this data to identify, recruit and

retain minority group members and women for participation on this contract.

4. The requirements of this paragraph shall not apply to any employment or application for employment outside New York State or solicitations or advertisements thereof, or any existing employment programs outside New York State.

Q. EEO SUBMISSION REQUIREMENTS

The successful proposer must submit to the MTA Agency Manager, a EEO-1 Form within seven Calendar Days after it receives verbal notification of the selection. All other proposers must submit the document within seven (7) Calendar Days of a verbal request from the MTA Agency Manager. The MTA Agency Manager will confirm, in writing, any verbal notification. However, the time frame for proposer's response is based upon the date of the verbal notification. Upon written request, the MTA Agency Manager may extend the deadline for submission of an EEO-1 Form. If a proposer does not submit an EEO-1 Form, the proposal may be disqualified unless reasonable justification for such failure is provided in writing or a commitment is made to provide such document by a date certain established by the MTA Agency. Requirements of this section will also be binding on each subcontractor.

R. DESIGN-BUILDER COMPLIANCE REPORTING

The MTA Department of Diversity and Civil Rights is responsible for determining compliance by the Design-Builder with the EEO/nondiscrimination obligations and MBE/WBE goals established in the contract. The MTA Department of Diversity and Civil Rights may determine that the Design-Builder is complying with the EEO/nondiscrimination obligations and MBE/WBE goals set forth in the MBE/WBE Utilization Plan (Form 15A. 1) by examining reports received from a contractor, on-site inspections, progress meetings regarding work required by the contract, or other MTA Agency actions taken in the ordinary course of administering the contract.

S. REPORTING AND RECORDKEEPING

1. The Design-Builder shall submit to the MTA Agency documentation concerning its performance in meeting the MBE/WBE goal during the term of the contract.
 - a. If the duration of this contract is less than one year, within sixty (60) days of the award date of this contract, unless extended by the MTA Agency in writing, the Design-Builder must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan (Form 15A.1) and accompanying Intent to Perform as a Subcontractor/Subconsultant (Form 15A.4) or with substitutes approved by the MTA Agency.
 - b. If the duration of this contract is one (1) year or more, not later than thirty (30) days before a subcontractor commences work on the contract, unless extended by the MTA Agency in writing, the Design-Builder must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan (Form 15A.1) and accompanying Intent to Perform as a Subcontractor/Subconsultant (Form 1 5A.4) or with substitutes approved by the MTA Agency.

- c. The Design-Builder immediately upon execution shall provide a copy of the Design-Builder's executed subcontract agreement(s) with MBE/WBEs to the MTA Agency, with a duplicate copy sent to the MTA Department of Diversity and Civil Rights.
 - d. The Design-Builder must submit updated subcontract agreements with MBE/WBEs any time a significant change to items of work, material, services, or subcontract value occurs.
2. The Design-Builder must submit a work schedule outlining when each MBE/WBE subcontractor will commence and complete work on the contract.
 3. The Design-Builder must submit monthly reports on progress toward meeting its MBE/WBE goal. The Monthly MBE/WBE Progress Reports (Form 15A.3), submitted with the contract documents, shall be mailed to the MTA Agency Manager with a copy to the MTA Department of Diversity and Civil Rights.
 4. The Design-Builder must promptly notify the MTA Agency Manager of any situation in which any progress payment is not made to a MBE/WBE subcontractor or supplier within the time frames set forth in this contract. Nothing herein shall create any obligation on the part of the MTA Agency to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and materialman and the MTA Agency.
 5. The Design-Builder must promptly inform the MTA Agency Manager, in writing, when it has reason to believe its attainment of the MBE/WBE participation goal is in jeopardy. In this regard, the Design-Builder must inform the MTA Agency Manager, in writing, with supporting documentation, immediately upon learning that a MBE/WBE firm is unable or unwilling to perform the subcontracted services.
 6. The willful making of false statements or the willful submission to MTA of incorrect information shall be treated by the MTA Agency as a breach of the contract.

T. WORKFORCE UTILIZATION REPORTS

1. Prior to the award of this contract the proposer shall submit an EEO Policy Statement and a staffing plan, as described in Section 143.3 of the Regulations. Where the work force to be utilized in the contract cannot be separated out from the Design-Builder's and/or subcontractor's total work force, the proposer shall submit to the MTA Agency Manager, instead of the staffing plan, a report of Design-Builder's and/or subcontractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal occupational categories. The information must be submitted on the Staffing Plan Form, attached below in this Appendix A. A proposer's failure to submit an EEO Policy Statement and a staffing plan or total work force data shall result in the rejection of the proposal unless the proposer provides the MTA Agency with a reasonable justification in writing for such failure or makes a commitment to submit an EEO Policy Statement and a staffing plan or work force data by a date certain established by the MTA Department of

Diversity and Civil Rights.

2. After the award of a the contract, the Design-Builder shall submit on a monthly basis, throughout the life of the contract, a workforce utilization report to the MTA Agency Manager, which details the number of employees that worked on activities related to this contract. The information must be submitted on the appropriate MTA standard form WF-257, a copy of which is attached in GP 16.01.
3. During the lifetime of the contract, the Design-Builder shall undertake or continue existing EEO programs and shall ensure that all subcontractors comply with the EEO requirements.

U. COMPLAINT BY MTA AGENCY AGAINST DESIGN-BUILDER TO NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT – FAILURE TO COMPLY WITH THE MBE/WBE PROGRAM OR BAD FAITH, WILLFUL AND INTENTIONAL FAILURE TO COMPLY

In the event the MTA Agency determines that the Design-Builder has failed to comply with the State MBE/WBE Law, the Regulations or this contract, including that Design-Builder has acted in bad faith or has willfully and intentionally failed to comply with the same and elects not to enforce its rights as set forth in Paragraph N, above, the MTA Agency may file a complaint with the Director pursuant to Executive Law, Section 316, seeking specified remedies, which include, but are not limited to, the imposition of various sanctions, fines or penalties against the Design-Builder. The procedure and requirements with respect to filing and resolving any such complaint are set forth in the Regulations. The Design-Builder is hereby put on notice that the penalties imposed by the Director for any violation which is premised upon either a fraudulent or intentional misrepresentation by the Design-Builder or the Design-Builder's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the Design-Builder shall be ineligible to submit a proposal to any contracting State agency, which is defined in the State MBE/WBE Law and the Regulations to include any MTA Agency, and many other non-MTA agencies, or be awarded any State agency contract for a period not to exceed one (1) year following the final determination; provided however, if a Design-Builder has previously been determined to be ineligible to submit a proposal pursuant to applicable regulations, the penalties imposed for any subsequent violation, if such violation occurs within five (5) years of the first violation, may include a determination that the Design-Builder shall be ineligible to submit a proposal to any contracting State agency or be awarded any State agency contract for a period not to exceed five (5) years following the final determination.

V. SUBSEQUENT RESPONSIBILITY DETERMINATIONS

The MTA Agency may take into account information regarding a Design-Builder compliance with the MBE/WBE program requirements under this contract, including, but not limited to its failure to meet goals or to demonstrate good faith efforts to meet same, etc., as well as information of willful or intentional failures, fraud or intentional misrepresentations on the part of the contractor, as described in the State MBE/WBE Law and Regulations, in rendering determinations as to whether the contractor, having submitted a proposal in connection with future contract solicitations, should be found to be a responsible proposer, as required pursuant to Section 1209 or 1265-a, as applicable, of the New York Public Authorities Law.

W. PROHIBITION OF AGREEMENTS TO RESTRICT COMPETITION

Agreements between a proposer and a MBE/WBE firm in which the MBE/WBE firm agrees not to provide subcontracting quotations to any other proposers are prohibited.

STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
Offeror's Name:		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor
Offeror's Address:		Subcontractor's name _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification										Disabled		Veteran	
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	Disabled (M) (F)	Veteran (M) (F)							
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	
PREPARED BY (Signature):								TELEPHONE NO.:					DATE:				
NAME AND TITLE OF PREPARER (Print or Type):								EMAIL ADDRESS:					Submit completed with bid or proposal MWBE 101 (Rev 03/11)				

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
 - **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- GENDER** Male or Female

EEO-1 JOB CLASSIFICATION GUIDE, 2014

(Effective beginning with the 2014 EEO-1 survey)

EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Exec/Senior Offs & Mgrs.	Chief Executives *** (See Details in Bottom Note)	11-1011	0010
First/Mid Offs & Mgrs.	General and Operations Managers	11-1021	0020
First/Mid Offs & Mgrs.	Advertising and Promotions Managers	11-2011	0040
First/Mid Offs & Mgrs.	Marketing Managers	11-2021	0050
First/Mid Offs & Mgrs.	Sales Managers	11-2022	0050
First/Mid Offs & Mgrs.	Public Relations and Fundraising Managers	11-2031	0060
First/Mid Offs & Mgrs.	Administrative Services Managers	11-3011	0100
First/Mid Offs & Mgrs.	Computer and Information Systems Managers	11-3021	0110
First/Mid Offs & Mgrs.	Financial Managers	11-3031	0120
First/Mid Offs & Mgrs.	Industrial Production Managers	11-3051	0140
First/Mid Offs & Mgrs.	Purchasing Managers	11-3061	0150
First/Mid Offs & Mgrs.	Transportation, Storage, and Distribution Managers	11-3071	0160
First/Mid Offs & Mgrs.	Compensation and Benefits Managers	11-3111	0135
First/Mid Offs & Mgrs.	Human Resources Managers	11-3121	0136
First/Mid Offs & Mgrs.	Training and Development Managers	11-3131	0137
First/Mid Offs & Mgrs.	Farmers, Ranchers, and Other Agricultural Managers	11-9013	0205
First/Mid Offs & Mgrs.	Construction Managers	11-9021	0220
First/Mid Offs & Mgrs.	Education Administrators, Preschool and Childcare Center/Program	11-9031	0230
First/Mid Offs & Mgrs.	Education Administrators, Elementary and Secondary School	11-9032	0230
First/Mid Offs & Mgrs.	Education Administrators, Postsecondary	11-9033	0230
First/Mid Offs & Mgrs.	Education Administrators, All Other	11-9039	0230
First/Mid Offs & Mgrs.	Architectural and Engineering Managers	11-9041	0300
First/Mid Offs & Mgrs.	Food Service Managers	11-9051	0310
First/Mid Offs & Mgrs.	Funeral Service Managers	11-9061	0430
First/Mid Offs & Mgrs.	Gaming Managers	11-9071	0330
First/Mid Offs & Mgrs.	Lodging Managers	11-9081	0340
First/Mid Offs & Mgrs.	Medical and Health Services Managers	11-9111	0350
First/Mid Offs & Mgrs.	Natural Sciences Managers	11-9121	0360
First/Mid Offs & Mgrs.	Postmasters and Mail Superintendents	11-9131	0430
First/Mid Offs & Mgrs.	Property, Real Estate, and Community Association Managers	11-9141	0410
First/Mid Offs & Mgrs.	Social and Community Service Managers	11-9151	0420
First/Mid Offs & Mgrs.	Emergency Management Directors	11-9161	0425
First/Mid Offs & Mgrs.	Managers, All Other	11-9199	0430
First/Mid Offs & Mgrs.	Morticians, Undertakers, and Funeral Directors	39-4031	4465
Professionals	Agents and Business Managers of Artists, Performers, and Athletes	13-1011	0500
Professionals	Buyers and Purchasing Agents, Farm Products	13-1021	0510
Professionals	Wholesale and Retail Buyers, Except Farm Products	13-1022	0520
Professionals	Purchasing Agents, Except Wholesale, Retail, and Farm Products	13-1023	0530

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Claims Adjusters, Examiners, and Investigators	13-1031	0540
Professionals	Insurance Appraisers, Auto Damage	13-1032	0540
Professionals	Compliance Officers	13-1041	0565
Professionals	Cost Estimators	13-1051	0600
Professionals	Human Resources Specialists	13-1071	0630
Professionals	Farm Labor Contractors	13-1074	0630
Professionals	Labor Relations Specialists	13-1075	0630
Professionals	Logisticians	13-1081	0700
Professionals	Management Analysts	13-1111	0710
Professionals	Meeting, Convention, and Event Planners	13-1121	0725
Professionals	Fundraisers	13-1131	0726
Professionals	Compensation, Benefits, and Job Analysis Specialists	13-1141	0640
Professionals	Training and Development Specialists	13-1151	0650
Professionals	Market Research Analysts and Marketing Specialists	13-1161	0735
Professionals	Business Operations Specialists, All Other	13-1199	0740
Professionals	Accountants and Auditors	13-2011	0800
Professionals	Appraisers and Assessors of Real Estate	13-2021	0810
Professionals	Budget Analysts	13-2031	0820
Professionals	Credit Analysts	13-2041	0830
Professionals	Financial Analysts	13-2051	0840
Professionals	Personal Financial Advisors	13-2052	0850
Professionals	Insurance Underwriters	13-2053	0860
Professionals	Financial Examiners	13-2061	0900
Professionals	Credit Counselors	13-2071	0910
Professionals	Loan Officers	13-2072	0910
Professionals	Tax Examiners and Collectors, and Revenue Agents	13-2081	0930
Professionals	Tax Preparers	13-2082	0940
Professionals	Financial Specialists, All Other	13-2099	0950
Professionals	Computer and Information Research Scientists	15-1111	1005
Professionals	Computer Systems Analysts	15-1121	1006
Professionals	Information Security Analysts	15-1122	1007
Professionals	Computer Programmers	15-1131	1010
Professionals	Software Developers, Applications	15-1132	1020
Professionals	Software Developers, Systems Software	15-1133	1020
Professionals	Web Developers	15-1134	1030
Professionals	Database Administrators	15-1141	1060
Professionals	Network and Computer Systems Administrators	15-1142	1105
Professionals	Computer Network Architects	15-1143	1106
Professionals	Computer User Support Specialists	15-1151	1050
Professionals	Computer Network Support Specialists	15-1152	1050
Professionals	Computer Occupations, All Other	15-1199	1107

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Actuaries	15-2011	1200
Professionals	Mathematicians	15-2021	1240
Professionals	Operations Research Analysts	15-2031	1220
Professionals	Statisticians	15-2041	1240
Professionals	Mathematical Technicians	15-2091	1240
Professionals	Mathematical Science Occupations, All Other	15-2099	1240
Professionals	Architects, Except Landscape and Naval	17-1011	1300
Professionals	Landscape Architects	17-1012	1300
Professionals	Cartographers and Photogrammetrists	17-1021	1310
Professionals	Surveyors	17-1022	1310
Professionals	Aerospace Engineers	17-2011	1320
Professionals	Agricultural Engineers	17-2021	1340
Professionals	Biomedical Engineers	17-2031	1340
Professionals	Chemical Engineers	17-2041	1350
Professionals	Civil Engineers	17-2051	1520
Professionals	Computer Hardware Engineers	17-2061	1400
Professionals	Electrical Engineers	17-2071	1410
Professionals	Electronics Engineers, Except Computer	17-2072	1410
Professionals	Environmental Engineers	17-2081	1420
Professionals	Health and Safety Engineers, Except Mining Safety Engineers and Inspectors	17-2111	1430
Professionals	Industrial Engineers	17-2112	1430
Professionals	Marine Engineers and Naval Architects	17-2121	1440
Professionals	Materials Engineers	17-2131	1450
Professionals	Mechanical Engineers	17-2141	1460
Professionals	Mining and Geological Engineers, Including Mining Safety Engineers	17-2151	1520
Professionals	Nuclear Engineers	17-2161	1530
Professionals	Petroleum Engineers	17-2171	1520
Professionals	Engineers, All Other	17-2199	1530
Professionals	Animal Scientists	19-1011	1600
Professionals	Food Scientists and Technologists	19-1012	1600
Professionals	Soil and Plant Scientists	19-1013	1600
Professionals	Biochemists and Biophysicists	19-1021	1610
Professionals	Microbiologists	19-1022	1610
Professionals	Zoologists and Wildlife Biologists	19-1023	1610
Professionals	Biological Scientists, All Other	19-1029	1610
Professionals	Conservation Scientists	19-1031	1640
Professionals	Foresters	19-1032	1640
Professionals	Epidemiologists	19-1041	1650
Professionals	Medical Scientists, Except Epidemiologists	19-1042	1650
Professionals	Life Scientists, All Other	19-1099	1650
Professionals	Astronomers	19-2011	1700

