

Torres Rojas, Genara

FOI#14434

From: robert.harwood@transport.alstom.com
Sent: Tuesday, November 26, 2013 11:44 AM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree; Qureshi, Ann
Subject: Freedom of Information Online Request Form

Information:

First Name: Robert
Last Name: Harwood
Company: Alstom Signaling Inc.
Mailing Address 1: 1025 John Street
Mailing Address 2: West Henrietta
City: Rochester
State: NY
Zip Code: 14586
Email Address: robert.harwood@transport.alstom.com
Phone: 585 279-2163
Required copies of the records: Yes

List of specific record(s):

I would like an executed signed copy of the final contract agreements for the PATH Signal Project - Automatic Train Control System - Contract Number 4600008007. I would like to see the executed final contracts between PATH and Siemens Mobility Division and between Siemens Mobility Division and Invensys Rail Corporation Safetrans.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

May 16, 2014

Mr. Robert Harwood
Alstom Signaling Inc.
1025 John Street, West Henrietta
Rochester, NY 14586

Re: Freedom of Information Reference No. 14434

Dear Mr. Harwood:

This is in response to your November 26, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for the executed signed copy of the final contract agreements for the PATH Signal Project - Automatic Train Control System - Contract Number 4600008007, and the executed final contracts between PATH and Siemens Mobility Division and between Siemens Mobility Division and Invensys Rail Corporation Safetrans.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/14434-C.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (1) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

PORT AUTHORITY
TRANS-HUDSON CORPORATION

**PATH Signal Project -
Automatic Train Control System**

Contract Number 4600008007

December 2009

CONFORMED

Volume 1 of 5



December 11, 2009

Siemens Team:

Siemens Industry Inc.
Oliver Hauck, President
7464 French Road
Sacramento, California, 95828

Safetran Systems Corporation
Kevin Riddett, President
2400 Nelson Miller Parkway
Louisville, Kentucky 40223

D/A Builders, LLC.
Victor Daidone, Member
200 Raymond Boulevard
Newark, New Jersey 07105

**RE: RFP #17528, PATH SIGNAL PROJECT, AUTOMATIC TRAIN CONTROL (ATC) SYSTEM,
CONTRACT NUMBER 4600008007, PURCHASE ORDER NUMBER 4500060939 – LETTER
OF ACCEPTANCE**

Gentlemen:

The Port Authority Trans-Hudson Corporation ("PATH") hereby accepts the Proposal dated December 10, 2009 submitted by Siemens Industry Inc, Safetran Systems Corporation, D/A Builders LLC., which entities acting jointly and severally constitute the Siemens Team, for the above referenced Contract Number 4600008007 (the "Contract"), subject to the following:

A. The Contract between the parties shall be understood to consist of the following:

1. This Letter of Acceptance
2. The Specific Contract Terms and Conditions, Exhibits, the Standard Contract Terms and Conditions, Price Forms, the Attachments, the Contract Guarantee Agreement, the Contractor Certification and the Proposal dated December 10, 2009, which forms part of the Contract Booklet for Contract Number 4600008007.
3. Compliance Matrix
4. Technical Specification, including all Appendices.

All other correspondence and communications of any nature whatsoever regarding such Contract Number 4600008007 not specifically mentioned hereinbefore are unconditionally withdrawn in their entirety and shall be regarded as never having been sent.

B. Receipt of an executed Contractor Certification in a form acceptable to the Port Authority.

PORT AUTHORITY
TRANS-HUDSON CORPORATION

Prior to the commencement of work under this Contract, please submit to the Port Authority your insurance certificate as required for this Contract under Article 503 entitled "Insurance to Be Procured by Contractor". Send your certificate to General Manager, Risk Management, 225 Park Avenue South, 12th Floor, New York, NY 10003 (Attention: Contract Certificate Review). Reference CITS # 54376 PATH SIGNAL PHASE II-4/10/07 on your certificate.

If the foregoing meets with your approval, please indicate your concurrence by counter signing the enclosed, duplicate originals of this letter and returning them to Mr. Dennis Kopik at 1 Madison Avenue, 7th Floor, New York, NY, 10010.

This Letter of Acceptance may be executed in counterparts and by each party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Letter of Acceptance.

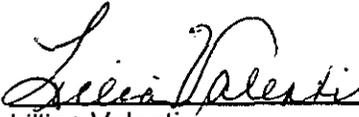
Yours truly,

CONCURRED IN AND CONFIRMED.

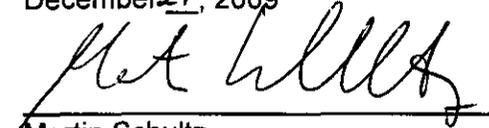
THE PORT AUTHORITY TRANS-
HUDSON CORPORATION

THE SIEMENS TEAM

SIEMENS INDUSTRY, INC


Lillian Valenti
Director, Procurement Department


Oliver Hauck
President, Mobility Division
December 21, 2009


Martin Schultz
Vice President, Business Administration
December 21, 2009

SAFETRAN SYSTEMS CORPORATION

Kevin Riddett
President
December __, 2009

D/A BUILDERS, LLC.

Victor Daidone
Member
December __, 2009

OK
from
BKV

PORT AUTHORITY
TRANS-HUDSON CORPORATION

Prior to the commencement of work under this Contract, please submit to the Port Authority your insurance certificate as required for this Contract under Article 503 entitled "Insurance to Be Procured by Contractor". Send your certificate to General Manager, Risk Management, 225 Park Avenue South, 12th Floor, New York, NY 10003 (Attention: Contract Certificate Review). Reference CITS # 54376 PATH SIGNAL PHASE II-4/10/07 on your certificate.

If the foregoing meets with your approval, please indicate your concurrence by counter signing the enclosed, duplicate originals of this letter and returning them to Mr. Dennis Kopik at 1 Madison Avenue, 7th Floor, New York, NY, 10010.

This Letter of Acceptance may be executed in counterparts and by each party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Letter of Acceptance.

Yours truly,

THE PORT AUTHORITY TRANS-
HUDSON CORPORATION

Lillian Valenti
Director, Procurement Department

CONCURRED IN AND CONFIRMED

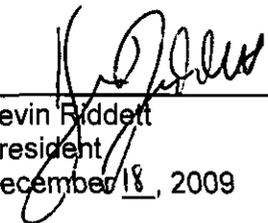
THE SIEMENS TEAM

SIEMENS INDUSTRY, INC

Oliver Hauck
President, Mobility Division
December __, 2009

Martin Schultz
Vice President, Business Administration
December __, 2009

SAFETRAN SYSTEMS CORPORATION



Kevin Biddett
President
December 18, 2009

D/A BUILDERS, LLC.

Victor Daidone
Member
December __, 2009

PORT AUTHORITY
TRANS-HUDSON CORPORATION

Prior to the commencement of work under this Contract, please submit to the Port Authority your insurance certificate as required for this Contract under Article 503 entitled "Insurance to Be Procured by Contractor". Send your certificate to General Manager, Risk Management, 225 Park Avenue South, 12th Floor, New York, NY 10003 (Attention: Contract Certificate Review). Reference CITS # 54376 PATH SIGNAL PHASE II-4/10/07 on your certificate.

If the foregoing meets with your approval, please indicate your concurrence by counter signing the enclosed, duplicate originals of this letter and returning them to Mr. Dennis Kopik at 1 Madison Avenue, 7th Floor, New York, NY, 10010.

This Letter of Acceptance may be executed in counterparts and by each party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Letter of Acceptance.

Yours truly,

THE PORT AUTHORITY TRANS-
HUDSON CORPORATION

Lillian Valenti
Director, Procurement Department

CONCURRED IN AND CONFIRMED

THE SIEMENS TEAM
SIEMENS INDUSTRY, INC

Oliver Hauck
President, Mobility Division
December __, 2009

Martin Schultz
Vice President, Business Administration
December __, 2009

SAFETRAN SYSTEMS CORPORATION

Kevin Riddett
President
December __, 2009

D/A BUILDERS, LLC.