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Physicists	19-2012	1700
Professionals	Atmospheric and Space Scientists	19-2021	1710
Professionals	Chemists	19-2031	1720
Professionals	Materials Scientists	19-2032	1720
Professionals	Environmental Scientists and Specialists, Including Health	19-2041	1740
Professionals	Geoscientists, Except Hydrologists and Geographers	19-2042	1740
Professionals	Hydrologists	19-2043	1740
Professionals	Physical Scientists, All Other	19-2099	1760
Professionals	Economists	19-3011	1800
Professionals	Survey Researchers	19-3022	1860
Professionals	Clinical, Counseling, and School Psychologists	19-3031	1820
Professionals	Industrial-Organizational Psychologists	19-3032	1820
Professionals	Psychologists, All Other	19-3039	1820
Professionals	Sociologists	19-3041	1860
Professionals	Urban and Regional Planners	19-3051	1840
Professionals	Anthropologists and Archeologists	19-3091	1860
Professionals	Geographers	19-3092	1860
Professionals	Historians	19-3093	1860
Professionals	Political Scientists	19-3094	1860
Professionals	Social Scientists and Related Workers, All Other	19-3099	1860
Professionals	Substance Abuse and Behavioral Disorder Counselors	21-1011	2000
Professionals	Educational, Guidance, School, and Vocational Counselors	21-1012	2000
Professionals	Marriage and Family Therapists	21-1013	2000
Professionals	Mental Health Counselors	21-1014	2000
Professionals	Rehabilitation Counselors	21-1015	2000
Professionals	Counselors, All Other	21-1019	2000
Professionals	Child, Family, and School Social Workers	21-1021	2010
Professionals	Healthcare Social Workers	21-1022	2010
Professionals	Mental Health and Substance Abuse Social Workers	21-1023	2010
Professionals	Social Workers, All Other	21-1029	2010
Professionals	Health Educators	21-1091	2025
Professionals	Probation Officers and Correctional Treatment Specialists	21-1092	2015
Professionals	Community Health Workers	21-1094	2025
Professionals	Community and Social Service Specialists, All Other	21-1099	2025
Professionals	Clergy	21-2011	2040
Professionals	Directors, Religious Activities and Education	21-2021	2050
Professionals	Religious Workers, All Other	21-2099	2060
Professionals	Lawyers	23-1011	2100
Professionals	Judicial Law Clerks	23-1012	2105
Professionals	Administrative Law Judges, Adjudicators, and Hearing Officers	23-1021	2100
Professionals	Arbitrators, Mediators, and Conciliators	23-1022	2100

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Judges, Magistrate Judges, and Magistrates	23-1023	2100
Professionals	Business Teachers, Postsecondary	25-1011	2200
Professionals	Computer Science Teachers, Postsecondary	25-1021	2200
Professionals	Mathematical Science Teachers, Postsecondary	25-1022	2200
Professionals	Architecture Teachers, Postsecondary	25-1031	2200
Professionals	Engineering Teachers, Postsecondary	25-1032	2200
Professionals	Agricultural Sciences Teachers, Postsecondary	25-1041	2200
Professionals	Biological Science Teachers, Postsecondary	25-1042	2200
Professionals	Forestry and Conservation Science Teachers, Postsecondary	25-1043	2200
Professionals	Atmospheric, Earth, Marine, and Space Sciences Teachers, Postsecondary	25-1051	2200
Professionals	Chemistry Teachers, Postsecondary	25-1052	2200
Professionals	Environmental Science Teachers, Postsecondary	25-1053	2200
Professionals	Physics Teachers, Postsecondary	25-1054	2200
Professionals	Anthropology and Archeology Teachers, Postsecondary	25-1061	2200
Professionals	Area, Ethnic, and Cultural Studies Teachers, Postsecondary	25-1062	2200
Professionals	Economics Teachers, Postsecondary	25-1063	2200
Professionals	Geography Teachers, Postsecondary	25-1064	2200
Professionals	Political Science Teachers, Postsecondary	25-1065	2200
Professionals	Psychology Teachers, Postsecondary	25-1066	2200
Professionals	Sociology Teachers, Postsecondary	25-1067	2200
Professionals	Social Sciences Teachers, Postsecondary, All Other	25-1069	2200
Professionals	Health Specialties Teachers, Postsecondary	25-1071	2200
Professionals	Nursing Instructors and Teachers, Postsecondary	25-1072	2200
Professionals	Education Teachers, Postsecondary	25-1081	2200
Professionals	Library Science Teachers, Postsecondary	25-1082	2200
Professionals	Criminal Justice and Law Enforcement Teachers, Postsecondary	25-1111	2200
Professionals	Law Teachers, Postsecondary	25-1112	2200
Professionals	Social Work Teachers, Postsecondary	25-1113	2200
Professionals	Art, Drama, and Music Teachers, Postsecondary	25-1121	2200
Professionals	Communications Teachers, Postsecondary	25-1122	2200
Professionals	English Language and Literature Teachers, Postsecondary	25-1123	2200
Professionals	Foreign Language and Literature Teachers, Postsecondary	25-1124	2200
Professionals	History Teachers, Postsecondary	25-1125	2200
Professionals	Philosophy and Religion Teachers, Postsecondary	25-1126	2200
Professionals	Graduate Teaching Assistants	25-1191	2200
Professionals	Home Economics Teachers, Postsecondary	25-1192	2200
Professionals	Recreation and Fitness Studies Teachers, Postsecondary	25-1193	2200
Professionals	Vocational Education Teachers, Postsecondary	25-1194	2200
Professionals	Postsecondary Teachers, All Other	25-1199	2200
Professionals	Preschool Teachers, Except Special Education	25-2011	2300
Professionals	Kindergarten Teachers, Except Special Education	25-2012	2300

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Elementary School Teachers, Except Special Education	25-2021	2310
Professionals	Middle School Teachers, Except Special and Career/Technical Education	25-2022	2310
Professionals	Career/Technical Education Teachers, Middle School	25-2023	2310
Professionals	Secondary School Teachers, Except Special and Career/Technical Education	25-2031	2320
Professionals	Career/Technical Education Teachers, Secondary School	25-2032	2320
Professionals	Special Education Teachers, Preschool	25-2051	2330
Professionals	Special Education Teachers, Kindergarten and Elementary School	25-2052	2330
Professionals	Special Education Teachers, Middle School	25-2053	2330
Professionals	Special Education Teachers, Secondary School	25-2054	2330
Professionals	Special Education Teachers, All Other	25-2059	2330
Professionals	Adult Basic and Secondary Education and Literacy Teachers and Instructors	25-3011	2340
Professionals	Self-Enrichment Education Teachers	25-3021	2340
Professionals	Teachers and Instructors, All Other	25-3099	2340
Professionals	Archivists	25-4011	2400
Professionals	Curators	25-4012	2400
Professionals	Museum Technicians and Conservators	25-4013	2400
Professionals	Librarians	25-4021	2430
Professionals	Audio-Visual and Multimedia Collections Specialists	25-9011	2550
Professionals	Farm and Home Management Advisors	25-9021	2550
Professionals	Instructional Coordinators	25-9031	2550
Professionals	Education, Training, and Library Workers, All Other	25-9099	2550
Professionals	Art Directors	27-1011	2600
Professionals	Craft Artists	27-1012	2600
Professionals	Fine Artists, Including Painters, Sculptors, and Illustrators	27-1013	2600
Professionals	Multimedia Artists and Animators	27-1014	2600
Professionals	Artists and Related Workers, All Other	27-1019	2600
Professionals	Commercial and Industrial Designers	27-1021	2630
Professionals	Fashion Designers	27-1022	2630
Professionals	Floral Designers	27-1023	2630
Professionals	Graphic Designers	27-1024	2630
Professionals	Interior Designers	27-1025	2630
Professionals	Merchandise Displayers and Window Trimmers	27-1026	2630
Professionals	Set and Exhibit Designers	27-1027	2630
Professionals	Designers, All Other	27-1029	2630
Professionals	Actors	27-2011	2700
Professionals	Producers and Directors	27-2012	2710
Professionals	Athletes and Sports Competitors	27-2021	2720
Professionals	Coaches and Scouts	27-2022	2720
Professionals	Umpires, Referees, and Other Sports Officials	27-2023	2720
Professionals	Dancers	27-2031	2740
Professionals	Choreographers	27-2032	2740

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Music Directors and Composers	27-2041	2750
Professionals	Musicians and Singers	27-2042	2750
Professionals	Entertainers and Performers, Sports and Related Workers, All Other	27-2099	2760
Professionals	Radio and Television Announcers	27-3011	2800
Professionals	Public Address System and Other Announcers	27-3012	2800
Professionals	Broadcast News Analysts	27-3021	2810
Professionals	Reporters and Correspondents	27-3022	2810
Professionals	Public Relations Specialists	27-3031	2825
Professionals	Editors	27-3041	2830
Professionals	Technical Writers	27-3042	2840
Professionals	Writers and Authors	27-3043	2850
Professionals	Interpreters and Translators	27-3091	2860
Professionals	Media and Communication Workers, All Other	27-3099	2860
Professionals	Photographers	27-4021	2910
Professionals	Camera Operators, Television, Video, and Motion Picture	27-4031	2920
Professionals	Film and Video Editors	27-4032	2920
Professionals	Chiropractors	29-1011	3000
Professionals	Dentists, General	29-1021	3010
Professionals	Oral and Maxillofacial Surgeons	29-1022	3010
Professionals	Orthodontists	29-1023	3010
Professionals	Prosthodontists	29-1024	3010
Professionals	Dentists, All Other Specialists	29-1029	3010
Professionals	Dietitians and Nutritionists	29-1031	3030
Professionals	Optometrists	29-1041	3040
Professionals	Pharmacists	29-1051	3050
Professionals	Anesthesiologists	29-1061	3060
Professionals	Family and General Practitioners	29-1062	3060
Professionals	Internists, General	29-1063	3060
Professionals	Obstetricians and Gynecologists	29-1064	3060
Professionals	Pediatricians, General	29-1065	3060
Professionals	Psychiatrists	29-1066	3060
Professionals	Surgeons	29-1067	3060
Professionals	Physicians and Surgeons, All Other	29-1069	3060
Professionals	Physician Assistants	29-1071	3110
Professionals	Podiatrists	29-1081	3120
Professionals	Occupational Therapists	29-1122	3150
Professionals	Physical Therapists	29-1123	3160
Professionals	Radiation Therapists	29-1124	3200
Professionals	Recreational Therapists	29-1125	3210
Professionals	Respiratory Therapists	29-1126	3220
Professionals	Speech-Language Pathologists	29-1127	3230

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Professionals	Exercise Physiologists	29-1128	3245
Professionals	Therapists, All Other	29-1129	3245
Professionals	Veterinarians	29-1131	3250
Professionals	Registered Nurses	29-1141	3255
Professionals	Nurse Anesthetists	29-1151	3256
Professionals	Nurse Midwives	29-1161	3258
Professionals	Nurse Practitioners	29-1171	3258
Professionals	Audiologists	29-1181	3140
Professionals	Health Diagnosing and Treating Practitioners, All Other	29-1199	3260
Professionals	Animal Trainers	39-2011	4340
Professionals	Sales Engineers	41-9031	4930
Professionals	Agricultural Inspectors	45-2011	6010
Professionals	Construction and Building Inspectors	47-4011	6660
Professionals	Airline Pilots, Copilots, and Flight Engineers	53-2011	9030
Professionals	Commercial Pilots	53-2012	9030
Professionals	Transportation Inspectors	53-6051	9410
Technicians	Architectural and Civil Drafters	17-3011	1540
Technicians	Electrical and Electronics Drafters	17-3012	1540
Technicians	Mechanical Drafters	17-3013	1540
Technicians	Drafters, All Other	17-3019	1540
Technicians	Aerospace Engineering and Operations Technicians	17-3021	1550
Technicians	Civil Engineering Technicians	17-3022	1550
Technicians	Electrical and Electronics Engineering Technicians	17-3023	1550
Technicians	Electro-Mechanical Technicians	17-3024	1550
Technicians	Environmental Engineering Technicians	17-3025	1550
Technicians	Industrial Engineering Technicians	17-3026	1550
Technicians	Mechanical Engineering Technicians	17-3027	1550
Technicians	Engineering Technicians, Except Drafters, All Other	17-3029	1550
Technicians	Surveying and Mapping Technicians	17-3031	1560
Technicians	Agricultural and Food Science Technicians	19-4011	1900
Technicians	Biological Technicians	19-4021	1910
Technicians	Chemical Technicians	19-4031	1920
Technicians	Geological and Petroleum Technicians	19-4041	1930
Technicians	Nuclear Technicians	19-4051	1930
Technicians	Social Science Research Assistants	19-4061	1965
Technicians	Environmental Science and Protection Technicians, Including Health	19-4091	1965
Technicians	Forensic Science Technicians	19-4092	1965
Technicians	Forest and Conservation Technicians	19-4093	1965
Technicians	Life, Physical, and Social Science Technicians, All Other	19-4099	1965
Technicians	Audio and Video Equipment Technicians	27-4011	2900
Technicians	Broadcast Technicians	27-4012	2900

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Technicians	Radio Operators	27-4013	2900
Technicians	Sound Engineering Technicians	27-4014	2900
Technicians	Media and Communication Equipment Workers, All Other	27-4099	2900
Technicians	Medical and Clinical Laboratory Technologists	29-2011	3300
Technicians	Medical and Clinical Laboratory Technicians	29-2012	3300
Technicians	Dental Hygienists	29-2021	3310
Technicians	Cardiovascular Technologists and Technicians	29-2031	3320
Technicians	Diagnostic Medical Sonographers	29-2032	3320
Technicians	Nuclear Medicine Technologists	29-2033	3320
Technicians	Radiologic Technologists	29-2034	3320
Technicians	Magnetic Resonance Imaging Technologists	29-2035	3320
Technicians	Emergency Medical Technicians and Paramedics	29-2041	3400
Technicians	Dietetic Technicians	29-2051	3420
Technicians	Pharmacy Technicians	29-2052	3420
Technicians	Psychiatric Technicians	29-2053	3420
Technicians	Respiratory Therapy Technicians	29-2054	3420
Technicians	Surgical Technologists	29-2055	3420
Technicians	Veterinary Technologists and Technicians	29-2056	3420
Technicians	Ophthalmic Medical Technicians	29-2057	3420
Technicians	Licensed Practical and Licensed Vocational Nurses	29-2061	3500
Technicians	Medical Records and Health Information Technicians	29-2071	3510
Technicians	Opticians, Dispensing	29-2081	3520
Technicians	Orthotists and Prosthetists	29-2091	3535
Technicians	Hearing Aid Specialists	29-2092	3535
Technicians	Health Technologists and Technicians, All Other	29-2099	3535
Technicians	Occupational Health and Safety Specialists	29-9011	3540
Technicians	Occupational Health and Safety Technicians	29-9012	3540
Technicians	Athletic Trainers	29-9091	3540
Technicians	Genetic Counselors	29-9092	3540
Technicians	Healthcare Practitioners and Technical Workers, All Other	29-9099	3540
Technicians	Air Traffic Controllers	53-2021	9040
Technicians	Airfield Operations Specialists	53-2022	9040
Sales Workers	First-Line Supervisors of Retail Sales Workers	41-1011	4700
Sales Workers	First-Line Supervisors of Non-Retail Sales Workers	41-1012	4710
Sales Workers	Cashiers	41-2011	4720
Sales Workers	Gaming Change Persons and Booth Cashiers	41-2012	4720
Sales Workers	Counter and Rental Clerks	41-2021	4740
Sales Workers	Parts Salespersons	41-2022	4750
Sales Workers	Retail Salespersons	41-2031	4760
Sales Workers	Advertising Sales Agents	41-3011	4800
Sales Workers	Insurance Sales Agents	41-3021	4810