Victor Daidone
Vice President Daidone Electric Inc,
Managing Member D/A Builders, LLC
December 21, 2009

TABLE OF CONTENTS

PROPOSAL	9
SPECIFIC CONTRACT TERMS AND CONDITIONS	19
<i>Chapter 1 GENERAL AGREEMENT and DEFINITIONS</i>	19
Article 101 Use of English Language	19
Article 102 Definitions.....	19
Article 103 General Agreement	25
Article 104 Project Compatibility Requirements	26
Article 105 PATH's Rights in Intellectual Property.....	26
105.1 Patents, License Fees, Consents.....	26
105.2 Definitions	27
105.3 Intellectual Property License	29
105.4 Injunctions.....	29
105.5 Tooling Rights	29
105.6 Software License Agreement	30
105.6.1 Term.....	34
105.6.2 Source Code and Confidential Materials.....	34
105.6.3 Limited Warranties	34
105.6.4 Governing Law	35
105.6.5 Miscellaneous.....	35
105.7 Hardware Design Escrow Agreement	35
105.8 Escrow Agreement.....	38
Article 106 Assignments and Subcontracts	38
Article 107 Master Project Schedule Submittal	38
107.1 Submittal Contents.....	38
107.1.1 Schedule Narrative	38
107.1.2 Master Project Schedule	39
107.2 Master Project Schedule Updating	40
Article 108 Order of Precedence	42
Article 109 Removal and Disposal of Hazardous Materials.....	42
Article 110 Contractor Representatives.....	43
Article 111 Local Content	43
Article 112 Removal and Disposal of Signal System Components	43
Article 113 M/WBE Subcontracting Provisions.....	44
<i>Chapter 2 DELIVERY AND ACCEPTANCE</i>	45
Article 201 Time for Completion and Delivery Schedule	45
Article 202 Time for Completion and Damages for Delay.....	46
202.1 Loss of Revenue Service Time	47
202.2 Cap on Liquidated Damages.....	48
Article 203 Extension of Time.....	48
Article 204 Delays to Contractor, Cancellation for Delay, Emergency Delay, and Idle Employees	50
204.1 Delays to Contractor	50
204.2 Cancellation for Delay	50
204.3 Compensation for Emergency Delay.....	51
204.4 Idle Employees.....	51
204.5 Suspension of 90 Days or More	52
Article 205 Acceptance.....	53
Article 206 Rejection	54
Article 207 Title to Materials	55
Article 208 Options.....	55
Article 209 Net Cost Items.....	57
Article 210 PATH Operations and Conditions	58
<i>Chapter 3 PRICE AND PAYMENT</i>	69
Article 301 Guide for Payments.....	69
301.1 PATH Payment Process	69
301.2 No Waiver	70
Article 302 Milestone Payments	70
302.1 Milestone Payments, General Provisions.....	70

302.2	Milestone Payments, Project Management (line item 1)	71
302.3	Milestone Payments, Operations Control Center Equipment (line item 2)	72
302.4	Milestone Payments, ATC Wayside Equipment (line item 3)	73
302.5	Milestone Payments, Interlocking Equipment (line item 4)	74
302.6	Milestone Payments, Trackside Equipment (line item 5)	77
302.7	Milestone Payments, Bungalows/Equipment Room Modifications (line item 6)	92
302.8	Milestone Payments, Signal Power Equipment (line item 7)	93
302.9	Milestone Payments, Existing Equipment Removals (line item 8)	94
302.10	Milestone Payments, ATC Carborne Equipment (line item 9)	95
302.11	Milestone Payments, Data Communications Equipment (line item 10)	97
302.12	Milestone Payments, PTC System Solution to Comply with the RSIA 2008 (line item 11)	98
302.13	Milestone Payments, System Safety/Safety Certification (line item 12)	98
302.14	Milestone Payments, Inspection and Testing (line item 13)	99
302.15	Milestone Payments, Training (line item 14)	100
302.16	Milestone Payments, Support Services (line item 15)	102
Article 303	Final Completion Certification	103
Article 304	Final Payments	103
304.1	Final Completion Payment	103
304.2	Conditions Associated with the Contractor's Acceptance of Final Payments	104
Article 305	Payments Related to Guarantee/Warranty Obligations	105
Article 306	Withholding of Payments	105
Article 307	Prevailing Rate of Wage	106
Chapter 4	CHANGES TO THE CONTRACT	108
Article 401	Extra Work	108
Article 402	General Obligations	110
Article 403	Differing Site Conditions	111
Article 404	Laws and Ordinances – Changes in Law	111
Chapter 5	CONTRACTOR'S LIABILITY, INDEMNIFICATION, RISK OF LOSS	113
Article 501	Indemnification and Risks Assumed By The Contractor	113
Article 502	Insurance Procured By PATH	114
Article 503	Insurance To Be Procured By Contractor	117
Article 504	Limitation of Liability	118
Chapter 6	AUTHORITY OF THE PROJECT MANAGER, DISPUTES AND CLAIMS	120
Article 601	Authority of the Project Manager	120
Article 602	Disputes Resolution Procedure/Authority and Duties of Director/General Manager	121
Article 603	Notice Requirements	121
Chapter 7	INSPECTION, TESTING, GUARANTEES AND CHARACTER OF WORK	124
Article 701	Inspections, Performance Testing and Rejections	124
Article 702	Character of the Work	125
Article 703	General Guarantee/Warranty	126
Article 704	Manufacturer's Warranties and Guarantees	131
Article 705	Payment for Services Required to be Provided by PATH	131
Article 706	Excessive Defect Guarantee	131
Article 707	Quality Assurance	133
Article 708	PATH Field Inspection Offices	133
Article 709	Railcar/Signal System Interface	134
Article 710	No Release of Contractor	134
Article 711	Errors and Discrepancies	134
Chapter 8	MISCELLANEOUS PROVISIONS	135
Article 801	Correspondence Tracking and Document Management	135
Article 802	Initial Provisions, Special Tools, Test Equipment, & Mock-Ups	135
Article 803	Contractual Relationship	136
Article 804	Non-Publication	136
Article 805	Long-Term Technical Support and Services Contract	137
805.1	Request for Preliminary Evaluation	137
805.2	Request for Preliminary Evaluation	138
805.3	Request for Preliminary Evaluation	139
Article 806	Orthstar	139
EXHIBIT A:	ESCROW AGREEMENT	141
EXHIBIT B:	NOT USED	166
EXHIBIT C:	FULL-TIME ASSIGNED EMPLOYEES	167

EXHIBIT D: SIGNALS THAT ARE DELETED FROM THE LAYOUT	168
EXHIBIT E: STAGING MATERIAL AS SPARES	169
EXHIBIT F: TRAIN ENGINEER TRAINING SIMULATOR UPGRADE (ORTHSTAR)	179
EXHIBIT G: DETAIL OF COMPLETE CARBORNE ATC EQUIPMENT SET PRICING	180
EXHIBIT H: HASTUS CREW SCHEDULE	181
EXHIBIT I: EXTENDED WARRANTY	182
STANDARD CONTRACT TERMS AND CONDITIONS.....	185
PART I GENERAL DEFINITIONS	185
PART II GENERAL PROVISIONS	186
1. Facility Rules and Regulations of PATH	186
2. Contractor Not An Agent	186
3. Contractor's Warranties	186
4. Personal Non Liability	187
5. Equal Employment Opportunity, Affirmative Action, Non Discrimination	187
6. Rights and Remedies of PATH	188
7. Rights and Remedies of the Contractor	188
8. Submission To Jurisdiction	188
9. Harmony	189
10. Claims of Third Persons	190
11. No Third Party Rights	190
12. Provisions of Law Deemed Inserted	190
13. Costs Assumed By The Contractor	190
14. Default, Revocation or Suspension of Contract	190
15. Sales or Compensating Use Taxes	194
16. No Estoppel or Waiver	194
17. Records and Reports	194
18. Not Used	195
19. Approval of Methods	195
20. Safety and Cleanliness	195
21. Accident Reports	196
22. Trash Removal	196
23. Lost and Found Property	196
24. Property of the Contractor	196
25. Modification of Contract	197
26. Invalid Clauses	197
27. Approval of Materials, Supplies and Equipment	197
28. Contract Records and Documents – Passwords and Codes	197
29. High Security Areas	197
30. Notification of Security Requirements	198
31. Construction In Progress	199
32. Permit Required Confined Space Work	199
33. Signs, Posters or Advertising	199
34. Vending Machines, Food Preparation	199
35. Non-Publication	199
36. Time is of the Essence	200
37. Holidays	200
38. Personnel Standards	200
39. General Uniform Requirements for Contractor's Personnel	200
40. Labor, Equipment and Materials Supplied by the Contractor	201
41. Contractor's Vehicles – Parking - Licenses	201
42. Project Manager's Authority	201
43. Price Preference	202
44. M/WBE Good Faith Participation	202
PART III CONTRACTOR'S INTEGRITY PROVISIONS	204

1.	<i>Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information.....</i>	494
2.	<i>Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees.....</i>	495
3.	<i>Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts</i>	501
4.	<i>No Gifts, Gratuities, Offers of Employment, Etc.</i>	503
5.	<i>Conflict of Interest.....</i>	504
6.	<i>Definitions</i>	506
	PRICE FORMS.....	509
	CONTRACT GUARANTEE AGREEMENT.....	560
	CONTRACTORS CERTIFICATION	

**THE PORT AUTHORITY TRANS-HUDSON CORPORATION
PATH Signal Project - Automatic Train Control (ATC) System
CONTRACT NUMBER 4600008007**

PROPOSAL

1. PROPOSAL, DATED DECEMBER 10, 2009

To The Port Authority Trans-Hudson Corporation:

The undersigned, Siemens Industry Inc., a corporation organized under the laws of Delaware; Safetran Systems Corporation, a corporation organized under the laws of Delaware; D/A Builders, LLC, a limited liability corporation organized under the laws of New Jersey, which entities acting jointly and severally constitute the Siemens Team (hereinafter called "the Contractor"), hereby offers to perform all the obligations and to assume all the duties and liabilities of the Contractor provided for in the Contract, at the prices inserted by the undersigned in the Price Forms.

To induce the acceptance of this Proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in said Contract.

The undersigned hereby designates the following as the Contractor's office:

498 Seventh Avenue, 16th Floor, New York, NY 10018

¹ Insert Proposer's name. If a corporation, give state of incorporation, using the phrase, "a corporation organized under the laws of the State of _____".
If a joint venture, give the information required above for each participant in the joint venture.

2. SIGNATURE AND CERTIFICATE OF AUTHORITY¹

Dated, Dec 11, 2009

(Name of corporation) Siemens Industry Inc.

(Signature of corporate officer) By^{2,3} [Signature]
President, Mobility Division

(Signature of corporate officer) By^{2,3} [Signature]
Vice President, Business Administration

7464 French Road, Sacramento, California, 95828

(Acknowledgment of signature to be taken on proper form on following page(s))

CERTIFICATE OF AUTHORITY, IF PROPOSER IS A CORPORATION

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

(Corporate Seal) [Signature]
Assistant Secretary

¹ If Proposer is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.

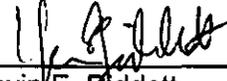
² Give title and address of corporate officer who signs.

³ NOTE: The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the Proposer with the Proposal will become part of the records of the Port Authority and that the Port Authority will rely in awarding the Contract on the truth and accuracy of such Proposal and each such schedule therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

2. SIGNATURE AND CERTIFICATE OF AUTHORITY¹

Dated, Dec 11, 2009

(Name of corporation) Safetran Systems Corporation

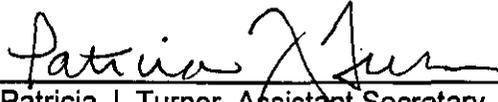
(Signature of corporate officer) By^{2,3} 
Kevin E. Riddett, President
2400 Nelson Miller Parkway, Louisville, Kentucky 40223

(Acknowledgment of signature to be taken on proper form on following page(s))

CERTIFICATE OF AUTHORITY, IF PROPOSER IS A CORPORATION

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

(Corporate Seal)


Patricia J. Turner, Assistant Secretary

¹ If Proposer is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.
² Give title and address of corporate officer who signs.
³ NOTE: The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the Proposer with the Proposal will become part of the records of the Port Authority and that the Port Authority will rely in awarding the Contract on the truth and accuracy of such Proposal and each such schedule therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

2. SIGNATURE AND CERTIFICATE OF AUTHORITY¹

Dated, December 22, 2009

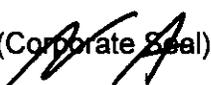
(Name of corporation) D/A Builders, LLC

(Signature of corporate officer) By^{2,3} 
Vice President, Daidone Electric Inc.
Managing Member D/A Builders, LLC
200 Raymond Boulevard, Newark, NJ 07105

(Acknowledgment of signature to be taken on proper form on following page(s))

CERTIFICATE OF AUTHORITY, IF PROPOSER IS A CORPORATION

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

(Corporate Seal)  _____

¹ If Proposer is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.

² Give title and address of corporate officer who signs.

³ NOTE: The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the Proposer with the Proposal will become part of the records of the Port Authority and that the Port Authority will rely in awarding the Contract on the truth and accuracy of such Proposal and each such schedule therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

State of California

County of Sacramento

Subscribed and sworn to (or affirmed) before me on this

11 day of December, 2009, by
Date Month Year

(1) Oliver Hauck,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (→ (,))

(2) Martin Schultz,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature *Crúz Gutierrez*
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Proposal - The Port Authority Trans-Hudson Corp

Document Date: 12-11-09 Number of Pages: 10

Signer(s) Other Than Named Above: no other signers



3. ACKNOWLEDGMENT

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

Commonwealth of Kentucky

SS.:

County of Jefferson

On this 11th day of December, 2009 before me personally came and appeared Kevin E. Riddett to me known, who, being by me duly sworn, did depose and say that he/she resides at 305 Longview Place, Louisville, KY that he/she is the President of the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by orders of the directors of said corporation; and that he/she signed his/her name thereto by like order.

Kevin E. Riddett

(Seal)



3. ACKNOWLEDGMENT

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

State of New Jersey

SS.:

County of Essex

On this 22nd day of December, 2009 before me personally came and

Appeared Victor Daidone to me known, who, being by me

duly sworn, did dispose and say that he/she resides at _____ Exemption (1)

that he/she is the Managing Member of the corporation described in and which executed the foregoing instrument and that he/she signed his/her name thereto by like order.



Lucy R Miranda

LUCY R. MIRANDA
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/6/2012

4. STATEMENT ACCOMPANYING PROPOSAL

4. STATEMENT ACCOMPANYING PROPOSAL

Names and Residences of Officers, if Proposer is a Corporation

<u>Name</u>	<u>Title</u>	<u>Residence¹</u>
Oliver Hauck	President	
Martin Schultz	Vice President	Exemption (1)
Phillis Ing	Assistant Secretary	

¹Give Street and Number of Residence. Do not give business address.

4. STATEMENT ACCOMPANYING PROPOSAL

Names and Residences of Officers, if Proposer is a Corporation

<u>Name</u>	<u>Title</u>	<u>Residence¹</u>
Kevin E. Riddett	President	
Paul R. Kerr	Vice President	
Richard G. Soldo	Vice President	Exemption (1)
Eleanor K. Whitfield	VP & Secretary	
Patricia J. Turner	Assistant Secretary	

¹Give Street and Number of Residence. Do not give business address.