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Sales Workers	Securities, Commodities, and Financial Services Sales Agents	41-3031	4820
Sales Workers	Travel Agents	41-3041	4830
Sales Workers	Sales Representatives, Services, All Other	41-3099	4840
Sales Workers	Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products	41-4011	4850
Sales Workers	Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products	41-4012	4850
Sales Workers	Demonstrators and Product Promoters	41-9011	4900
Sales Workers	Models	41-9012	4900
Sales Workers	Real Estate Brokers	41-9021	4920
Sales Workers	Real Estate Sales Agents	41-9022	4920
Sales Workers	Telemarketers	41-9041	4940
Sales Workers	Door-to-Door Sales Workers, News and Street Vendors, and Related Workers	41-9091	4950
Sales Workers	Sales and Related Workers, All Other	41-9099	4965
Administrative Support Workers	Social and Human Service Assistants	21-1093	2016
Administrative Support Workers	Paralegals and Legal Assistants	23-2011	2145
Administrative Support Workers	Court Reporters	23-2091	2160
Administrative Support Workers	Title Examiners, Abstractors, and Searchers	23-2093	2160
Administrative Support Workers	Legal Support Workers, All Other	23-2099	2160
Administrative Support Workers	Library Technicians	25-4031	2440
Administrative Support Workers	Teacher Assistants	25-9041	2540
Administrative Support Workers	Medical Transcriptionists	31-9094	3646
Administrative Support Workers	First-Line Supervisors of Office and Administrative Support Workers	43-1011	5000
Administrative Support Workers	Switchboard Operators, Including Answering Service	43-2011	5010
Administrative Support Workers	Telephone Operators	43-2021	5020
Administrative Support Workers	Communications Equipment Operators, All Other	43-2099	5030
Administrative Support Workers	Bill and Account Collectors	43-3011	5100
Administrative Support Workers	Billing and Posting Clerks	43-3021	5110
Administrative Support Workers	Bookkeeping, Accounting, and Auditing Clerks	43-3031	5120
Administrative Support Workers	Gaming Cage Workers	43-3041	5130
Administrative Support Workers	Payroll and Timekeeping Clerks	43-3051	5140
Administrative Support Workers	Procurement Clerks	43-3061	5150
Administrative Support Workers	Tellers	43-3071	5160

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Administrative Support Workers	Financial Clerks, All Other	43-3099	5165
Administrative Support Workers	Brokerage Clerks	43-4011	5200
Administrative Support Workers	Correspondence Clerks	43-4021	5350
Administrative Support Workers	Court, Municipal, and License Clerks	43-4031	5220
Administrative Support Workers	Credit Authorizers, Checkers, and Clerks	43-4041	5230
Administrative Support Workers	Customer Service Representatives	43-4051	5240
Administrative Support Workers	Eligibility Interviewers, Government Programs	43-4061	5250
Administrative Support Workers	File Clerks	43-4071	5260
Administrative Support Workers	Hotel, Motel, and Resort Desk Clerks	43-4081	5300
Administrative Support Workers	Interviewers, Except Eligibility and Loan	43-4111	5310
Administrative Support Workers	Library Assistants, Clerical	43-4121	5320
Administrative Support Workers	Loan Interviewers and Clerks	43-4131	5330
Administrative Support Workers	New Accounts Clerks	43-4141	5340
Administrative Support Workers	Order Clerks	43-4151	5350
Administrative Support Workers	Human Resources Assistants, Except Payroll and Timekeeping	43-4161	5360
Administrative Support Workers	Receptionists and Information Clerks	43-4171	5400
Administrative Support Workers	Reservation and Transportation Ticket Agents and Travel Clerks	43-4181	5410
Administrative Support Workers	Information and Record Clerks, All Other	43-4199	5420
Administrative Support Workers	Cargo and Freight Agents	43-5011	5500
Administrative Support Workers	Couriers and Messengers	43-5021	5510
Administrative Support Workers	Police, Fire, and Ambulance Dispatchers	43-5031	5520
Administrative Support Workers	Dispatchers, Except Police, Fire, and Ambulance	43-5032	5520
Administrative Support Workers	Meter Readers, Utilities	43-5041	5530
Administrative Support Workers	Postal Service Clerks	43-5051	5540
Administrative Support Workers	Postal Service Mail Carriers	43-5052	5550
Administrative Support Workers	Postal Service Mail Sorters, Processors, and Processing Machine Operators	43-5053	5560
Administrative Support Workers	Production, Planning, and Expediting Clerks	43-5061	5600

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Administrative Support Workers	Shipping, Receiving, and Traffic Clerks	43-5071	5610
Administrative Support Workers	Stock Clerks and Order Fillers	43-5081	5620
Administrative Support Workers	Weighers, Measurers, Checkers, and Samplers, Recordkeeping	43-5111	5630
Administrative Support Workers	Executive Secretaries and Executive Administrative Assistants	43-6011	5700
Administrative Support Workers	Legal Secretaries	43-6012	5700
Administrative Support Workers	Medical Secretaries	43-6013	5700
Administrative Support Workers	Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43-6014	5700
Administrative Support Workers	Computer Operators	43-9011	5800
Administrative Support Workers	Data Entry Keyers	43-9021	5810
Administrative Support Workers	Word Processors and Typists	43-9022	5820
Administrative Support Workers	Desktop Publishers	43-9031	5940
Administrative Support Workers	Insurance Claims and Policy Processing Clerks	43-9041	5840
Administrative Support Workers	Mail Clerks and Mail Machine Operators, Except Postal Service	43-9051	5850
Administrative Support Workers	Office Clerks, General	43-9061	5860
Administrative Support Workers	Office Machine Operators, Except Computer	43-9071	5900
Administrative Support Workers	Proofreaders and Copy Markers	43-9081	5910
Administrative Support Workers	Statistical Assistants	43-9111	5920
Administrative Support Workers	Office and Administrative Support Workers, All Other	43-9199	5940
Craft Workers	First-Line Supervisors of Construction Trades and Extraction Workers	47-1011	6200
Craft Workers	Boilermakers	47-2011	6210
Craft Workers	Brickmasons and Blockmasons	47-2021	6220
Craft Workers	Stonemasons	47-2022	6220
Craft Workers	Carpenters	47-2031	6230
Craft Workers	Carpet Installers	47-2041	6240
Craft Workers	Floor Layers, Except Carpet, Wood, and Hard Tiles	47-2042	6240
Craft Workers	Floor Sanders and Finishers	47-2043	6240
Craft Workers	Tile and Marble Setters	47-2044	6240
Craft Workers	Cement Masons and Concrete Finishers	47-2051	6250
Craft Workers	Terrazzo Workers and Finishers	47-2053	6250
Craft Workers	Paving, Surfacing, and Tamping Equipment Operators	47-2071	6300
Craft Workers	Pile-Driver Operators	47-2072	6320
Craft Workers	Operating Engineers and Other Construction Equipment Operators	47-2073	6320

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Craft Workers	Drywall and Ceiling Tile Installers	47-2081	6330
Craft Workers	Tapers	47-2082	6330
Craft Workers	Electricians	47-2111	6355
Craft Workers	Glaziers	47-2121	6360
Craft Workers	Insulation Workers, Floor, Ceiling, and Wall	47-2131	6400
Craft Workers	Insulation Workers, Mechanical	47-2132	6400
Craft Workers	Painters, Construction and Maintenance	47-2141	6420
Craft Workers	Paperhangers	47-2142	6430
Craft Workers	Pipelayers	47-2151	6440
Craft Workers	Plumbers, Pipefitters, and Steamfitters	47-2152	6440
Craft Workers	Plasterers and Stucco Masons	47-2161	6460
Craft Workers	Reinforcing Iron and Rebar Workers	47-2171	6500
Craft Workers	Roofers	47-2181	6515
Craft Workers	Sheet Metal Workers	47-2211	6520
Craft Workers	Structural Iron and Steel Workers	47-2221	6530
Craft Workers	Solar Photovoltaic Installers	47-2231	6765
Craft Workers	Elevator Installers and Repairers	47-4021	6700
Craft Workers	Fence Erectors	47-4031	6710
Craft Workers	Hazardous Materials Removal Workers	47-4041	6720
Craft Workers	Highway Maintenance Workers	47-4051	6730
Craft Workers	Rail-Track Laying and Maintenance Equipment Operators	47-4061	6740
Craft Workers	Septic Tank Servicers and Sewer Pipe Cleaners	47-4071	6765
Craft Workers	Segmental Pavers	47-4091	6765
Craft Workers	Construction and Related Workers, All Other	47-4099	6765
Craft Workers	Derrick Operators, Oil and Gas	47-5011	6800
Craft Workers	Rotary Drill Operators, Oil and Gas	47-5012	6800
Craft Workers	Service Unit Operators, Oil, Gas, and Mining	47-5013	6800
Craft Workers	Earth Drillers, Except Oil and Gas	47-5021	6820
Craft Workers	Explosives Workers, Ordnance Handling Experts, and Blasters	47-5031	6830
Craft Workers	Continuous Mining Machine Operators	47-5041	6840
Craft Workers	Mine Cutting and Channeling Machine Operators	47-5042	6840
Craft Workers	Mining Machine Operators, All Other	47-5049	6840
Craft Workers	Rock Splitters, Quarry	47-5051	6940
Craft Workers	Roof Bolters, Mining	47-5061	6940
Craft Workers	Roustabouts, Oil and Gas	47-5071	6800
Craft Workers	Helpers--Extraction Workers	47-5081	6940
Craft Workers	Extraction Workers, All Other	47-5099	6940
Craft Workers	First-Line Supervisors of Mechanics, Installers, and Repairers	49-1011	7000
Craft Workers	Computer, Automated Teller, and Office Machine Repairers	49-2011	7010
Craft Workers	Radio, Cellular, and Tower Equipment Installers and Repairs	49-2021	7020
Craft Workers	Telecommunications Equipment Installers and Repairers, Except Line Installers	49-2022	7020

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Craft Workers	Avionics Technicians	49-2091	7030
Craft Workers	Electric Motor, Power Tool, and Related Repairers	49-2092	7040
Craft Workers	Electrical and Electronics Installers and Repairers, Transportation Equipment	49-2093	7100
Craft Workers	Electrical and Electronics Repairers, Commercial and Industrial Equipment	49-2094	7100
Craft Workers	Electrical and Electronics Repairers, Powerhouse, Substation, and Relay	49-2095	7100
Craft Workers	Electronic Equipment Installers and Repairers, Motor Vehicles	49-2096	7110
Craft Workers	Electronic Home Entertainment Equipment Installers and Repairers	49-2097	7120
Craft Workers	Security and Fire Alarm Systems Installers	49-2098	7130
Craft Workers	Aircraft Mechanics and Service Technicians	49-3011	7140
Craft Workers	Automotive Body and Related Repairers	49-3021	7150
Craft Workers	Automotive Glass Installers and Repairers	49-3022	7160
Craft Workers	Automotive Service Technicians and Mechanics	49-3023	7200
Craft Workers	Bus and Truck Mechanics and Diesel Engine Specialists	49-3031	7210
Craft Workers	Farm Equipment Mechanics and Service Technicians	49-3041	7220
Craft Workers	Mobile Heavy Equipment Mechanics, Except Engines	49-3042	7220
Craft Workers	Rail Car Repairers	49-3043	7220
Craft Workers	Motorboat Mechanics and Service Technicians	49-3051	7240
Craft Workers	Motorcycle Mechanics	49-3052	7240
Craft Workers	Outdoor Power Equipment and Other Small Engine Mechanics	49-3053	7240
Craft Workers	Bicycle Repairers	49-3091	7260
Craft Workers	Recreational Vehicle Service Technicians	49-3092	7260
Craft Workers	Tire Repairers and Changers	49-3093	7260
Craft Workers	Mechanical Door Repairers	49-9011	7300
Craft Workers	Control and Valve Installers and Repairers, Except Mechanical Door	49-9012	7300
Craft Workers	Heating, Air Conditioning, and Refrigeration Mechanics and Installers	49-9021	7315
Craft Workers	Home Appliance Repairers	49-9031	7320
Craft Workers	Industrial Machinery Mechanics	49-9041	7330
Craft Workers	Maintenance Workers, Machinery	49-9043	7350
Craft Workers	Millwrights	49-9044	7360
Craft Workers	Refractory Materials Repairers, Except Brickmasons	49-9045	7330
Craft Workers	Electrical Power-Line Installers and Repairers	49-9051	7410
Craft Workers	Telecommunications Line Installers and Repairers	49-9052	7420
Craft Workers	Camera and Photographic Equipment Repairers	49-9061	7430
Craft Workers	Medical Equipment Repairers	49-9062	7430
Craft Workers	Musical Instrument Repairers and Tuners	49-9063	7430
Craft Workers	Watch Repairers	49-9064	7430
Craft Workers	Precision Instrument and Equipment Repairers, All Other	49-9069	7430
Craft Workers	Maintenance and Repair Workers, General	49-9071	7340
Craft Workers	Wind Turbine Service Technicians	49-9081	7630
Craft Workers	Coin, Vending, and Amusement Machine Servicers and Repairers	49-9091	7510
Craft Workers	Commercial Divers	49-9092	7630

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Craft Workers	Fabric Menders, Except Garment	49-9093	7630
Craft Workers	Locksmiths and Safe Repairers	49-9094	7540
Craft Workers	Manufactured Building and Mobile Home Installers	49-9095	7550
Craft Workers	Riggers	49-9096	7560
Craft Workers	Signal and Track Switch Repairers	49-9097	7630
Craft Workers	Installation, Maintenance, and Repair Workers, All Other	49-9099	7630
Craft Workers	Structural Metal Fabricators and Fitters	51-2041	7740
Craft Workers	Machinists	51-4041	8030
Craft Workers	Model Makers, Metal and Plastic	51-4061	8060
Craft Workers	Patternmakers, Metal and Plastic	51-4062	8060
Craft Workers	Tool and Die Makers	51-4111	8130
Craft Workers	Prepress Technicians and Workers	51-5111	8250
Craft Workers	Print Binding and Finishing Workers	51-5113	8256
Craft Workers	Shoe and Leather Workers and Repairers	51-6041	8330
Craft Workers	Sewers, Hand	51-6051	8350
Craft Workers	Tailors, Dressmakers, and Custom Sewers	51-6052	8350
Craft Workers	Upholsterers	51-6093	8450
Craft Workers	Cabinetmakers and Bench Carpenters	51-7011	8500
Craft Workers	Furniture Finishers	51-7021	8510
Craft Workers	Model Makers, Wood	51-7031	8550
Craft Workers	Patternmakers, Wood	51-7032	8550
Craft Workers	Woodworkers, All Other	51-7099	8550
Craft Workers	Nuclear Power Reactor Operators	51-8011	8600
Craft Workers	Power Distributors and Dispatchers	51-8012	8600
Craft Workers	Power Plant Operators	51-8013	8600
Craft Workers	Stationary Engineers and Boiler Operators	51-8021	8610
Craft Workers	Water and Wastewater Treatment Plant and System Operators	51-8031	8620
Craft Workers	Jewelers and Precious Stone and Metal Workers	51-9071	8750
Craft Workers	Dental Laboratory Technicians	51-9081	8760
Craft Workers	Medical Appliance Technicians	51-9082	8760
Craft Workers	Ophthalmic Laboratory Technicians	51-9083	8760
Craft Workers	Etchers and Engravers	51-9194	8910
Craft Workers	Crane and Tower Operators	53-7021	9510
Craft Workers	Dredge Operators	53-7031	9520
Craft Workers	Excavating and Loading Machine and Dragline Operators	53-7032	9520
Craft Workers	Loading Machine Operators, Underground Mining	53-7033	9520
Operatives	Graders and Sorters, Agricultural Products	45-2041	6040
Operatives	First-Line Supervisors of Production and Operating Workers	51-1011	7700
Operatives	Aircraft Structure, Surfaces, Rigging, and Systems Assemblers	51-2011	7710
Operatives	Coil Winders, Tapers, and Finishers	51-2021	7720
Operatives	Electrical and Electronic Equipment Assemblers	51-2022	7720