4. STATEMENT ACCOMPANYING PROPOSAL

Names and Residences of Managing Members, if Proposer is a Corporation

<u>Name</u>	<u>Title</u>	<u>Residence¹</u>
John Daidone	President Daidone Electric Inc. Managing Member, D/A Builders LLC	
Victor Daidone	V.P. Daidone Electric Inc. Managing Member, D/A Builders LLC	Exemption (1)
Kenneth Aldridge	CEO Aldridge Electric Inc. Member, D/A Builders LLC	

¹Give Street and Number of Residence. Do not give business address.

SPECIFIC CONTRACT TERMS AND CONDITIONS

Chapter 1 GENERAL AGREEMENT and DEFINITIONS

Article 101 Use of English Language

Unless otherwise agreed or requested by PATH, all documentation shall be supplied in the English language only, including design drawings, working drawings, schedules, inspection reports and any other documentation required by this Contract. If English is not the prevalent language used at the Contractor's, Subcontractor's and/or Supplier's facilities, the Contractor shall make a skilled interpreter available to any PATH personnel during all working hours.

Article 102 Definitions

The following terms used in the Contract shall be construed as shown below, except where it is clear by the context that another meaning is intended. Refer to the Technical Specifications for technical definitions not shown below. Defined terms, irrespective of having an initial capital letter or not, shall have the meaning provided in the definition sections.

Agent - Any employee of, or contractor to PATH, or any subsidiary or affiliate agency of the Port Authority or designated as such by PATH.

Approval - Review and acceptance, in writing, by PATH. PATH approval in no way relieves the Contractor of meeting all requirements of the Contract.

Automatic Train Control (ATC) System - A complete system for controlling train movements, enforcing train safety, and directing train operations, utilizing Communications Based Train Control technology that satisfies all of the requirements of the Technical Specification.

Authority or Port Authority - Shall mean the Port Authority of New York and New Jersey

Car or Railcar - A complete assembly of a PA-series A or C type revenue vehicle. Unless identified otherwise, it shall refer to a PA-5 revenue vehicle.

Change in Law - shall mean any of the following that occur after execution of the Contract: (a) a change in, or adoption of, any federal, State, County, City or other local law, ordinance, code, rule, regulation or similar legislation, or legislative, administrative, judicial or regulatory interpretation thereof, (b) the imposition, resulting from any Federal, State, County, City or other local law, ordinance, code, rule, regulation or similar legislation, or legislative, administrative, judicial or regulatory interpretation of any conditions to the issuance, renewal or continuation of any governmental permit, official governmental license or official governmental approval, or (c) the order and/or judgment of a federal, State, County, City or other local court, administrative agency or governmental body, which, in the case of any of clause (a), (b) or (c) delays and impacts the performance of the Work.

Communications Based Train Control (CBTC) - A system for controlling train movements, enforcing train safety, and directing train operations utilizing: high-resolution train location determination, independent of track circuits; continuous, high-capacity, bi-directional train-to-wayside data communications; and train borne and wayside processors capable of implementing vital functions.

Compliance Matrix - Volumes 5 of the Contract that details the Contractors compliance exceptions and comments for the Technical Specification.

Conditional Acceptance, Conditionally Accepted – shall mean that an item of equipment, component, Deliverable, or portion of the Work (referred hereinafter in this definition as “element”) has open items, but has passed all required tests and successfully complied with such other requirements of the Contract as may (in the sole opinion of PATH) apply, to a degree sufficient for PATH to use, rely upon, and allow portions of the Work that require such element as a condition or requirement to further advance and prosecute the Work, including milestone or progress payments to proceed. Conditional Acceptance will not be unreasonably withheld, delayed or conditioned.

Contract, Document or Agreement – shall mean the “Proposal” (which form is bound herewith), “Specific Contract Terms and Conditions”, “Standard Contract Terms and Conditions”, “Price Forms”, “Attachments”, the “Technical Specifications”, Compliance Matrix, Deliverables, and, if included, attachments, endorsements, schedules, exhibits, or drawings, and PATH’s Letter of Acceptance.

Contractor - That person or persons, firm, partnership, corporation, or combination thereof to whom this Contract is awarded, its successors and assignees. For convenience, the Contractor may hereinafter be referred to as if the Contractor were an individual. The word “he” shall, as the sense may require include “she”, “it” and “they”; the word “him” shall include “her”, “it” and “them”; and the word “his” shall include “her”, “its” and “their”.

Contractor’s Drawings – shall mean items such as general arrangement drawings, detail drawings, manufacturing drawings, as-built drawings, graphs, diagrams, and sketches, prepared by the Contractor, or its Suppliers or Subcontractors, in accordance with this Contract in the form in which they are finally approved by PATH in accordance with the provisions of this Contract.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Days, Working or workdays - Those calendar days during which regular business is conducted, excluding Saturdays and Sundays and all PATH-observed holidays.

Deliverables - All items furnished by the Contractor to PATH under the terms of this Contract including but not limited to ATC System components, initial provisions, intellectual property, materials, equipment, drawings, documents, samples, data, special tools or test equipment.

Director/General Manager – shall mean the Director/General Manager of PATH, which operates the facility of PATH at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Facility – shall mean all points on the PATH right-of-way, signal huts, relay rooms, the Operations Control Center, the Harrison Car Maintenance Facility, and such other PATH-owned location or property in or on which the Contractor is performing any aspect of the Work.

Federal Government - The government of the United States of America.

Final Completion – shall mean when the requirements of Article 303, Final Completion Certification, have been fulfilled and a Final Completion Certificate has been issued.

FRA – Federal Railroad Administration of the United States Department of Transportation.

Inspector - Any representative of the Project Manager designated by him as an inspector and acting within the scope of the particular authority vested in him.

Kawasaki or PA-5 Railcar Manufacturer or PA-5 Railcar Supplier – shall mean Kawasaki Rail Car, Inc. the corporation to whom the Contract for PA-5 railcars was awarded, its successors and assignees.

Law - Each and every law, rule, regulation of the United States, the State of New York, and the State of New Jersey, as well as any requirement, order, judgment, decree, or ordinance issued by any government entity, applicable to or affecting the Contract, the Work and all persons engaged in the Work (including any of the foregoing which concern health, safety, environmental protection, and non-discrimination).

Letter of Acceptance – A written notice signed by an authorized PATH representative specifically stating that the Proposal is accepted.

Manufacturer or OEM - The original builder or producer supplying materials, equipment, or apparatus for installation in the PATH ATC System.

Materialman - A person, firm, contractor, corporation or combination thereof who furnishes materials, equipment, plant, or supplies to the Contractor or any Subcontractor for use in the performance of the Work. The term “material supplier” shall have the same meaning as “Materialman”.

“Materialman”, however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm, or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent or the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the Article 106, “Assignments and Subcontracts,” the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Materials – Materials, equipment, products, and articles incorporated or to be incorporated into the Work.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled

by one or more such individuals who are citizens or permanent resident aliens. A firm will not be recognized as a MBE firm for the purposes of this Contract unless such firm has been, or, upon successful completion of the review process and procedures adopted by the Port Authority, will be certified by the Port Authority as a MBE firm. Please note that a minority-women-owned firm is not recognized as a MBE firm in the Port Authority program, but is recognized as a Women-Owned Business Enterprise.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Month - unless otherwise specified, shall mean a calendar month.

Notice - a written statement.

Notice of Acceptance - Notice given by PATH to the Contractor that a Deliverable or other item of the Work is accepted by PATH, in accordance with the provisions of Article 205, Acceptance.

Notice of Conditional Acceptance – Notice given by PATH to the Contractor that a Deliverable or other item of the Work is Conditionally Accepted.

Notice of ATC System Conditional Acceptance – Notice given by PATH that the ATC System has open items, but has passed all required tests and is being accepted by PATH for revenue service, on a provisional basis, until all open items are closed.

Notice to Proceed – Notice to the Contractor that the Work shall begin.

Open Item - Open Items are defects or deficiencies of an item of the Work, either readily apparent or as determined from the failure to pass all required tests, but which items, in the opinion of the Project Manager, do not render the Work unfit for service

PATH – shall mean the Port Authority Trans-Hudson Corporation, which is a wholly-owned subsidiary of the Port Authority of New York and New Jersey.