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Operatives	Electromechanical Equipment Assemblers	51-2023	7720
Operatives	Engine and Other Machine Assemblers	51-2031	7730
Operatives	Fiberglass Laminators and Fabricators	51-2091	7750
Operatives	Team Assemblers	51-2092	7750
Operatives	Timing Device Assemblers and Adjusters	51-2093	7750
Operatives	Assemblers and Fabricators, All Other	51-2099	7750
Operatives	Bakers	51-3011	7800
Operatives	Butchers and Meat Cutters	51-3021	7810
Operatives	Meat, Poultry, and Fish Cutters and Trimmers	51-3022	7810
Operatives	Slaughterers and Meat Packers	51-3023	7810
Operatives	Food and Tobacco Roasting, Baking, and Drying Machine Operators and Tenders	51-3091	7830
Operatives	Food Batchmakers	51-3092	7840
Operatives	Food Cooking Machine Operators and Tenders	51-3093	7850
Operatives	Food Processing Workers, All Other	51-3099	7855
Operatives	Computer-Controlled Machine Tool Operators, Metal and Plastic	51-4011	7900
Operatives	Computer Numerically Controlled Machine Tool Programmers, Metal and Plastic	51-4012	7900
Operatives	Extruding and Drawing Machine Setters, Operators, and Tenders, Metal and Plastic	51-4021	7920
Operatives	Forging Machine Setters, Operators, and Tenders, Metal and Plastic	51-4022	7930
Operatives	Rolling Machine Setters, Operators, and Tenders, Metal and Plastic	51-4023	7940
Operatives	Cutting, Punching, and Press Machine Setters, Operators, and Tenders, Metal and Plastic	51-4031	7950
Operatives	Drilling and Boring Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4032	7960
Operatives	Grinding, Lapping, Polishing, and Buffing Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4033	8000
Operatives	Lathe and Turning Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4034	8010
Operatives	Milling and Planing Machine Setters, Operators, and Tenders, Metal and Plastic	51-4035	8220
Operatives	Metal-Refining Furnace Operators and Tenders	51-4051	8040
Operatives	Pourers and Casters, Metal	51-4052	8040
Operatives	Foundry Mold and Coremakers	51-4071	8100
Operatives	Molding, Coremaking, and Casting Machine Setters, Operators, and Tenders, Metal and Plastic	51-4072	8100
Operatives	Multiple Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4081	8220
Operatives	Welders, Cutters, Solderers, and Brazers	51-4121	8140
Operatives	Welding, Soldering, and Brazing Machine Setters, Operators, and Tenders	51-4122	8140
Operatives	Heat Treating Equipment Setters, Operators, and Tenders, Metal and Plastic	51-4191	8150
Operatives	Layout Workers, Metal and Plastic	51-4192	8220
Operatives	Plating and Coating Machine Setters, Operators, and Tenders, Metal and Plastic	51-4193	8200
Operatives	Tool Grinders, Filers, and Sharpeners	51-4194	8210
Operatives	Metal Workers and Plastic Workers, All Other	51-4199	8220
Operatives	Printing Press Operators	51-5112	8255
Operatives	Laundry and Dry-Cleaning Workers	51-6011	8300
Operatives	Pressers, Textile, Garment, and Related Materials	51-6021	8310
Operatives	Sewing Machine Operators	51-6031	8320

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Operatives	Shoe Machine Operators and Tenders	51-6042	8340
Operatives	Textile Bleaching and Dyeing Machine Operators and Tenders	51-6061	8400
Operatives	Textile Cutting Machine Setters, Operators, and Tenders	51-6062	8400
Operatives	Textile Knitting and Weaving Machine Setters, Operators, and Tenders	51-6063	8410
Operatives	Textile Winding, Twisting, and Drawing Out Machine Setters, Operators, and Tenders	51-6064	8420
Operatives	Extruding and Forming Machine Setters, Operators, and Tenders, Synthetic and Glass Fibers	51-6091	8460
Operatives	Fabric and Apparel Patternmakers	51-6092	8460
Operatives	Textile, Apparel, and Furnishings Workers, All Other	51-6099	8460
Operatives	Sawing Machine Setters, Operators, and Tenders, Wood	51-7041	8530
Operatives	Woodworking Machine Setters, Operators, and Tenders, Except Sawing	51-7042	8540
Operatives	Chemical Plant and System Operators	51-8091	8630
Operatives	Gas Plant Operators	51-8092	8630
Operatives	Petroleum Pump System Operators, Refinery Operators, and Gaugers	51-8093	8630
Operatives	Plant and System Operators, All Other	51-8099	8630
Operatives	Chemical Equipment Operators and Tenders	51-9011	8640
Operatives	Separating, Filtering, Clarifying, Precipitating, and Still Machine Setters, Operators, and Tenders	51-9012	8640
Operatives	Crushing, Grinding, and Polishing Machine Setters, Operators, and Tenders	51-9021	8650
Operatives	Grinding and Polishing Workers, Hand	51-9022	8650
Operatives	Mixing and Blending Machine Setters, Operators, and Tenders	51-9023	8650
Operatives	Cutters and Trimmers, Hand	51-9031	8710
Operatives	Cutting and Slicing Machine Setters, Operators, and Tenders	51-9032	8710
Operatives	Extruding, Forming, Pressing, and Compacting Machine Setters, Operators, and Tenders	51-9041	8720
Operatives	Furnace, Kiln, Oven, Drier, and Kettle Operators and Tenders	51-9051	8730
Operatives	Inspectors, Testers, Sorters, Samplers, and Weighers	51-9061	8740
Operatives	Packaging and Filling Machine Operators and Tenders	51-9111	8800
Operatives	Coating, Painting, and Spraying Machine Setters, Operators, and Tenders	51-9121	8810
Operatives	Painters, Transportation Equipment	51-9122	8810
Operatives	Painting, Coating, and Decorating Workers	51-9123	8810
Operatives	Semiconductor Processors	51-9141	8965
Operatives	Photographic Process Workers and Processing Machine Operators	51-9151	8830
Operatives	Adhesive Bonding Machine Operators and Tenders	51-9191	8850
Operatives	Cleaning, Washing, and Metal Pickling Equipment Operators and Tenders	51-9192	8860
Operatives	Cooling and Freezing Equipment Operators and Tenders	51-9193	8965
Operatives	Molders, Shapers, and Casters, Except Metal and Plastic	51-9195	8920
Operatives	Paper Goods Machine Setters, Operators, and Tenders	51-9196	8930
Operatives	Tire Builders	51-9197	8940
Operatives	Production Workers, All Other	51-9199	8965
Operatives	Aircraft Cargo Handling Supervisors	53-1011	9000
Operatives	First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand	53-1021	9000
Operatives	First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators	53-1031	9000

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Operatives	Flight Attendants	53-2031	9050
Operatives	Ambulance Drivers and Attendants, Except Emergency Medical Technicians	53-3011	9110
Operatives	Bus Drivers, Transit and Intercity	53-3021	9120
Operatives	Bus Drivers, School or Special Client	53-3022	9120
Operatives	Driver/Sales Workers	53-3031	9130
Operatives	Heavy and Tractor-Trailer Truck Drivers	53-3032	9130
Operatives	Light Truck or Delivery Services Drivers	53-3033	9130
Operatives	Taxi Drivers and Chauffeurs	53-3041	9140
Operatives	Motor Vehicle Operators, All Other	53-3099	9150
Operatives	Locomotive Engineers	53-4011	9200
Operatives	Locomotive Firers	53-4012	9200
Operatives	Rail Yard Engineers, Dinkey Operators, and Hostlers	53-4013	9200
Operatives	Railroad Brake, Signal, and Switch Operators	53-4021	9230
Operatives	Railroad Conductors and Yardmasters	53-4031	9240
Operatives	Subway and Streetcar Operators	53-4041	9260
Operatives	Rail Transportation Workers, All Other	53-4099	9260
Operatives	Sailors and Marine Oilers	53-5011	9300
Operatives	Captains, Mates, and Pilots of Water Vessels	53-5021	9310
Operatives	Motorboat Operators	53-5022	9310
Operatives	Ship Engineers	53-5031	9300
Operatives	Bridge and Lock Tenders	53-6011	9420
Operatives	Parking Lot Attendants	53-6021	9350
Operatives	Traffic Technicians	53-6041	9420
Operatives	Transportation Attendants, Except Flight Attendants	53-6061	9415
Operatives	Transportation Workers, All Other	53-6099	9420
Operatives	Conveyor Operators and Tenders	53-7011	9560
Operatives	Hoist and Winch Operators	53-7041	9560
Operatives	Industrial Truck and Tractor Operators	53-7051	9600
Operatives	Packers and Packagers, Hand	53-7064	9640
Operatives	Gas Compressor and Gas Pumping Station Operators	53-7071	9650
Operatives	Pump Operators, Except Wellhead Pumps	53-7072	9650
Operatives	Wellhead Pumpers	53-7073	9650
Operatives	Mine Shuttle Car Operators	53-7111	9750
Operatives	Tank Car, Truck, and Ship Loaders	53-7121	9750
Operatives	Material Moving Workers, All Other	53-7199	9750
Labors and Helpers	First-Line Supervisors of Landscaping, Lawn Service, and Groundskeeping Workers	37-1012	4210
Labors and Helpers	Landscaping and Groundskeeping Workers	37-3011	4250
Labors and Helpers	Pesticide Handlers, Sprayers, and Applicators, Vegetation	37-3012	4250
Labors and Helpers	Tree Trimmers and Pruners	37-3013	4250
Labors and Helpers	Grounds Maintenance Workers, All Other	37-3019	4250
Labors and Helpers	Nonfarm Animal Caretakers	39-2021	4350

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Labors and Helpers	First-Line Supervisors of Farming, Fishing, and Forestry Workers	45-1011	6005
Labors and Helpers	Animal Breeders	45-2021	6050
Labors and Helpers	Agricultural Equipment Operators	45-2091	6050
Labors and Helpers	Farmworkers and Laborers, Crop, Nursery, and Greenhouse	45-2092	6050
Labors and Helpers	Farmworkers, Farm, Ranch, and Aquacultural Animals	45-2093	6050
Labors and Helpers	Agricultural Workers, All Other	45-2099	6050
Labors and Helpers	Fishers and Related Fishing Workers	45-3011	6100
Labors and Helpers	Hunters and Trappers	45-3021	6100
Labors and Helpers	Forest and Conservation Workers	45-4011	6120
Labors and Helpers	Fallers	45-4021	6130
Labors and Helpers	Logging Equipment Operators	45-4022	6130
Labors and Helpers	Log Graders and Scalers	45-4023	6130
Labors and Helpers	Logging Workers, All Other	45-4029	6130
Labors and Helpers	Construction Laborers	47-2061	6260
Labors and Helpers	Helpers--Brickmasons, Blockmasons, Stonemasons, and Tile and Marble Setters	47-3011	6600
Labors and Helpers	Helpers--Carpenters	47-3012	6600
Labors and Helpers	Helpers--Electricians	47-3013	6600
Labors and Helpers	Helpers--Painters, Paperhangers, Plasterers, and Stucco Masons	47-3014	6600
Labors and Helpers	Helpers--Pipelayers, Plumbers, Pipefitters, and Steamfitters	47-3015	6600
Labors and Helpers	Helpers--Roofers	47-3016	6600
Labors and Helpers	Helpers, Construction Trades, All Other	47-3019	6600
Labors and Helpers	Helpers--Installation, Maintenance, and Repair Workers	49-9098	7610
Labors and Helpers	Helpers--Production Workers	51-9198	8950
Labors and Helpers	Automotive and Watercraft Service Attendants	53-6031	9360
Labors and Helpers	Cleaners of Vehicles and Equipment	53-7061	9610
Labors and Helpers	Laborers and Freight, Stock, and Material Movers, Hand	53-7062	9620
Labors and Helpers	Machine Feeders and Offbearers	53-7063	9630
Labors and Helpers	Refuse and Recyclable Material Collectors	53-7081	9720
Service Workers	Home Health Aides	31-1011	3600
Service Workers	Psychiatric Aides	31-1013	3600
Service Workers	Nursing Assistants	31-1014	3600
Service Workers	Orderlies	31-1015	3600
Service Workers	Occupational Therapy Assistants	31-2011	3610
Service Workers	Occupational Therapy Aides	31-2012	3610
Service Workers	Physical Therapist Assistants	31-2021	3620
Service Workers	Physical Therapist Aides	31-2022	3620
Service Workers	Massage Therapists	31-9011	3630
Service Workers	Dental Assistants	31-9091	3640
Service Workers	Medical Assistants	31-9092	3645
Service Workers	Medical Equipment Preparers	31-9093	3655
Service Workers	Pharmacy Aides	31-9095	3647

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EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Service Workers	Veterinary Assistants and Laboratory Animal Caretakers	31-9096	3648
Service Workers	Phlebotomists	31-9097	3649
Service Workers	Healthcare Support Workers, All Other	31-9099	3655
Service Workers	First-Line Supervisors of Correctional Officers	33-1011	3700
Service Workers	First-Line Supervisors of Police and Detectives	33-1012	3710
Service Workers	First-Line Supervisors of Fire Fighting and Prevention Workers	33-1021	3720
Service Workers	First-Line Supervisors of Protective Service Workers, All Other	33-1099	3730
Service Workers	Firefighters	33-2011	3740
Service Workers	Fire Inspectors and Investigators	33-2021	3750
Service Workers	Forest Fire Inspectors and Prevention Specialists	33-2022	3750
Service Workers	Bailiffs	33-3011	3800
Service Workers	Correctional Officers and Jailers	33-3012	3800
Service Workers	Detectives and Criminal Investigators	33-3021	3820
Service Workers	Fish and Game Wardens	33-3031	3840
Service Workers	Parking Enforcement Workers	33-3041	3840
Service Workers	Police and Sheriff's Patrol Officers	33-3051	3850
Service Workers	Transit and Railroad Police	33-3052	3850
Service Workers	Animal Control Workers	33-9011	3900
Service Workers	Private Detectives and Investigators	33-9021	3910
Service Workers	Gaming Surveillance Officers and Gaming Investigators	33-9031	3930
Service Workers	Security Guards	33-9032	3930
Service Workers	Crossing Guards	33-9091	3940
Service Workers	Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	33-9092	3955
Service Workers	Transportation Security Screeners	33-9093	3945
Service Workers	Protective Service Workers, All Other	33-9099	3955
Service Workers	Chefs and Head Cooks	35-1011	4000
Service Workers	First-Line Supervisors of Food Preparation and Serving Workers	35-1012	4010
Service Workers	Cooks, Fast Food	35-2011	4020
Service Workers	Cooks, Institution and Cafeteria	35-2012	4020
Service Workers	Cooks, Private Household	35-2013	4020
Service Workers	Cooks, Restaurant	35-2014	4020
Service Workers	Cooks, Short Order	35-2015	4020
Service Workers	Cooks, All Other	35-2019	4020
Service Workers	Food Preparation Workers	35-2021	4030
Service Workers	Bartenders	35-3011	4040
Service Workers	Combined Food Preparation and Serving Workers, Including Fast Food	35-3021	4050
Service Workers	Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	35-3022	4060
Service Workers	Waiters and Waitresses	35-3031	4110
Service Workers	Food Servers, Nonrestaurant	35-3041	4120
Service Workers	Dining Room and Cafeteria Attendants and Bartender Helpers	35-9011	4130
Service Workers	Dishwashers	35-9021	4140

EEO-1 Job Group	Job Title/Description of Standard Occupational Classification (SOC)	Six-Level SOC Job Code	Four-Digit Census Code
Service Workers	Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	35-9031	4150
Service Workers	Food Preparation and Serving Related Workers, All Other	35-9099	4130
Service Workers	First-Line Supervisors of Housekeeping and Janitorial Workers	37-1011	4200
Service Workers	Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	4220
Service Workers	Maids and Housekeeping Cleaners	37-2012	4230
Service Workers	Building Cleaning Workers, All Other	37-2019	4220
Service Workers	Pest Control Workers	37-2021	4240
Service Workers	Gaming Supervisors	39-1011	4300
Service Workers	Slot Supervisors	39-1012	4300
Service Workers	First-Line Supervisors of Personal Service Workers	39-1021	4320
Service Workers	Gaming Dealers	39-3011	4400
Service Workers	Gaming and Sports Book Writers and Runners	39-3012	4400
Service Workers	Gaming Service Workers, All Other	39-3019	4400
Service Workers	Motion Picture Projectionists	39-3021	4410
Service Workers	Ushers, Lobby Attendants, and Ticket Takers	39-3031	4420
Service Workers	Amusement and Recreation Attendants	39-3091	4430
Service Workers	Costume Attendants	39-3092	4430
Service Workers	Locker Room, Coatroom, and Dressing Room Attendants	39-3093	4430
Service Workers	Entertainment Attendants and Related Workers, All Other	39-3099	4430
Service Workers	Embalmers	39-4011	4460
Service Workers	Funeral Attendants	39-4021	4460
Service Workers	Barbers	39-5011	4500
Service Workers	Hairdressers, Hairstylists, and Cosmetologists	39-5012	4510
Service Workers	Makeup Artists, Theatrical and Performance	39-5091	4520
Service Workers	Manicurists and Pedicurists	39-5092	4520
Service Workers	Shampooers	39-5093	4520
Service Workers	Skincare Specialists	39-5094	4520
Service Workers	Baggage Porters and Bellhops	39-6011	4530
Service Workers	Concierges	39-6012	4530
Service Workers	Tour Guides and Escorts	39-7011	4540
Service Workers	Travel Guides	39-7012	4540
Service Workers	Childcare Workers	39-9011	4600
Service Workers	Personal Care Aides	39-9021	4610
Service Workers	Fitness Trainers and Aerobics Instructors	39-9031	4620
Service Workers	Recreation Workers	39-9032	4620
Service Workers	Residential Advisors	39-9041	4640
Service Workers	Personal Care and Service Workers, All Other	39-9099	4650

*** NOTE: Executive/Senior Level Officials and Managers include individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO. Examples of

these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

APPENDIX B

INSURANCE REQUIREMENTS

A Introduction

Subject to the terms of this Appendix B, MTA, prior to the commencement of the Work, will furnish insurance coverage for the benefit of the Design-Builder and its Subcontractor(s) performing work at the Site under the Owner Controlled Insurance Program (OCIP). Such insurance coverage will continue in force until Final Completion (warranty period is not covered), unless otherwise specified. Insurance furnished by MTA applies only to operations of and for each Insured at the Site. It does not apply to the operations of any Insured in its regularly established main or branch office, factory, warehouse, or similar place or any other job site. MTA reserves the right to furnish other insurance coverage of various types and limits provided that such coverage will not be less than that specified in this Contract. Excluded Contractors and Exempted Contractors will not be covered by the insurance provided by MTA.

NOTE: IN ITS PROPOSAL, THE DESIGN-BUILDER MUST EXCLUDE THE INSURANCE COSTS FOR THE DESIGN-BUILDER AND ITS SUBCONTRACTORS FOR INSURANCE FURNISHED BY THE OCIP.

MTA reserves the right to audit the books and records and insurance coverage of the Design-Builder and any of its Subcontractors to ensure that the cost of OCIP coverage have been excluded from the Proposal or MTA may elect to have the Broker or Broker's representative perform the audit.

The Design-Builder authorizes and shall obtain authorization from all Subcontractors for MTA to request and obtain access to and audit the Design-Builder's insurance records, including policies, billings, adjustments, and all other relevant records in the possession or control of the Design-Builder, Subcontractors, their insurance agent/broker and insurance carriers. Insurance includes self-insurance. Access includes inspection and copying. In the event MTA is unable for any reason to obtain direct access in general or to specific records, the Design-Builder shall take all steps necessary to enable MTA to obtain such access, including obtaining copies of such records on its behalf and providing them to MTA.

While it is the intent of MTA to keep the OCIP in force until Final Completion (warranty period is not covered), MTA reserves the right to exclude the Design-Builder or Subcontractor(s) or terminate or modify the OCIP or any portion thereof at any time. To implement this right, MTA shall provide at least 45 days advance written notice to the Design-Builder or Subcontractor(s) covered under the OCIP.

In the event MTA elects to terminate or modify the OCIP, the Design-Builder or affected Subcontractors shall immediately be required to obtain insurance coverage in accordance

with Section E of this Appendix B and the reasonable cost of such insurance will be reimbursed by MTA. If the OCIP is terminated or modified by the Insurer due to the actions or inactions of the Design-Builder or its Subcontractors, the Design-Builder or affected Subcontractors shall immediately be required to obtain insurance coverage in accordance with Section E of this Appendix B and the cost of such insurance will be the responsibility of the Design-Builder or Subcontractors.

Written evidence of insurance coverage shall be provided to the OCIP On-Site Administrator, c/o MTA, Risk and Insurance Management Department, 2 Broadway, 21st Floor, New York NY 10004. All insurance secured by the Design-Builder or its Subcontractors pursuant to this Appendix B shall be in policies subject to MTA's reasonable approval as to form, content, limits of liability, cost and issuing company.

Notwithstanding any apparent limits to the definition of Excluded Contractor, MTA may remove or exclude (after first being included) the Design-Builder or any Subcontractor from the OCIP. Each Excluded Contractor shall furnish evidence of its own insurance to MTA as outlined in this Appendix B before access to the Site.

The Design-Builder shall not violate or knowingly permit to be violated and cause its Subcontractors to not violate or knowingly permit to be violated any conditions of the policies of insurance provided by MTA under the terms of this Appendix B.

The Design-Builder shall incorporate into each subcontract agreement at each tier all provisions regarding Subcontractor requirements and obligations. The Design-Builder shall be responsible for providing each Subcontractor with a copy of the Project Insurance Manual.

WAIVER OF SUBROGATION

The Railroad, MTA, Design-Builder and each Subcontractor shall waive all rights against each other for all damages to the extent damages are covered by insurance required under this Section or any other insurance actually carried by the Railroad, MTA Design-Builder or Subcontractors respectively. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

B DEFINITIONS

The following definitions are for the purposes of this Appendix B only.

1. "Certified Payroll" shall mean a detailed weekly payroll listing, subject to the standard exclusions and provisions of the New York Compensation Manual, of the Design-Builder and its Subcontractors of each tier, certified by affidavit, showing the hours and days worked by employees at the Site, the occupation at which the employee worked, the hourly wage rate paid, and the supplements paid or provided. The affidavit shall be in the form of United States Department of Labor Statement of Compliance (Budget Bureau Form 44-R1093) or equivalent.
2. "Excluded Contractors" shall mean:

- (a) The Design-Builder and Subcontractors not covered by the OCIP following Final Completion (warranty period not covered), termination, or modification of the OCIP; and
 - (b) Subcontractors which MTA has elected to exclude from the OCIP. The following types of contractors (whether working as prime contractors or subcontractors) are typically excluded: remediation contractors involved in abatement of lead, asbestos, and hazardous substances; professional service providers such as architects, engineers, surveyors or testing services; security patrol or guard services; photographers and videographers; and contractors performing structural demolition involving blasting or any other blasting operations.
3. "Exempted Contractors" shall mean:
- (a) Subcontractors whose functions are principally to supply materials, personnel, parts or equipment to and from the Site or which are engaged solely in the delivery, loading, hauling, and/or unloading of material to or from the Site including, but not limited to, hazardous materials transport companies, vendors, suppliers, fabricators, material dealers, drivers, delivery persons, truckers/haulers, equipment rental companies and crane owner/operators; and
 - (b) Subcontractors not working at the Site (such as vendors, suppliers, fabricators, material dealers etc.) and others which occasionally visit the Site.
4. "Insurance Broker" shall mean an individual(s) or organization representing MTA and rendering services related to the OCIP.
5. "Insured" or "Named Insured" shall mean the Railroad, MTA, the Design-Builder, any firm retained by MTA as applicable, and Subcontractors at each tier named in a policy or a Certificate of Insurance signed by a duly authorized representative of the Insurer.
6. "Insurer" shall mean the insurance carrier providing any or all of the insurance to be provided by MTA.
7. "Manager of Safety Compliance" shall mean the individual(s) or firm(s) hired by the Insurance Broker to perform loss control and safety oversight at the various construction sites.
8. "Metropolitan Transportation Authority Risk and Insurance Management Department" (MTA RIM) shall mean the department responsible for securing OCIP insurance, administering the OCIP and approving Design-Builder furnished insurance.
9. "Owner Controlled Insurance Program" (OCIP), shall mean MTA furnished insurance program with the insurance coverage and limits described in this Section.
10. "On-Site Insurance Administrator" shall mean an agent of the Insurance Broker who handles insurance enrollment, claims and other matters relating to the Owner Controlled Insurance Program.
11. "Project Insurance Manual" shall mean the document that details the insurance policies of the OCIP and outlines procedures for handling Design-Builder/Subcontractor enrollment, accident

reporting and claims handling. The Project Insurance Manual may be modified, revised or updated from time to time during the course of the Work.

12. "MTA" shall mean The Metropolitan Transportation Authority and its subsidiaries and affiliates. Whenever in this Appendix B the approval of MTA is required, the approval of MTA RIM shall be deemed the approval of MTA.
13. "Site" shall mean the worksite(s) described in this Contract and any additional locations subsequently approved by MTA.

C INSURANCE FURNISHED BY MTA

1. MTA will furnish the following insurance coverage:

- (a) **Workers' Compensation Insurance** in compliance with the laws of the State of New York, including Employer's Liability Insurance with limits of liability of not less than [REDACTED] each accident. A separate policy will be issued for each Insured. Policies will be renewed and continued, if necessary, until Final Completion.
- (b) **General Liability Insurance** (excluding Automobile Liability/Contractors Pollution Liability and Errors and Omissions), with total combined limit of liability of [REDACTED] each occurrence for all Insured subject to a [REDACTED] designated project annual general aggregate for bodily injury and property damage, and subject to a [REDACTED] annual aggregate for Products/Completed Operations. The policy will be in MTA's name in the standard ISO CGL occurrence form (CG 00 01 04 13) or its equivalent approved by MTA RIM.
 - The Design-Builder shall be responsible for the first [REDACTED] of each occurrence for bodily injury or property damage to the extent losses payable are attributable to the Design-Builder's acts or omissions, or the acts or omissions of its Insured Subcontractor or any other Insured entity or person for whom it may be responsible as determined by MTA. This obligation will not be covered by any of the OCIP insurance policies.
 - The City and State are additional insured only with respect to their interest in real property occupied or otherwise used by the Railroad, MTA or the City/State or adjacent thereto, or the City/State performance of work or services on behalf of MTA in connection with the Work.
 - There shall be no coverage for causing physical damage against another Insured arising out of acts for which the Design-Builder or its Subcontractors may be found liable. Physical damage shall mean direct and accidental loss of or damage to "all property of any Insured and all property in any Insured's care, custody or control." Such damages to the property of an Insured are to be covered by the OCIP's Builder's Risk policy.

Coverage Details:

Standard General Liability Form

- Employee Exclusion (amended to include supervisory personnel)
- Contractual Liability

- Contractual Liability Exclusion, applicable to work performed within 50 feet of railroad tracks, will be deleted
- Products/Completed Operations – extending 10 years or statute of repose, whichever is shorter, after project completion (The limits for products/completed operations shall apply as a one-time separate aggregate limit for the entire extension period.)
- Non-Owned Watercraft (up to 51 feet in length)
- Employees as Additional Insureds
- Notice of Occurrence
- Knowledge of Occurrence
- Severability of Interest
- Total Pollution Exclusion except Building Heating, Cooling, and Dehumidifying Equipment and Hostile Fire (CG 21 65 12 04).
- Other Exclusions Include: Asbestos, Lead, Silica, Chromated Copper Arsenate (CCA), MTBE and other Fuel Oxygenates, Fungi or Bacteria, Rip & Tear, Exterior Insulation and Finish Systems (EFIS), Chinese Drywall, Nuclear Energy, Radioactive Matter, Professional Liability, Inspection, Survey and Appraisal, and Employment Related Practices.
- This list may not be comprehensive. A comprehensive list of coverage provisions, endorsements, exclusions, and amendments is found in the actual policies.

- (c) **Excess Liability Insurance** with a limit of [REDACTED] each occurrence, subject to a [REDACTED] annual general aggregate, in excess of the underlying limits and terms as set forth in coverage items above. These excess limits are shared with other projects covered under the MTA OCIP for the 2015-2019 Capital Plan.

Regardless of the number of Insured on the underlying policies, the total limit for General Liability and Excess Liability policies shall not exceed [REDACTED] in the aggregate in any one policy year. In the event General Liability limits are reduced or aggregate limits are exhausted, the Excess Policy is extended to “drop down” and becomes primary.

There is a one-time limit of [REDACTED] per occurrence and [REDACTED] in the aggregate for Products/Completed Operations for the six-year extension period. The insurance furnished under the OCIP will not extend coverage for Products Liability to any Insured, Excluded Contractor, Exempted Contractor, or others for any product manufactured, assembled, or otherwise worked upon away from the Site, unless such manufacturing or assembly is expressly required by this Contract.

- (d) **Builder’s Risk /Installation Floater Insurance** with a limit equal to the value of the Contract amount up to a maximum amount of [REDACTED] each occurrence. This policy shall cover the interests of each Insured as their interest may appear, in all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly. Tools owned by mechanics, and machinery, tools and equipment, and other personal property of any kind owned, rented or in the care, custody and control of the Design-Builder, and its Subcontractors, used in the building, erection, assembly and installation will not be covered. This insurance shall be primary to cover property damage suffered by an Insured.

Coverage under this policy shall be governed by the actual policy language and shall not include those risks normally excluded from such policies, except for physical loss or damage resulting from faulty designs, materials or workmanship.

Loss covered by the Builder's Risk Insurance policy will be adjusted by the Insurer and payable to MTA. There will be a [REDACTED] deductible each occurrence. The Design-Builder shall be responsible for the first [REDACTED] for each occurrence where it or its Insured Subcontractor(s) are responsible for the loss as determined by MTA. The [REDACTED] deductible will not be covered by any OCIP insurance policy.