Port District – the area within a twenty-five (25) miles radius of the Statue of Liberty.

Project Manager or Engineer or Chief Engineer – Shall mean the person designated by PATH to be its liaison with the Contractor, acting within the scope of the particular Authority vested within that person.

Reference Drawings - Drawings provided by PATH without guarantee of completeness or accuracy, to be used as is.

Safe - The condition in which passengers, crew, or maintenance, and repair workers are secure from threat or danger, harm, or loss arising from improper design, manufacture, assembly, malfunction, or failure of the ATC System or any of its components or subsystems.

Signal Project - A PATH project to specify, design, procure, manufacture, install, test, commission and cut-over a new Automatic Train Control System to replace and remove PATH's existing Wayside Signal System. The Signal Project consists of two phases: Signal Project, Phase I and Signal Project, Phase II.

Signal Project, Phase I - The phase of the Signal Project during which each Phase I Contractor prepared and submitted certain Deliverables and conducted a Limited Engineering Trial, all in accordance with the requirements of the Phase I Technical Specification, with the objective of mitigating Signal Project Phase II risks.

Signal Project, Phase II - That phase of the Signal Project during which a Phase II Contractor will design, manufacture, install, test, commission and cut-over a new Automatic Train Control System and remove PATH's existing Wayside Signal System, all in accordance with the requirements of the Technical Specification contained herein.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

The principal place of business must be located in New York or New Jersey;
The firm must have been in business for at least three years with activity;
Average gross income limitations by industry as established by the Port Authority.

Site – see "Facility"

State (where identifying an entity) – Either the State of New York or New Jersey, or both as the case may be.

Subcontractor - shall mean anyone who performs Work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services.

"Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Supplier – see "Materialman".

Technical Specification, Specification (TS) – Volumes 2, 3 and 4 of the Contract that details the technical requirements for the supply an Automatic Train Control System and associated equipment, including any changes or addenda.

Total Contract Price - is the total amount of compensation that will be due the Contractor upon the completion of all the Work, including the Automatic Train Control System, system support, initial provisions, special tools, test equipment, training, and all other items contained within the Price Forms, plus the price of any options exercised during the contract period of performance, and as adjusted for any amounts due to PATH and as may be otherwise adjusted in accordance with the provisions of the Contract.

United States Government - See "Federal Government."

U.S. Department of Transportation - U.S. Department of Transportation (DOT) means the Secretary of the DOT and other persons who may at the time be acting in the capacity of the Secretary, or authorized representative or any person otherwise authorized to perform the functions to be performed hereunder, including representatives of the Federal Railroad Administration (FRA).

Wayside Signal System - The Signal System installed at PATH at the time of award of the Phase II contract, utilizing wayside signals and automatic train stops.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Women Owned Business Enterprise (WBE) shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens. A firm will not be recognized as a WBE firm for the purposes of this Contract unless such firm has been, or, upon successful completion of the review process and procedures adopted by the Port Authority, will be certified by the Port Authority as a WBE firm.

Work - All services, structures, equipment, plant, labor, materials (including structures, materials and equipment furnished by PATH) and other facilities and all other things necessary and proper for or incidental to the design, manufacturing, assembly, testing, delivery, acceptance, and completion of the General Guarantee/Warranty requirements (Article 703) of an Automatic Train Control System in accordance with the terms of the Contract; and "performance of work" and words of similar import shall mean the furnishing of such items, facilities, and services.

Whenever the following words refer to the Work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of similar import shall mean directed, required, permitted, ordered, designated or prescribed by the Project Manager; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Project Manager; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Project Manager.

Whenever "including", "such as" or words of similar import are used, the specific things thereafter enumerated shall not limit the generality of the things preceding such words.

Whenever reference is made to the date of opening of proposals or receipt of bids or whenever words of similar import are used, such reference or words shall be deemed to mean the date of receipt by PATH of the Contractor's Proposal.

Article 103 General Agreement

1. The Contractor agrees:
 - A. To complete the design of an Automatic Train Control (ATC) System in full compliance with the requirements of the Technical Specification (to specifically include compliance with the defined interfaces to the PATH PA-5 Railcars);
 - B. To fabricate, assemble, test and deliver such an ATC System, together with initial provisions, manuals, training, special tools and test equipment, and other related parts in accordance with the Technical Specification;
 - C. To furnish labor, materials, tools, and equipment necessary to install the ATC System in full compliance with the Technical Specification;
 - D. To complete all necessary safety certification tasks;
 - E. To fully support PATH in obtaining any and all required FRA approvals and acceptance;
 - F. To remove and appropriately dispose of replaced signal system components and subsystems when they have been decommissioned by PATH, as per section 2.2.4 of the Technical Specification;
 - G. To assume and perform all other duties and obligations imposed by this Contract.
2. PATH agrees to pay the Contractor, and the Contractor agrees to accept from PATH, in full consideration for the performance by the Contractor of its duties and obligations under this Contract and the whole thereof, the Total Contract Price.
3. PATH may exercise the options set forth in Article 208, by providing written notice to the Contractor at any point up to Final Completion (Article 303). The exercise of any such option shall be in PATH's sole and absolute discretion. All options shall be delivered and performed in accordance with a reasonable timetable mutually established by the Contractor and PATH.
4. The amounts set forth above shall be the Contractor's total compensation, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.
5. The enumeration in this Contract and in the Technical Specification of particular things to be furnished or done at the Contractor's expense, or without cost or expense to PATH, or without additional compensation to the Contractor, shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done; but the Contractor shall perform all Work as required without other compensation than that specifically provided in this Contract including the provisions with respect to compensation for Extra Work and Net Cost Work, whatsoever changes may be made in PATH's Technical Specification and the Contractor's Detailed contract drawings, and other Contractor deliverables approved by the Project Manager, whatsoever Work may be required in addition to that required by PATH's Technical Specification and the Contractor's detailed contract drawings, and other Contractor deliverables approved by the Project Manager in their present form, and whatsoever obstacles of unforeseen conditions may arise or be encountered.

PATH notes that oral discussions, technical specifications, reference drawings and written documentation from Phase I of the PATH Signal Project, which were under a separate contract, shall not be used or assumed to be incorporated into the ATC Technical Specifications for Phase II unless specified in this Contract. Any agreements, direction, drawings, discussions, documentation or suggested changes provided as part of Phase I shall not be binding unless included in this ATC Technical Specification. Any clarifications to Specification language which the Contractor may require shall be re-submitted and officially addressed by PATH as part of this Contract.

Article 104 Project Compatibility Requirements

The Contractor agrees to develop the ATC System design in full compliance with interfaces to the railcars, wayside, Operations Control Center (OCC) and PATH Train Control and Communications Systems (PTCC) as defined and documented in the Technical Specification. Specifically, the Contractor agrees that the mechanical, electrical or functional interfaces specified in the Technical Specification (specifically the Vehicle/ATC Interface Control Document) that are to be provided by the PA-5 railcar contractor will be necessary and sufficient for the Contractor to be in full compliance with all other performance and functional requirements of the Technical Specification and the Compliance Matrix. Interface compatibility shall be demonstrated by the Contractor during the conceptual, preliminary and final design reviews.

Article 105 PATH's Rights in Intellectual Property

PATH, in accordance with the provisions of this Article, shall have rights to Intellectual Property arising from the Contractor's performance of the Work as set forth in this Article.

105.1 Patents, License Fees, Consents

The Contractor shall pay any and all royalties and license fees that are required to be paid to third parties in connection with (a) Contractor's efforts relating to the Work, including the efforts of Subcontractors, but excluding any and all royalties and license fees that PATH may have to pay for items already owned or in use by PATH and to which the Work has to interface, modify, or use for a complete ATC System, and (b) PATH's use and exploitation of any portion thereof in accordance with this Article. As used in this Article, "PATH's use and exploitation" of the Work shall be limited to "Allowable Uses" as defined below.