- (e) **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form as determined by the MTA) with limit of liability of [REDACTED] per occurrence and subject to a [REDACTED] aggregate. This policy shall cover the Work to be performed at the Site and afford 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. Physical Damage shall mean direct and accidental loss of or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control".

The following are the "Named Insured" for this coverage:

- Metropolitan Transportation Authority and all its subsidiaries
- The Long Island Rail Road Company
- Metro-North Commuter Railroad Company
- New York City Transit Authority
- New York and Atlantic Railway Company
- New Jersey Transit Corporation
- NJ Transit Rail Operations Inc.
- Connecticut Department of Transportation
- Argent Ventures, LLC
- Midtown Trackage Ventures LLC
- Midtown TDR Ventures LLC
- National Railroad Passenger Corporation (Amtrak)
- Consolidated Rail Corporation
- CSX Transportation Inc.
- New York Central Lines LLC
- Delaware & Hudson Railway Company, Inc.
- Housatonic Railroad Company
- Providence & Worcester Railroad Company
- Norfolk Southern Railway Company
- Pennsylvania Lines LLC

2. General Provisions

- (a) MTA will furnish to each Insured a copy of a certificate of insurance as evidence of coverage under the OCIP.
- (b) Premium adjustments, including return premiums and dividends for Workers' Compensation Insurance, General Liability Insurance, Builder's Risk Insurance, and Railroad Protective

Liability Insurance belong to MTA. The Design-Builder shall execute, and cause each Subcontractor to execute, each and every instrument of assignment necessary to permit MTA receipt of these adjustments.

- (c) The Design-Builder and each Subcontractor shall inform their respective insurance brokers or agents to exclude exposure data for OCIP coverage for purposes of calculating premium.
- (d) The Design-Builder shall cooperate with and assist, and cause each of its Subcontractors to cooperate with and assist, in every possible manner, MTA, the Insurance Broker, and Insurers with respect to:
 - accident reporting and claims handling procedures;
 - enrollment and payroll reporting procedures as outlined in the Project Insurance Manual;
 - payroll audits for the purposes of developing and determining premiums;
 - maintaining payroll records relating to this Contract such that they shall be separated from other work; and
 - audit and inspection requests.
- (e) MTA will have no obligation to furnish insurance other than specified in this Section. Nothing contained herein shall be deemed to place any responsibility on MTA for ensuring that the insurance required herein is sufficient for the conduct of the Design-Builder's or each Subcontractor's business. Any type, quality or quantity of insurance coverage or increase in limits not provided by the OCIP, which the Design-Builder requires for its own protection or on account of statute, shall be the responsibility of the Design-Builder at its own expense. MTA assumes no responsibility for furnishing coverage in excess of the policy limits. The furnishing of insurance by MTA through the OCIP shall in no way relieve or limit, or be construed to relieve or limit, the Design-Builder or its Subcontractor(s) of any responsibility or obligation whatsoever otherwise imposed by this Contract.
- (f) The Design-Builder acknowledges that MTA is not an agent, partner or guarantor of the OCIP Insurers and is not responsible for any claims or disputes between the Design-Builder and the Insurers.
- (g) Prior to the Commencement of Work, the Design-Builder shall submit the MTA Contractor Enrollment form (OCIP Form 1) and Absolute Assignment/Waiver of Subrogation form (OCIP Form 2), as found in the Project Insurance Manual, to the On-Site Insurance Administrator. The Design-Builder shall cause each of its Insured Subcontractor(s) to submit OCIP Form 1 and OCIP Form 2 before commencement of their work.

Upon receipt of this completed information, the On-Site Insurance Administrator will arrange for and send to the Design-Builder and each Insured Subcontractor:

- an original Workers' Compensation and Employer's Liability Policy; and
- a Certificate of Insurance evidencing the specified OCIP coverage.

Copies of the General Liability, Excess Liability, and Builder's Risk policies will be available, upon written request to the On-Site Insurance Administrator.

- (h) At the completion or termination of each Subcontractor's work at the Site, the Design-Builder shall submit the Notice of Work Termination Form (OCIP Form 3) as found in the Project Insurance Manual.
- (i) The Design-Builder and each Subcontractor shall furnish to the On-Site Insurance Administrator, within ten (10) days after the end of each month, Certified Payrolls for all work performed at the site.
- (j) Coverage under the OCIP shall be governed by and limited to the actual policies of insurance constituting the OCIP coverage. The descriptions of insurance coverages contained in this Section are not intended to be complete or to alter or amend any provision of the actual insurance policies. In matters, if any, in which the description may be conflicting with such instruments, the provisions of the actual insurance policies shall govern.

D INSURANCE FURNISHED BY THE DESIGN-BUILDER

1. The Design-Builder shall furnish and maintain in force at all times during this Contract until Final Completion, the following policies of insurance:
 - (a) **Workers' Compensation Insurance** for operations "away from the Site" complying with the statutory requirements of the State of New York, covering all employees of the Design-Builder. Employer's Liability Insurance coverage with limits of not less than [REDACTED] each accident or illness shall be included. When applicable, the policy shall be endorsed to include the Longshore and Harbor Workers' Compensation Act and/or Maritime Coverage Endorsement (Jones Act Endorsement).
 - **Longshore & Harbor Workers' Compensation Act Endorsement** - When work will be performed on or over navigable waterways, a Longshore and Harbor Workers Endorsement shall be provided to cover the employees for wages, transportation, maintenance and cure, in accordance with applicable laws.
 - **Maritime Coverage Endorsement (Jones Act)** - When operations are to be performed upon navigable waterways and barges, Tug Boats, and all other vessels on the ocean and all intra-coastal rivers and canals, as well as drivers, divers, and underwater personnel are utilized, a Maritime Coverage Endorsement shall be provided to cover the seamen, masters and members of a crew in accordance with applicable laws, providing remedy for damage to injury in this course of employ.
 - (b) **Commercial General Liability Insurance** for operations "away from site" (I.S.O. CG 00 01 04 13 Form or equivalent approved by MTA) in the Design-Builder's name with limits of liability specifically written for this Contract of not less than [REDACTED] for each occurrence. The Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property must also be at least equal to the amount as the per occurrence limit for Commercial General Liability. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event the primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-

contributory to any other valid and collectible insurance and must be exhausted before implicating an available LIRR/MTA policy.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed by the Design-Builder under this Contract;
- Personal and Advertising Injury Coverage;
- Products-Completed Operations extending at least one year after project completion;
- The pollution exclusion shall be amended to provide coverage within the products/completed operations hazard defined in the policy, when applicable;
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and
- Additional Insured Endorsement (I.S.O. Form CG 20 10 and Additional Insured Completed Operations I.S.O. Form CG 20 37 or equivalent naming the following entities and their subsidiaries and affiliates:

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.

- (c) **Business Automobile Liability Insurance Policy** - (I.S.O. Form CA 00 01 10 13 or equivalent approved by MTA). **If vehicle enters LIRR's property or is used as part of service provided**, in the Design-Builder's name with limits of liability not less than [REDACTED] each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The policy shall be extended to include employees of any insured acting in the scope of their employment.

- If the project involves transporting and/or disposing of any hazardous material or waste off of the jobsite, the Design-Builder or any Subcontractor performing such work must add the MCS-90 to the automobile policy.
- The CA9948 03/06 endorsement or equivalent is also required if transporting hazardous material to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. **(Additional pollution liability insurances maybe required, which are identified in below paragraphs.)**

- The policy limits of liability must be increased to at least [REDACTED] each occurrence pursuant to federal, state or local laws, rules and regulations, and
 - Copies of all required endorsements shall be provided, for review as part of the insurance submission.
- (d) **Marine Protection and Indemnity Insurance:** If any watercraft, including but not limited to boats and barges, will be used in performing the Work, then the Design-Builder must provide Marine Protection and Indemnity Insurance covering all marine hazards arising from this contract; including injuries to crew members, if not provided through other insurance, Bodily Injury to third parties and Property Damage to wharves, piers and other structures and loss or damage to other vessels not caused by collision. The policy shall be subject to a limit of liability of not less than [REDACTED] per occurrence and [REDACTED] in the aggregate. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. MTA and all other Indemnified parties under the Contract must be named as additional insured.
- (e) **Professional Liability/Errors and Omissions (Project Specific Coverage) Including Pollution Liability**
The Design-Builder shall provide project specific Professional Liability or Errors and Omissions Insurance with one of the following two optional limits of liability that may be exercised in LIRR's discretion: Option 1 – with limits not less than [REDACTED] per claim and aggregate; Option 2 – with limits not less than [REDACTED] per claim and aggregate. The professional liability coverage shall be provided on a primary basis and shall apply to the activities of all design, engineering, and construction management professionals assigned to the project. The policy shall have a retroactive date no later than the date on which the RFP was issued and coverage shall remain in effect until the termination of the project. The policy shall contain a provision to provide an extended reporting period (ERP) of ten years after Final Acceptance. Notwithstanding, the forgoing, the Design-Builder may rely on separate insurance to cover professional services performed by its employees or its Subcontractors, in lieu of being named as an insured on the project-specific policy, provided that the form and amount of such insurance shall be subject to approval by the LIRR/MTA.
- i. If any deductible or self-insured retention is applicable, such deductible or self-insured retention shall not exceed [REDACTED], unless approved by the LIRR. The Design-Builder shall be responsible for all claims expenses and loss payments within the policy deductible or self-insurance retention.
 - ii. Said policy shall cover defense costs for the LIRR that includes an “Indemnified Party Endorsement” covering LIRR/MTA and the NYSDOT for liabilities, damages, and attorneys’ fees and related cost due to any Claim asserted by a Third-Party against any Indemnified party listed herein. A copy of the Indemnified Party Endorsement shall be submitted with the evidence of insurance.
 - iii. The Design-Builder shall provide pollution liability coverage as part of its Professional Liability Insurance Policy.
- (f) **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 at least [REDACTED]. 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.

(g) **Contractor's Pollution Liability** - In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), the Design-Builder shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Design-Builder or its Subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least [REDACTED]. The Design-Builder shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Design-Builder's Pollution Liability Insurance shall be in effect from the time the LIRR permits the work relating to the Hazardous Substances or other environmentally regulated substances and materials to begin through the completion of the work.

- This insurance shall name the following entities as additional insured's: LIRR and The Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates.
- This insurance may be supplied by the Subcontractor performing the Work, if the Design-Builder is not performing any of the relevant Work and providing all applicable additional insureds are named.
- The Design-Builder or its Subcontractor performing the Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Project Engineer. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements referenced in the Insurance Article.
- In the event that the Design-Builder or its Subcontractors transports from the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the auto liability policy. The CA9948 03/06 endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least [REDACTED] per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the [REDACTED] limits.
- Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the LIRR.

(h) **Pollution Legal Liability (Non-Owned Disposal Site Coverage)** - If the Project activities include the disposal of waste or other hazardous substance from the work site, the Design-Builder shall maintain or cause to be maintained pollution legal liability with limits of liability of at least [REDACTED] per occurrence naming the following as additional insureds, with a copy of said endorsement submitted to LIRR/MTA: The LIRR and The Metropolitan Transportation Authority.

Additionally, coverage shall be maintained in one of the following ways:

- A stand-alone policy;
- If coverage is not provided under a standalone policy, but is included in either an Environmental Package policy and/or a Contractors Pollution Liability policy, a Non-Owned Disposal Site endorsement may be provided listing the indemnitees referenced above as additional insureds; or
- The Design-Builder may also designate the disposal site, and provide a certificate of insurance from the disposal facility naming the above referenced indemnitees as additional insureds.

2. General Provisions

- (a) Except that as otherwise provided in this Section, the Design-Builder shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, through the completion of Contract, including the warranty period, if applicable, policies of insurance as herein set forth, written by companies with an A.M. Best Company rating of A- /“VII” or better, and approved by MTA and shall deliver evidence of such policies.
- (b) These policies shall:
- Be written in accordance with the requirements of the paragraphs above, as applicable;
 - State or be endorsed to provide (a) that the coverage afforded under the Design-Builder’s policies shall apply on a primary basis and not on an excess or contributing basis with any policies that may be available to the Railroad/MTA, and (b) that the Design-Builder’s policies, primary and excess, shall be exhausted before implicating any Railroad/MTA policy available; and
 - State or be endorsed to provide that, if a Subcontractor’s policy contains any provision that may adversely affect whether Design-Builder’s policies are primary and must be exhausted before implicating any Railroad/MTA policy available, the Design-Builder’s and Subcontractors’ policies shall nevertheless be primary and must be exhausted before implicating any Railroad/MTA policy available.
- (c) Should any of the policies listed herein be canceled, materially changed or not renewed, notice shall be delivered to MTA Risk and Insurance Management Department -OCIP On-Site Administrator, 2 Broadway, 21st floor, New York, NY 10004 by Certified Mail, return receipt requested.
- (d) Policies written on a claims-made basis are not acceptable, except for Professional Liability.
- (e) At least two (2) weeks prior to the expiration of the policies, the Design-Builder shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.
- (f) Except as otherwise indicated in the detailed coverage paragraphs above, self-insured retentions and policy deductibles shall not exceed [REDACTED], unless such increased deductible or retention is approved in writing by Railroad/MTA based on a review of the Design-Builder’s financials. The Design-Builder shall be responsible for all claims expense and loss payments within the deductible or self-insured retention.

- (g) The insurance monetary limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies.
- (h) The Design-Builder's shall furnish evidence of all policies before any work is started to MTA:

MTA Risk & Insurance Management
c/o OCIP On-Site Administrator 2 Broadway – 21st Floor
New York, NY 10004

- (i) Certificates of Insurance may be supplied as evidence of the above policies, except for the Builder's Risk and Railroad Protective Liability policies. However, MTA reserves the right to request copies of such policies herein described above. If requested by MTA, the Design-Builder shall deliver to MTA, within forty-five (45) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

If a Certificate of Insurance is submitted, it must:

- be provided on MTA OCIP Certificate of Insurance Form, as applicable;
 - be signed by an authorized representative of the insurance carrier or producer and notarized;
 - disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage;
 - indicate the Additional Insured, Additional Named Insured and/or Named Insured as required herein; the Design-Builder must provide a physical copy of the Additional Insured Endorsement (ISO Form CG 20 10 and Additional Insured Completed Operations I.S.O. Form CG 2037 or equivalent) – endorsements must include policy number(s);
 - reference the Contract by number on the face of the certificate; and
 - expressly reference the inclusion of all required endorsements.
- (j) If, at any time during the period of this Contract, insurance as required is not in force, or proof thereof is not provided to MTA, MTA shall have the options to:
 - direct the Design-Builder to suspend work with no additional cost or extension of time due on account thereof; or
 - treat such failure as an Event of Default.
 - (k) Although MTA is not responsible for and does not contractually require such coverage, the Design-Builder should determine that its Subcontractors enrolled in the OCIP have adequate Automobile Liability insurance. In addition, the Design-Builder should determine that its Subcontractors enrolled in the OCIP have adequate Workers' Compensation and General Liability coverage for off-site work.

E INSURANCE FURNISHED BY EXCLUDED CONTRACTORS:

1. In addition to the requirements contained in Section D of this Article, each Excluded Contractor, as defined in this Section, shall furnish and maintain in force at all times during this Contract until Final Completion the following policies of insurance:

- (a) **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than [REDACTED] which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State. When applicable, the policy shall be endorsed to include the Longshore and Harbor Workers' Compensation Act and/or Maritime Coverage Endorsement (Jones Act Endorsement).
- (b) **General Liability Insurance** (I.S.O. CG 00 01 01 13 Form or equivalent approved by MTA) in the Design-Builder's name with limits of liability of at least [REDACTED], for each occurrence. The Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property must also be at least equal to the amount as the per occurrence limit for Commercial General Liability. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event the primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating an available Railroad/MTA policy.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed by the Design-Builder under this Contract;
- Personal and Advertising Injury Coverage;
- Products and Completed Operations extending at least one year after project completion;
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary and applicable to the work;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and
- Additional Insured Endorsement (I.S.O. Form CG 20 10 and additional Insured Completed Operations I.S.O. Form CG 20 37 or equivalent approved by MTA), naming MTA, and all other Indemnified Parties under this Contract as additional insured.

2. General Provisions

- (a) Except that as otherwise provided in this Section, the Design-Builder shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, through the completion of Contract, including the warranty period, if applicable, policies of insurance as herein set forth, written by companies with an A.M. Best Company rating of A-/"VII" or better, and approved by MTA and shall deliver evidence of such policies.
- (b) These policies shall:
- Be written in accordance with the requirements of the paragraphs above, as applicable;
 - State or be endorsed to provide (a) that the coverage afforded under the Design-Builder's policies shall apply on a primary basis and not on an excess or contributing

basis with any policies that may be available to the Railroad/MTA, and (b) that the Design-Builder's policies, primary and excess, shall be exhausted before implicating any Railroad/MTA policy available; and

- State or be endorsed to provide that, if a Subcontractor's policy contains any provision that may adversely affect whether the Design-Builder's policies are primary and must be exhausted before implicating any Railroad/MTA policy available, the Design-Builder's and Subcontractors' policies shall nevertheless be primary and must be exhausted before implicating any Railroad/MTA policy available.
- (c) Should any of the policies listed herein be canceled, materially changed or not renewed, notice shall be delivered to the MTA Risk and Insurance Management Department -OCIP On-Site Administrator, 2 Broadway, 21st floor, New York, NY 10004 by Certified Mail, return receipt requested;
- (d) Policies written on a claims-made basis are not acceptable, except for Professional Liability.
- (e) At least two (2) weeks prior to the expiration of the policies, the Design-Builder shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.
- (f) Except as otherwise indicated in the detailed coverage paragraphs above, self-insured retentions and policy deductibles shall not exceed [REDACTED], unless such increased deductible or retention is approved in writing by Railroad/MTA based on a review of the Design-Builder's financials. The Design-Builder shall be responsible for all claims expense and loss payments within the deductible or self-insured retention.
- (g) The insurance monetary limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies.
- (h) The Design-Builder shall furnish evidence of all policies before any work is started to MTA:

MTA Risk & Insurance Management
c/o OCIP On-Site Administrator 2 Broadway – 21st Floor
New York, NY 10004

- (i) Certificates of Insurance may be supplied as evidence of the above policies, except for the Builder's Risk and Railroad Protective Liability policies. However, MTA reserves the right to request copies of such policies herein described above. If requested by MTA, the Design-Builder shall deliver to MTA, within forty-five (45) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

If a Certificate of Insurance is submitted, it must:

- be provided on MTA OCIP Certificate of Insurance Form, as applicable;
- be signed by an authorized representative of the insurance carrier or producer and notarized;
- disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage;
- indicate the Additional Insured, Additional Named Insured and/or Named Insured as required herein; the Design-Builder must provide a physical copy of the Additional

Insured Endorsement (ISO Form CG 20 10 11 85 version or equivalent) – endorsements must include policy number(s);

- reference the Contract by number on the face of the certificate; and
 - expressly reference the inclusion of all required endorsements.
- (j) If, at any time during the period of this Contract, insurance as required is not in force, or proof thereof is not provided to MTA, MTA shall have the options to:
- direct the Design-Builder to suspend work with no additional cost or extension of time due on account thereof; or
 - treat such failure as an Event of Default.
- (k) Although MTA is not responsible for and does not contractually require such coverage, the Design-Builder should determine that its Subcontractors enrolled in the OCIP have adequate Automobile Liability insurance. In addition, the Design-Builder should determine that its Subcontractors enrolled in the OCIP have adequate Workers' Compensation and General Liability coverage for off-site work.

[The LIRR Certificate of Insurance begins on the next page.]

- Capital Contract
- Operating Contract
- Entry Permits



The Metropolitan Transportation Authority CERTIFICATE OF INSURANCE

AGREEMENT or CONTRACT #:		AGREEMENT or CONTRACT NAME/DESCRIPTION:			
INSURANCE PRODUCER: ADDRESS: PHONE #:		CERTIFICATE ISSUANCE DATE:	DATE RECEIVED:	REFERENCE #:	
INSURED: ADDRESS: PHONE #:	CO LTR	COMPANIES AFFORDING COVERAGE			
	A				NAIC #
	B				NAIC #
	C				NAIC #
	D				NAIC #
	E				NAIC #
	F				NAIC #
CERTIFICATE HOLDER: MTA Attention: Risk & Insurance Management ADDRESS: 2 Broadway, 21 st Floor New York, NY 10004 PHONE #: (646) 252-1428		G			
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> Occur <input type="checkbox"/> SIR/Deductible \$ _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Loc <input type="checkbox"/> Other: SIR/Deductible \$ _____				EACH OCCURRENCE \$ DAMAGES TO RENTED PREMISES (Ea occurrence) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS – COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> Owned Autos Only <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos Only <input type="checkbox"/> Non-Owned Autos Only				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> Occur <input type="checkbox"/> Excess Lia <input type="checkbox"/> Claims Made <input type="checkbox"/> DED <input type="checkbox"/> Retention \$ _____				EACH OCCURRENCE \$ AGGREGATE \$
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY <input type="checkbox"/> USLH <input type="checkbox"/> Jones Act <input type="checkbox"/> "Other States" Coverage				<input type="checkbox"/> STATUTORY LIMITS EMPLOYER'S LIABILITY \$
	GARAGE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> Owned Autos Only <input type="checkbox"/> Hired Autos Only <input type="checkbox"/> Non-Owned Autos Only				AUTO ONLY EACH ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
	PROFESSIONAL LIABILITY <input type="checkbox"/> Includes incidental Pollution Liability <input type="checkbox"/> Deductible \$ _____				\$
	OTHER:				\$

EVIDENCE OF RAILROAD PROTECTIVE LIABILITY AND/OR BUILDER'S RISK INSURANCE, WHEN APPLICABLE, REQUIRES SUBMISSION OF THE ORIGINAL POLICY.
THE ORIGINAL BINDER(S) WILL BE ACCEPTED, PENDING ISSUANCE OF THE ORIGINAL POLICY(S). Revised 9/2015

CERTIFICATE OF INSURANCE

MTA

(Continued) Page 2

LIABILITY COVERAGES:

ADDITIONAL INSUREDS Check all that apply
Coverage: General Liability, Garage Liability, Excess/Umbrella Liability

For All Long Island Rail Road Agreements:

- Long Island Rail Road (LIRR)
- Metropolitan Transportation Authority (MTA), and its subsidiaries and affiliates
- 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 Party listed herein.

Additional Indemnitees Required on Long Island Rail Road Agreements, depending on Location of Work:

- NJ Transit Corporation/NJ Transit Rail Operations, Inc.
- National Railroad Passenger Corp. (Amtrak)
- Consolidated Rail Corporation
- CSX Transportation Inc.
- Triborough Bridge & Tunnel Authority (B&T)
- Port Authority of NY & NJ
- Other: The State of New York
- Other: LIRR 3rd-Party Construction Management Firm(s)

PROPERTY COVERAGES:

Check all that apply

ADDITIONAL NAMED INSUREDS/LOSS PAYEE
Property, Builder's Risk, etc.

For all Long Island Railroad Agreements :

- Long Island Rail Road (LIRR)
- Metropolitan Transportation Authority (MTA), and its subsidiaries and affiliates
- 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 Party listed herein

Additional Indemnitees Required on Long Island Rail Road Agreements, depending on Location of Work:

- NJ Transit Corporation/NJ Transit Rail Operations, Inc.
- National Railroad Passenger Corp. (Amtrak)
- Consolidated Rail Corporation
- CSX Transportation Inc.
- Triborough Bridge & Tunnel Authority (B&T)
- Port Authority of NY & NJ
- Other _____

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents that the Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of.....)

) s.s.:

County of.....)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

Guidelines for Submission of Evidence of Insurance

ALL AGENCY AGREEMENTS

These are basic acceptance guidelines-read your agreement for specific insurance requirements.
Policies must be written by Carriers rated A-/VII or better to be acceptable to MTA & MTA's Operating Agencies

1. General Requirements:

- Use Agency Certificate applicable to the contract/agreement – **Version 9/2015**.
- Use Joint Agency Certificate if contract applies to more than one MTA Agency- **Version 9/2015**.
- ACORD Certificate may be used for operating-funded contracts under \$250,000 unless otherwise noted in agreement.

On the Certificate, you are required to:

- Reference the Agreement or Contract #;
- Disclose any deductible, self-insured retention, sub-limit or aggregate limit;
- Provide insured's telephone number, contact person and e-mail address;
- Must be **signed** by an **authorized official, broker, or agent, and notarized**.
- Insurance expiration dates may **not** be within 30 days of submission unless written assurance from the authorized broker that the policy (s) will be renewed with the same terms and conditions is submitted with the certificate.
- Select / Check (✓) the appropriate boxes for Additional Insured / Additional Named Insureds and/or Loss Payees.

2. Minimum Coverages (Refer to Agreement for Specific Insurance Requirements):

a. Workers' Compensation

- The New York State Insurance Fund form is acceptable.
- If a company is located out of state, an "Other States" endorsement is required.
- Sole Proprietors may provide documentation from their accountant or attorney confirming their exempt status.

b. General Liability (Refers To Primary and Umbrella/Excess Liability Policies)

- Minimum limits of Commercial General Liability may be satisfied by a combination of primary and umbrella / excess policies and must follow form of the underlying policy and be extended to "drop down" to become primary in the event the primary policy is exhausted.
- A physical copy of the Additional Insured Endorsement (I.S.O. Form CG 20 10 and Additional Insured Completed Operations I.S.O. Form CG 2037 or equivalent) reflecting the policy number(s) and covering the required Indemnitees in the contract must accompany the certificate of insurance.

c. Railroad Protective Liability (RRPL) / Builder's Risk (including Installation Floater)

- A Certificate of Insurance is not acceptable proof of these coverages: an insurance binder must be provided pending issuance of actual policy.
- RRPL binder must list all required "Named" and/or "Additional Named" Insureds, as applicable.
- Actual policies must be submitted within 30 days from issuance of binder.

d. Environmental Coverages - Contractor or its sub-contractor may provide:

- Contractor's Pollution Liability coverage must be endorsed to include the Additional Insureds per terms of contract and a copy of the physical endorsement must accompany the certificate of insurance.
- Pollution Legal Liability coverage must be endorsed to include the Additional Insureds as required in the contract. Evidence of coverage can be satisfied by the following:
 - Stand-alone Pollution Legal Liability policy listing the Non-Owned Disposal Site.
 - A Non-Owned Disposal Site Endorsement to the Contractors Pollution Liability policy.
 - A certificate of insurance from the disposal facility adding the applicable Agency (s) as Additional Insured.
- The Hauler must provide evidence of their Business Auto Liability policy with copies of the MCS90 & CA9948 endorsement.

e. Joint Venture

- If the Contractor/Consultant is a Joint Venture, the joint venture shall provide evidence of liability insurance in the name of the Joint Venture.
- If insurance is not purchased in the name of the Joint Venture, the member with the majority ownership interest in the joint venture must endorse its general liability policy to name the Joint Venture as an "ADDITIONAL NAMED" insured.

3. Provide Initial Certificates or a Certified Copy(s) of the actual Policy(s). Please follow instructions provided in the Insurance Section of your Solicitation Document. **EVIDENCE OF RENEWAL INSURANCE MUST BE SUBMITTED ELECTRONICALLY. THEY SHOULD BE EMAILED TO THE CONTRACT-SPECIFIC EMAIL ADDRESS RECEIVED FROM COMPLIANZ™. DO NOT MAIL HARD COPIES TO RISK MANAGEMENT.**

APPENDIX C

ROADWAY WORKER PROTECTION TRAINING

[See Next Pages]



FROM: **LIRR TRAINING DEPARTMENT**
Greg James [REDACTED] [@lirr.org](mailto:[REDACTED]@lirr.org)
Asst. Director – Safety and Security Training
Phone: [REDACTED] Fax: (718) 558-3226

CONSULTANT / CONTRACTOR TRAINING

All Consultants and/or Contractors who perform work on Long Island Rail Road property are required to attend a **Contractor Safety Course** and **Roadway Worker Protection Training**. This training is offered in a 3 ½ hour session, normally scheduled on **Wednesdays, at 3:30 PM** in the Safety and Training Department of the Long Island Rail Road at our Hillside Support Facility in Queens.

Any individuals interested in attending Consultant / Contractor training must send an e-mail to pre-register for the session. **Registration must be sent no later than 11:00 AM on Monday of the week you wish to attend**, by e-mail to SafetyTraining@lirr.org

Registration should be sent with **<Consultant / Contractor Training (DATE REQUESTED)>** in the subject line, and **must** include the following information in the first line of the e-mail body:

First Name Last Name - D.O.B - Last 2 SS# - Employer given in the following format

(John Doe - 11/12/85 - 12 - XYZ Construction)

Please be sure to specify the date of the class you wish to attend

Registrations are only valid after receipt or a confirmation e-mail from the LIRR Training Department, and any verbal request must be followed by e-mail containing the information specified above. All participants must possess Photo I.D (Company photo ID is acceptable).

Note: There are **no substitutions** permitted if the registered individual cannot attend.

**DO NOT SEND SOMEONE ELSE IN PLACE OF A REGISTERED INDIVIDUAL,
THEY WILL NOT BE ADMITTED**

If participant(s) are not fluent in the English Language, the Contractor shall designate an individual(s) to accompany participant(s) to the training session. Such individual(s) must be fluent in the English Language and capable of communicating with both the student and instructor, to assist with proper translation of all pertinent course material.

NOTE: SIGN-IN BEGINS AT 3:15 PM

STUDENTS ARRIVING AFTER 3:30 PM WILL NOT BE ADMITTED

Due to new LIRR security procedures, on-site parking is no longer available. Travel to the Hillside Support Facility is best accomplished utilizing rail service to the facility, as street parking in the area is limited.