In addition, Contractor shall defend and indemnify PATH from, and hold PATH harmless from and against, any and all costs, expenses, losses and liabilities (including without limitation costs, expenses and attorneys' fees) arising out of or in connection with any and all demands, suits, claims and other similar proceedings brought by third parties alleging infringement of any patent or misappropriation of any other proprietary rights with respect to the Work. The Contractor shall not be liable with respect to any claim arising out of or relating to either use or incorporation in any product not supplied by the Contractor under this Contract, of any design, technique, modification or specification not originating with or furnished by the Contractor or its agents; or the combination with or incorporation into the product supplied by the Contractor with any other product not supplied by the Contractor if such infringement would not have occurred without such combination; the modification of product supplied by the Contractor under this Contract by PATH or any person or entity other than the Contractor; the use of products supplied by the Contractor under this Contract other than as permitted under this Contract; or use or distribution of other than the

most current update, upgrade or version of the product supplied by the Contractor under this Contract (if such infringement or claim would have been prevented by the use of such update, upgrade or version). The indemnification obligations of this Article are conditioned upon the following: (i) PATH will give prompt written notice to Contractor of the claim(s), (ii) PATH will grant to Contractor sole control over defenses and settlement of the claim(s), and (iii) PATH will provide all timely assistance in defense of the claim(s) at Contractor's expense.

With respect to the Work, Contractor shall not use or permit the use of or furnish for use by PATH or another party any appliance, article, Software, device, or method of assembly, design or manufacturing, unless Contractor has obtained all necessary consents or authorizations for such use or uses. Any action by the Contractor to obtain such consents or authorizations shall include without limitation all rights necessary to permit PATH to use or permit the use of or furnish for use by another party such appliance, article, Software, device or method of assembly, design or manufacturing to the extent necessary in connection with PATH's use or exploitation of the Work.

105.2 Definitions

The following definitions apply to terms used within this Article:

1. "Allowable Uses" shall mean PATH's use of Intellectual Property arising from this Contract will be limited to: (a) the use, maintenance or repair (including overhaul repairs, modifications and/or upgrades) of any element, aspect, or portion of the Work; (b) work performed by or on behalf of PATH to complete the Work after a breach of a material term of the Contract resulting in PATH exercising its rights and remedies as set forth in the Article entitled, "Rights and Remedies of PATH" (Standard Contract Terms and Conditions); (c) manufacturing, assembling, and/or producing replacements or equivalent products, items, or other elements, aspects, or portions of the Work, in the event such elements, aspects, or portions of the Work become "Unavailable for Purchase" for PATH's sole use; or, (d) preparation of specifications for future procurements of Automatic Train Control (ATC) Systems, equipment, systems, components or parts, including the evaluation and qualification of proposed Contractors and Subcontractors during such procurements, provided that disclosed elements will be reviewed and agreed to previously by the Contractor, such agreement shall not be unreasonably withheld.
2. "Unavailable for Purchase" shall mean that an element, aspect, or portion of the Work is no longer being manufactured (or no longer being manufactured to the Technical Specification, or with the necessary capabilities and characteristics, as results from the Work of this Contract), being offered for sale, or is unavailable for delivery within a time period that would permit PATH to safely or effectively operate or maintain the ATC System or special tools or test equipment provided as part of the Work; or that a sufficient quantity to meet PATH's needs is not available for purchase; or that no supplier will offer the required item(s) at a commercially reasonable price at the time required.
3. "Intellectual Property" shall include all rights and interests in any and all patents, patent applications, copyrights, and unpatented technology, know-how, trade secrets and other proprietary rights and documentation thereof (including, but not limited to, manuals, drawings, Contractor's drawings, diagrams, schematics, Software, and databases), held by the Contractor or Subcontractors relating to or included in the Work and any and all technical data or documentation delivered to PATH pursuant to this Contract.

4. "Software" shall mean the combination of "Source Code" and "Executable Code" that comprise, or are included in, or are required for the proper functioning of, any element, aspect, or portion of the Work, including the documentation requirements of "Source Code" and "Executable Code" as defined hereinafter.
5. "Source Code" shall mean the programming statements and instructions a programmer writes, but which statements and instructions ("code") are not directly executable by the computer that will execute the instructions provided by the programmer. Source Code has to be converted into "Executable Code" by compilers, assemblers, linkers, or interpreters. Source Code also shall mean both the written documentation of the code and the electronic version of the code (including the media on which the electronic version is stored).
6. "Executable Code" or "Object Code" shall mean the instructions in machine language (also referred to as machine code) that is the representation of the Source Code in the native language of the central processing unit (CPU) model or family of models that will execute the instructions provided by the programmer. Executable Code also shall mean: (1) the electronic version of the code (including the media on which the electronic version is stored); and, (2) any and all compilers, assemblers, linkers, interpreters, and intermediate language code that are used and are required to convert the Source Code into Executable Code (including the media on which the electronic version of the compilers, assemblers, linkers, interpreters, and intermediate language code is stored).
7. "Standard Software" shall mean any Software, including firmware and programs, that is Contractor (or its Subcontractors) owned or licensed or is integral to the Contractor's or its Subcontractors' ATC System. Custom programs, data files or routines that operate within but are not part of Standard Software are defined separately under "Custom Software".
8. "Third Party Software" shall mean Software, including all operating systems, compilers, database management systems, development tools, utilities and other programs owned by persons or entities other than the Contractor or its Subcontractors, and which form any part of Licensed Software and Commercial-Off-the-Shelf Software hereunder.
9. "Commercial-Off-the-Shelf Software" or "COTS Software" shall mean commercially available Software that is widely available and used as directly purchased from independent vendors.
10. "Custom Software" shall mean any Software written by the Contractor or its Subcontractors that is not Third Party Software, but that operates within the software environment of the Standard Software or Third Party Software, including all software, firmware or programs developed during the term of this Contract that result in direct enhancements to the Contractor (or its Subcontractors) owned products based upon PATH's Technical Specification and utilizing PATH's design and/or proprietary information such as attributes, objects, algorithms or programs, and configurations that are specific to the Work.
11. "Licensed Software" shall mean all "Standard Software", "Third Party Software" and "Custom Software" that are required for the proper and complete functioning of the Work and all of its components, equipment, and the ATC System as required by the Technical Specification and in the approved detailed software and system designs. (The specific list shall be provided in Exhibit SL-1 bound herein).
12. "Software License Agreement" shall mean the License Agreement between the Contractor and PATH granting PATH the rights to the Licensed Software as described by the provisions of this Article.

13. "Purchased Hardware Products" shall mean all computer hardware delivered pursuant to the Contract or compatible replacement hardware intended for use in connection with any Licensed Software.
14. "Updates" shall mean any releases of Licensed Software encompassing any improvements, updates and other changes, which are logical improvements of said Licensed Software or which are required to correct any reproducible errors in the Licensed Software identified during the Acceptance or Warranty periods of the Contract.
15. "Use", as applied to Software, shall mean the utilization, application, and implementation, including copying of any portion of the Executable Code of the Licensed Software into the Purchased Hardware Products for processing of the instructions or statements contained in such Licensed Software.
16. "Third Party Software Vendors" shall mean owners, other than the Contractor (or its Subcontractors), of any of the Licensed Software that have ownership, trade secret, copyright, patent or other rights in any of the Licensed Software.
17. "Confidential Materials" shall mean those parts of the Licensed Software and any Intellectual Property that would be determined, if so requested, by an independent third party or court of competent jurisdiction and that are claimed by the Contractor, its Subcontractors, or any of its Third Party Software Vendors, to constitute or contain trade secret, confidential or other proprietary data that are or might be of competitive advantage in the marketplace. PATH retains the right to have a mutually acceptable independent third party, or failing agreement, a court of competent jurisdiction, determine the validity of such claim.
18. "Proprietary Hardware" shall mean any hardware provided as part of the Licensed Products by the Contractor or Subcontractor(s) that is not available off-the-shelf or from multiple vendors.

105.3 Intellectual Property License

The Contractor hereby grants to PATH an irrevocable, perpetual non-exclusive, fully paid-up right and license to use the Intellectual Property related to the Work in connection with and limited to Allowable Uses.

105.4 Injunctions

Without limiting any right or remedy of PATH, if PATH or any of its affiliates is enjoined from using all or any portion of the Work as to which the Contractor is to indemnify PATH against infringement or misappropriation, the Contractor shall, at Contractor's option upon PATH's notice to Contractor and at the Contractor's expense, either (i) procure immediately for PATH the right to continue using the Work or portion thereof enjoined, or (ii) immediately replace all or any portion of the Work with a non-infringing product or part which provides equivalent compliance or performance and is satisfactory to PATH and the use of which does not violate the terms and conditions of such injunction, or (iii) immediately modify all or any portion of the Work in a manner satisfactory to PATH so as to render use of such Work or portion of the Work non-infringing and not in conflict with the injunction.

105.5 Tooling Rights

The Contractor and its Subcontractors shall provide PATH with the right of first refusal to purchase, and shall provide one hundred eighty (180) days notice prior to the proposed sale, destruction, or other disposal of, or rights to the use of, the castings, patterns, and/or

forming or extrusion dies, or the machinery to manufacture and test custom microprocessor boards or components (whether digital, analog, or a combination thereof) or any electronic item used in the Work, at a fair and reasonable price.

105.6 Software License Agreement

The Contractor hereby grants to PATH an irrevocable, perpetual, non-exclusive, fully paid-up license to Use the Software related to the Work in connection with and limited to Allowable Uses. PATH hereby accepts and the Contractor hereby provides to PATH, the Licensed Software delivered pursuant to the Contract for PATH's Use. The License Terms and Conditions contained herein are part of this Software License Agreement. This license shall pertain to the items identified by the Contractor in Exhibit SL-1 bound herein.

In furtherance of the grant of the licenses granted in this Article, the Contractor shall provide to PATH, no later than the ATC System Conditional Acceptance scheduled milestone date in Article 201, all of the Licensed Software (excluding Source Code) that has been integrated within or is required to operate the ATC System.

The Contractor covenants that it shall deliver to PATH three complete and current copies of all Licensed Software (excluding Source Code), which delivery shall be a necessary requirement and precursor to PATH's approval of the associated payment milestone, and approval of all subsequent payment milestones. This submittal shall include any corrections, modifications and upgrades (collectively, "Updates") to the documentation of the Licensed Software made by the Contractor up until this time.

PATH agrees not to provide or otherwise make available the Software or copies thereof to third parties without the Contractor's prior written consent, except as otherwise provided herein or in the Escrow Agreement. PATH's rights to copy Software for its own Use shall be limited to one copy for archival purposes only, except to the extent additional copies are reasonably required for maintenance or other support requirements for the continued operation of the ATC System.

Final corrections, modifications and Updates to the Licensed Software (excluding Source Code) shall be provided to PATH no later than one hundred eighty (180) days after cutover from the old signal system to the ATC System. With this final delivery, the Contractor shall certify that PATH has received all Licensed Software (excluding Source Code) representing the "as built" ATC System devices and items that include or require Software.

Except with respect to Commercial-Off-the-Shelf Software, the Contractor warrants that it has or will have the full right and authority to license to PATH any Third Party Software that forms a part of the Licensed Software, and that the license terms between the Contractor and any said third party owners permit or will permit the Contractor to grant to PATH the right of Use given herein. Any right of Use granted to the Contractor by any third party and consistent with, but not in excess of, any rights granted herein shall inure to the benefit of PATH as a third party beneficiary. The Contractor agrees to include this language in its third party contracts and shall provide proof of same upon request.

Commercial-Off-the-Shelf Software shall be provided to PATH with the standard license made available by the software provider to users of its software, including the original electronic media on which the Commercial-Off-the-Shelf Software was furnished to the

Contractor. Such standard license and original media shall be provided to PATH as part of the Final Design Review documentation.

Within one thousand (1,000) days following NTP, PATH and the Contractor shall mutually agree as to the Software that is to be considered Custom Software. If PATH and Contractor fail to agree within that time, the parties will promptly submit the dispute under Article 602. The Contractor shall immediately furnish the Source Code and demonstrate that such Source Code can be compiled, assembled, and/or linked into Executable Code on a workstation that the Contractor shall provide for the duration of the demonstration.

Updates shall be provided to PATH at no charge subject to additional compensation as may be provided in Article 204 by the Contractor or any of its Subcontractors during the time the ATC System remains under Warranty subject to additional compensation for delay as may be provided pursuant to Article 204. Once delivered to and accepted by PATH, Updates shall become part of the Licensed Software. Upon the date the ATC System Warranty lapses, the Contractor, its Subcontractors, and Third Parties shall offer Updates to PATH at the lowest price such Updates are offered to other customers by the Contractor, its Subcontractors or Third Parties, excluding free updates offered to other customers who have purchased a maintenance agreement. The Contractor shall offer maintenance agreements including obsolescence monitoring and obsolescence management to PATH at the conclusion of the Warranty Period. The Contractor shall use its best efforts to obtain similar maintenance agreements from its Subcontractors, and Third Parties if requested by PATH. In the event PATH elects to implement Update after the expiration of the warranty, the costs required to implement such Update as well as any other changes required to achieve compatibility shall be at the cost and expense of PATH.

The Software may contain freeware, shareware or open source software. No license fee is charged to PATH for the use of such freeware, shareware or open source software. Contractor shall warrant to PATH that any freeware, shareware or open source software being provided or used as part of the Software is appropriately licensed for use as part of the Work. Regarding such portions of the Software, PATH hereby accepts the specific license conditions either being part of the Software documentation or accompanying the hardware ("Open Source Conditions"). Upon request of PATH, the Contractor is prepared to provide a copy of the source code of the open source software, if required by the Open Source Conditions. To the extent there is a conflict between this Contract and the Open Source Conditions, the terms of the Open Source Conditions shall prevail over the terms and conditions of this Contract with regard to the open source software.

The licensors of Third Party Software, which exists prior to the execution of this Contract, and COTS Software may be direct and intended third party beneficiaries of certain terms and conditions herein relating to the protection of such Third Party Software and COTS Software including documentation. PATH agrees that those third party beneficiaries may enforce the terms and conditions of Article 105 directly against PATH.

Title to each of the Software shall at all times remain with the licensors. PATH has no rights to transfer Software without the prior written consent of the Contractor, except as otherwise provided herein or in the Escrow Agreement.

PATH agrees to use the Software only as provided herein and only during the term of the license granted herein below in Section 105.6.1. PATH agrees that it will not nor will it permit a third party to reverse engineer, decompile, or disassemble or create derivative works of

the Software, except as otherwise provided herein or in the Escrow Agreement. The Contractor shall include an appropriate notice that PATH and its employees have limited rights with respect to the use, reproduction, protection, and security of the Software in all relevant manuals and training materials furnished under the Contract.

EXHIBIT SL-1

Software License Number: _____

Licensed Software:

<u>Software Name or Identification</u>	<u>Function</u>	<u>Version</u>
--	-----------------	----------------

Purchased Hardware Products:

<u>Quantity</u>	<u>Model</u>	<u>Description</u>
-----------------	--------------	--------------------

105.6.1 Term

The term of the license granted in this Article shall commence upon Notice to Proceed for the Contract and shall be perpetual.