See Page 2 for an area map and suggested rail service to the Hillside Support Facility

**Safety and Training Department • Hillside Support Facility
93-59 183rd Street • Dept. 3149 • Hollis, NY 11473**

Should you have any problems with this transmittal, please contact:

Greg James • [REDACTED]

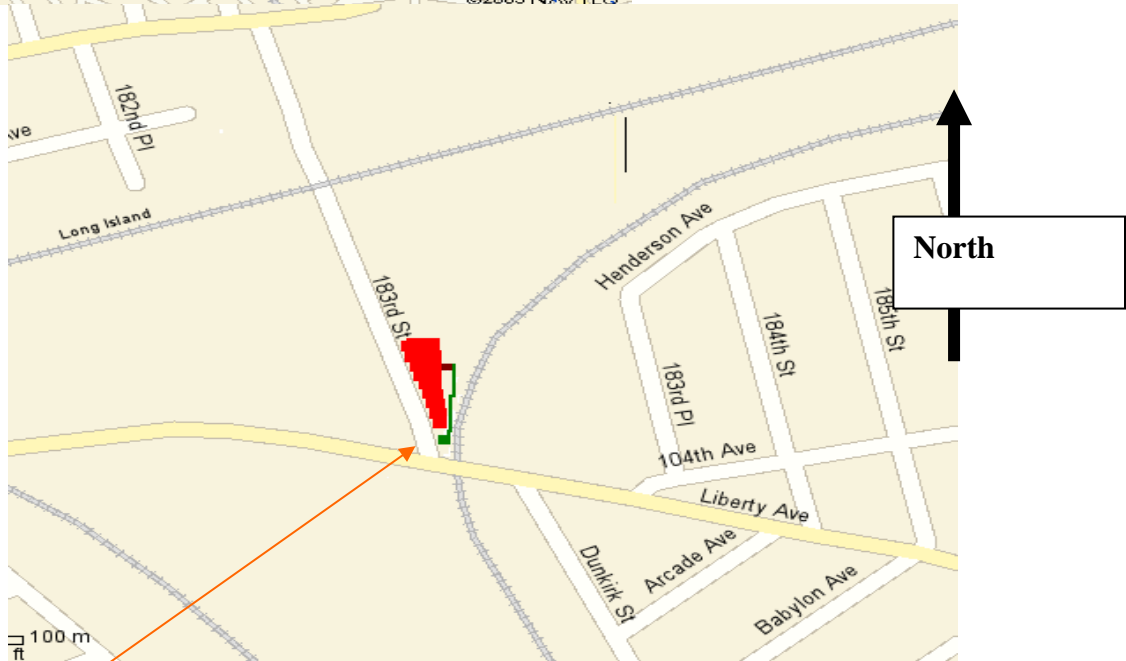
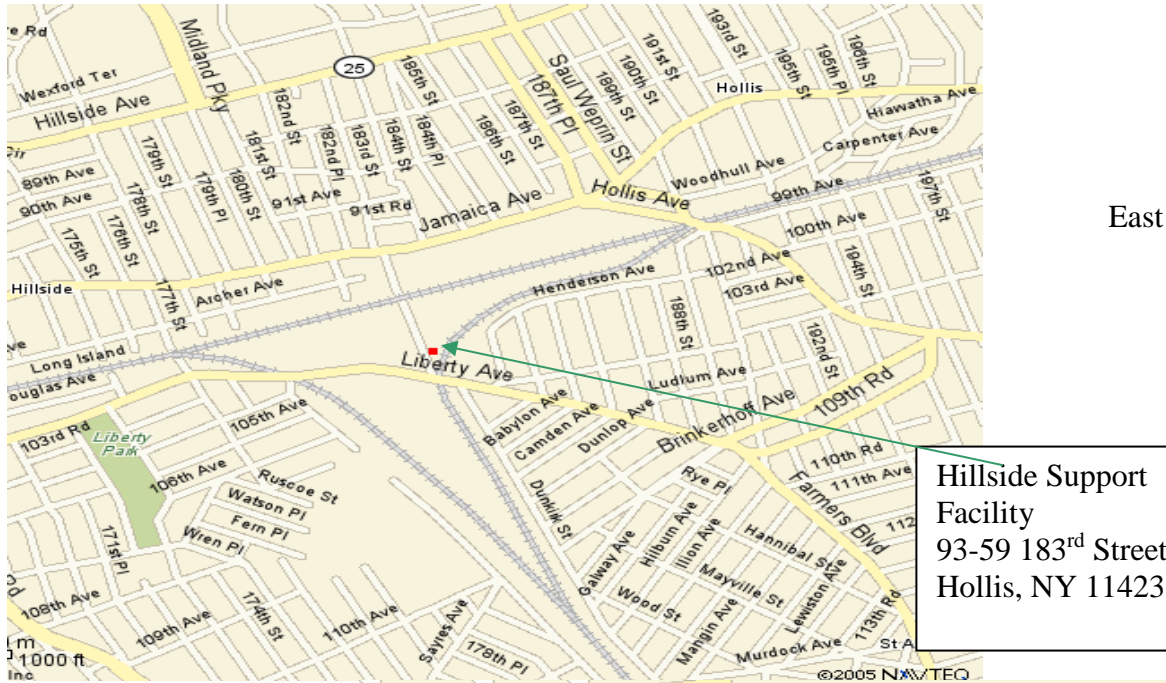
DIRECTIONS (via LIRR)

E/B If coming from **PENN STATION** Take **2:52 PM** Huntington Train Arrive at **Hillside Support Facility** at **3:17 PM**

E/B If coming from **JAMAICA STATION** Take **3:13 PM** Huntington Train Arrive at **Hillside Support Facility** at **3:17 PM**

W/B If coming from **Ronkonkoma** Take **2:11 PM** Ronkonkoma Train Arrive at **Hillside Support facility** at **3:07 PM**

Use overpass at center of platform and proceed to Security Desk (They will direct you to classrooms)



Hillside Support Facility
Follow driveway (green) from Guard Booth on 183rd Street and Liberty Avenue to Hillside Support Facility Building #2 (Indicated by red area.) Enter Building at the brown awning. Check in at the Security Desk.

Safety is an easy A-B

APPENDIX D

**Design-Build Services for LIRR Expansion Project from Floral Park to Hicksville
Contract #6240**

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This agreement (the "Agreement") is made this ____ day of _____, 2017 by and among The Metropolitan Transportation Authority ("MTA"), a public benefit corporation of the State of New York and the Proposer identified below who is participating in the Request for Proposal ("RFP") process for the procurement of Consultant Services for the Project referenced herein ("Proposer").

WHEREAS, MTA's subsidiary The Long Island Rail Road Company ("LIRR" or "Railroad") has conducted a procurement to solicit proposals from firms to perform Design-Build Services for LIRR Expansion Project Floral Park to Hicksville; and

WHEREAS, the Railroad issued a RFP to prospective proposers to enable proposers to prepare and submit proposals; and

WHEREAS, in connection with the RFP, the Railroad and MTA have provided certain proprietary and confidential documentation and information (collectively, the "Confidential Information") to prospective proposers; and

WHEREAS, the Railroad and MTA have an interest in the non-disclosure of the Confidential Information for purposes of safety and security of the Railroad and MTA, their employees and the public at large;

NOW, THEREFORE, the parties agree as follows:

1. The Proposer shall hold and maintain in confidence the Confidential Information. The Confidential Information shall also include, without limitation, the existence and content of the negotiations and discussions regarding the contemplated business arrangement between the parties,

documents prepared by the parties or their representatives containing or based in whole or in part on any Confidential Information obtained from the parties or their representatives.

2. Except as may be required by law or pursuant to other written agreement, the Proposer agrees not to disclose the Confidential Information to any person (broadly interpreted to include without limitation any corporation, partnership and individual) without the prior written approval of MTA and to limit the disclosure of the Confidential Information to its representatives whose duties and responsibilities require the need to know the Confidential Information and then only provided that there is a clear understanding on the part of such representatives of their obligation to maintain the confidentiality of the Confidential Information in accordance with the terms hereof.

3. All Confidential Information received by the Proposer shall remain the property of the Railroad, and upon the request of MTA, or upon termination of this Agreement, shall be immediately returned to MTA, along with all copies, summaries and reproductions not previously destroyed.

4. Nothing in this Agreement shall be construed as granting or covering any rights by license or otherwise, express or implied, for any invention, discovery, or improvement made, conceived or acquired with respect to the Confidential Information prior to or after the date of this Agreement.

5. No failures or delay by MTA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. MTA shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Agreement by the Proposer.

6. This Agreement may be executed in counterparts, all of which together shall constitute one and the same document and any of which shall be deemed an original without productions of the other copies.

7. This Agreement represents the entire understanding between MTA and Proposer pertaining to the Confidential Information and any prior agreements regarding said matters are hereby superseded.

8. The obligation under this Agreement shall not apply to any portion of the Confidential Information which (i) is or becomes public knowledge through no fault of the Proposer, (ii) is legally in the possession of the Proposer prior to disclosure to it by MTA, (iii) is disclosed to the Proposer without restriction on disclosure by a person who has the lawful right to disclose the information, or (iv) is disclosed pursuant to the lawful requirement or formal request of a governmental agency. Nevertheless, in the event that the Proposer or their representatives are requested or become legally compelled (by process) to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to the Proposer or its representatives, the Proposer agrees on behalf of itself and its representatives that MTA will be provided with prompt written notice of such requests so that the Proposer has the opportunity to pursue its legal and equitable remedies regarding such potential disclosure. Notwithstanding the waiver by MTA of the provisions of this Agreement or its failure to obtain a protective order or other remedy, the Proposer agrees on behalf of itself and its representatives to (a) only furnish that portion of the Confidential Information which is legally required, and (b) utilize

all reasonable efforts to obtain reliable assurances that the person receiving such Confidential Information will maintain the confidentiality of the same.

9. Should the Proposer violate any provisions of this Agreement it is understood and agreed that the Proposer will be subject to any and all remedies available by law, including damages to compensate MTA for the release of any of the Confidential Information, and any remedies provided for in the Railroad's RFP.

10. This Agreement shall be governed and construed in accordance with the laws of the State of New York with regarding to any conflicts of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives intending to be bound thereby.

PROPOSER

THE METROPOLITAN TRANSPORTATION
AUTHORITY

(Company name)_____

By:_____

By:_____

Print Name:_____

Print Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

STATE OF _____)

)ss.:

COUNTY OF _____)

On the _____ day of _____, in the year 2017, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

APPENDIX E

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. MTA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of MTA Agency contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Proposers are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

- A. MTA hereby establishes an overall goal of **6%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Design-Builder should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the Point of Contact. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Proposers are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Proposer intends to use to perform the Contract, a description of the work that the Proposer intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Proposer acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to MTA.
- C. MTA will review the submitted SDVOB Utilization Plan and advise the Design-Builder of MTA’s acceptance or issue a notice of deficiency within 20 days of receipt.

- D. If a notice of deficiency is issued, Design-Builder agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to MTA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by MTA to be inadequate, MTA shall notify the Design-Builder and direct the Design-Builder to submit, within five business days of notification by MTA, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. MTA may disqualify a Proposer's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Proposer fails to submit an SDVOB Utilization Plan;
 - (b) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - (c) If a Proposer fails to submit a request for waiver; or
 - (d) If MTA determines that the Proposer has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, MTA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Design-Builder shall speak to the Designated Contacts at MTA for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Design-Builder that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Proposer may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by MTA at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Proposer's waiver request is complete, MTA shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to MTA, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If MTA, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, MTA may issue a notice of deficiency to the Contractor.

The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to MTA.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Proposer's solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by MTA with certified SDVOBs whom MTA determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to MTA during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the MTA website and should be completed by the Contractor and submitted to MTA, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [email or contact information of the Agency]

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE AT: <http://ogs.ny.gov/Core/SDVOBA.asp>

SDVOB UTILIZATION PLAN

Initial Plan
 Revised plan
 Contract/Solicitation # _____

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Design Builder commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.			
DESIGN BUILDER INFORMATION			SDVOB Goals In Contract
Design Builder Name:	NYS Vendor ID:		%
Design Builder Address (Street, City, State and Zip Code):			
Design Builder Telephone Number:	Contract Work Location/Region:		
Contract Description/Title:			
CONTRACTOR INFORMATION			
Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			
<i>If unable to meet the SDVOB goals set forth in the solicitation/contract, Design Builder must submit a request for waiver on the SDVOB Waiver Form.</i>			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
FOR MTA USE ONLY			
MTA Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
NAME (Please Print):	SDVOB %/\$ _____	Date Received:	Date Processed:
Comments:			
NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf Note: All listed Subcontractors/Suppliers will be contacted and verified by MTA. SDVOB Utilization Plan – SDVOB 100 (9/16)			

ADDITIONAL SHEET

Design Builder Name:		Contract/Solicitation # _____	
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %			

APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL

(must be submitted before requesting final payment on the Contract)

Section 1: Basic Information			
Contractor's Name:		Federal Identification Number:	
Street Address:		E-Mail Address:	
City, State, Zip Code:		Telephone: () -	
Contract Number:		SDVOB CONTRACT GOALS	
		%	
Section 2: Type of SDVOB Waiver Requested			
<input type="checkbox"/>	Total	<input type="checkbox"/>	Partial
If partial waiver, please enter the revised SDVOB percentage:			%
Please explain the reason for the waiver request:			
Section 3: Supporting Documentation			
Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:			
<ul style="list-style-type: none"> <input type="checkbox"/> Attachment A. Copies of solicitations to SDVOBs and any responses thereto. <input type="checkbox"/> Attachment B. Explanation of the specific reasons each SDVOB that responded to Proposers' solicitation was not selected. <input type="checkbox"/> Attachment C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by MTA with certified SDVOBs whom MTA determined were capable of fulfilling the SDVOB goals set forth in the contract. <input type="checkbox"/> Attachment D. Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs. <input type="checkbox"/> Attachment E. Other information deemed relevant to the request. 			
Section 4: Signature and Contact Information			
By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.			
Prepared By: (Signature)			Date:
Name and Title of Preparer (Print or Type)			

For MTA Use Only	
Reviewed By:	Date:
Decision: <input type="checkbox"/> Full SDVOB waiver granted <input type="checkbox"/> Partial SDVOB waiver granted; revised SDVOB goal: _____ % <input type="checkbox"/> SDVOB waiver denied	
Approved By:	Date:
Date Notice of Determination Sent:	
Comments	

Instructions for Completing the Monthly SDVOB Compliance Report – SDVOB 101

The SDVOB Monthly Reporting Form is to be completed by the Contractor/Vendor, and submitted by the 10th day of *each* month for the duration of the Contract. This form should include **all** (e.g. SDVOB and non SDVOB) Subcontractors and/or Suppliers assigned by the Contractor/Vendor to perform work during the contract. This reporting should also include payments made by your Subcontractors and/or Suppliers to SDVOB firms.

Complete the form as specified below.

Contract No.	6240
Contractor/Vendor Name and Address	Provide your firm's name and address.
Federal ID No.	Enter your firm's Federal ID No.
Goals	Indicate SDVOB participation goals.
Reporting Period	Fill in the month and year of reporting period. One copy must be submitted with final payment application.
Description of Project	Briefly describe the work you are providing under the terms of this contract.
Firm Name and Address	Provide the name, address and phone number of all Subcontractors/Suppliers assigned by the Contractor/Vendor on this contract or purchase agreement(s).
Federal ID No.	Enter the Subcontractor's/Supplier's Federal ID No. If no Federal ID No. has been assigned, provide only the owner's last four (4) digits of his or her Social Security No.
Payment This Month	Indicate the amount paid <i>this month</i> to each Subcontractor/Supplier. If there was no income activity for a Subcontractor/Supplier, please check the box indicating "No Payment This Month."
Contract Amount	Enter the total contract amount or purchase agreement(s) amount for each Subcontractor/Supplier.
Description of Work/Supplies	Briefly describe the work performed or supplies provided by each Subcontractor/Supplier.

Submit to:

MTA Long Island Rail Road Company
Gerald M. Turchetto, LIRR Procurement Department
144-41 94th Avenue
Jamaica, NY 11435
Email: [REDACTED]@lirr.org

DESIGN BUILDER'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10TH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT)

Contract No.: _____

Contractor/Vendor Name, Address and Phone No.:	Design Builder/Vendor Federal ID No.:	SDVOB Goals	Reporting Period	
	Description of Project:	%	Month	Year
Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation <input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	Payment This Month	Contract Amount
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		

Signature	Print Name and Title	Date				
Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.						
		<table style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center; padding: 2px;">For MTA Use Only</th> </tr> <tr> <td style="width: 50%; padding: 2px;">Reviewed By:</td> <td style="width: 50%; padding: 2px;">Date:</td> </tr> </table>	For MTA Use Only		Reviewed By:	Date:
For MTA Use Only						
Reviewed By:	Date:					