105.6.2 Source Code and Confidential Materials

1. Delivery of Source Code and Confidential Materials The Source Code for all Standard Software, Third Party Software (excluding COTS), and Custom Software and all Confidential Materials shall be delivered to an Escrow Agent by the Contractor pursuant to the terms of a separate Escrow Agreement between the Contractor and PATH. Notwithstanding delivery of the Custom Software to the Escrow Agent, PATH retains ownership rights of such Custom Software as provided for in this Article and may obtain possession thereof at any time from the Escrow Agent. In the event the Contractor, after using commercially reasonable efforts, is unable to deliver the Source Code for any Third Party Software, or Confidential Materials from a Subcontractor, for deposit in escrow pursuant to an escrow agreement between the Contractor and PATH as set forth in this Article, the Contractor shall cause such Source Code for Third Party Software or Subcontractor Confidential Materials to be deposited in escrow by the Third Party or Subcontractor pursuant to a separate escrow agreement between the Third Party or Subcontractor, PATH, and an Escrow Agent.
2. Compatible Hardware If PATH should replace any device, through no fault of the Contractor, which is a part of the Purchased Hardware Products, with another compatible device of equal or better quality in terms of function, performance and safety, then the Licensed Software may be transferred to such device, excluding the warranty obligation.
3. Copies PATH may copy Licensed Software in whole or in part, as required for the Uses.
4. Proprietary Markings PATH agrees not to remove or destroy any proprietary markings or proprietary legends, including copyright notices, appearing on or contained within any Licensed Software and Confidential Materials and when making permitted copies, will transfer to the copy/copies any copyright or proprietary legends or other such marking appearing on the Licensed Software or Confidential Materials.

105.6.3 Limited Warranties

1. The Contractor shall warrant (i) that the Contractor has full title and ownership of the Software except as stated otherwise, (ii) that the Contractor has the full power and authority to grant the license and rights under this Software License Agreement to PATH, and the license to, rights and use by PATH shall in no way constitute an infringement or the violation of any copyright, trade secret, trademark, patent or other proprietary right of any third party.
2. Malicious Software The Contractor hereby warrants that the Licensed Software, with the exception of COTS Software, furnished under this Agreement are free of so-called viruses, Trojan Horses, 'backdoors', or other devices which are generally known at the time of delivery and could be manually or automatically activated to damage or render inoperable the furnished software, and programs or databases used by PATH, or to permit access by unauthorized users.

105.6.4 Governing Law

This Software License Agreement shall be deemed to have been entered into, and shall be interpreted, in accordance with the laws of the State of New York.

105.6.5 Miscellaneous

Section Headings. The Section headings used in this Software License Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

Severability. If any provision of this Software License Agreement is declared or found to be illegal, unenforceable or void, then obligations arising under such provision shall be null and void and each provision not so affected shall be enforced to the full extent permitted by law.

Waivers and Discharges. No delay or omission by any party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

Responsibilities, Liabilities, Obligations upon Termination. Termination or expiration of this Software License Agreement for any reason shall not release any party from any liabilities or obligations set forth in this Software License Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

Personal Liability of Individuals. No Commissioner nor any officer, director, member, agent, or employee of any of the parties shall be personally liable hereunder.

Restrictions on Licensee's Use of Licensed Software. During any period of time in which the Licensed Software is in the possession of the Licensee, it is agreed that the Licensed Software shall be used only by the Licensee for the Allowable Uses and shall not be sold, or licensed to others or marketed in any manner. In addition, during this time the Contractor shall have unrestricted use and title to the Licensed Software, except for Custom Software which Custom Software may be used by Contractor for its own internal use or for marketing and licensing to third parties. If the Contractor wishes to use or otherwise benefit from Custom Software, the Contractor shall first obtain written authorization from PATH for such use or benefit.

105.7 Hardware Design Escrow Agreement

The Contractor agrees to provide for deposit into escrow under the terms of the Escrow Agreement attached here to as Exhibit A: Escrow Agreement all Proprietary Hardware design documents and manufacturing documents (as used by the Subcontractor) in an industry-standard electronic medium as per Exhibit S-1 to the Escrow Agreement.

Updates shall be provided to PATH at no charge by the Contractor or any of its Subcontractors during the time the ATC System remains under Warranty subject to additional compensation for delay as may be provided pursuant to Article 204. Once

delivered to and accepted by PATH, Updates shall become part of the Hardware Agreement. Upon the date the ATC System Warranty lapses, the Contractor, its Subcontractors, and Third Parties shall offer Updates to PATH at the lowest price such Updates are offered to other customers by the Contractor, its Subcontractors or Third Parties, excluding free updates offered to other customers who have purchased a maintenance agreement. The Contractor shall offer maintenance agreements including obsolescence monitoring and obsolescence management to PATH at the conclusion of the Warranty Period. The Contractor shall use its best efforts to obtain similar maintenance agreements from its Subcontractors, and Third Parties if requested by PATH. In the event PATH elects to implement Update after the expiration of the warranty, the costs required to implement such Update as well as any other changes required to achieve compatibility shall be at the cost and expense of PATH.

PATH agrees that it will not nor will it permit a third party to reverse engineer, decompile, or disassemble or create derivative works of the hardware, except as otherwise provided herein or in the Escrow Agreement. The Contractor shall include an appropriate notice that PATH and its employees have limited rights with respect to the use, reproduction, protection, and security of the hardware in all relevant manuals and training materials furnished under the Contract.

The Parties agree to escrow the electronic design and manufacturing drawings of Proprietary Hardware used in the Work no later than 60 days After ATC System Conditional Acceptance. Once such boards, components, or items are Unavailable for Purchase, the Parties will notify the Escrow Agent of such event and said Escrow Agent will release the corresponding escrowed documents to PATH. In such event, PATH will have full rights to have the item manufactured, or to create design derivatives for the ATC System, consistent with Allowable Uses.

EXHIBIT SH-1

Hardware License Number: _____

Licensed Hardware:

<u>Hardware Name or Identification</u>	<u>Function</u>	<u>Version</u>
--	-----------------	----------------

105.8 Escrow Agreement

PATH hereinafter provides as Exhibit A, an Escrow Agreement ("EA"). The form of the escrow agreement shall be substantially similar to that set forth in Exhibit A. Final wording of the Escrow Agreement and exhibits will be determined by the Parties at the time of execution.

The Escrow Agent fees resulting from the EA shall be paid by the Contractor until issuance of the Certificate of Final Completion; PATH will pay the fees subsequent thereto.

Article 106 Assignments and Subcontracts

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of its rights hereunder or of any monies due or to become due hereunder and any delegation of any of its duties hereunder without the express consent in writing of PATH shall be void and of no effect as to PATH, provided, however, that the Contractor may subcontract portions of the Work or procure equipment from such technically and financially capable persons, partnership or corporation as the Project Manager may, from time to time, expressly approve in writing. The Contractor shall submit all Subcontractors to the Project Manager for the Project Manager's approval in accordance with the provisions of this clause. The Project Manager will approve all Subcontractors for relevant design, installation and cutover experience for any subcontracts in value excess of \$200,000, and such approval will not be unreasonably withheld or delayed. For each individual, partnership or corporation proposed by the Contractor as a Subcontractor, the Contractor shall submit to PATH a certification or, if a certification cannot be made, a statement by such person; partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of this Contract entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc.; Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee". All further subcontracting by any Subcontractor shall also be subject to such approval of the Project Manager. Approval of a Subcontractor may be conditioned on (among other things) the furnishing without expense to PATH, of a surety bond guaranteeing payment by the Subcontractor of claims of Materialman, Subcontractors, workers and other third persons arising out of the Subcontractor's performance of any part of the Work.

Article 107 Master Project Schedule Submittal**107.1 Submittal Contents**

The Master Project Schedule Submittal (MPSS) shall consist of two parts; a schedule narrative and an updated Critical Path Method (CPM) Master Project Schedule (MPS). Additional requirements for the MPS are described in the TS Section 19.

107.1.1 Schedule Narrative

- A. The narrative shall describe (as a minimum) the approach to the Work and schedule, fabrication, manufacturing and assembly plants and methods, shipping methods and

routes, installation and commissioning methods, and progress and delays in the execution and delivery of the Work.

- B. The schedule narrative also shall include a detailed statement of actions the Contractor would take if a monthly update of the MPS shows potential delays exceeding five working days in project activities. It also shall include an explanation of any proposed schedule changes, as identified by PATH and /or the Contractor, since the NTP date.
- C. During the manufacturing, assembly, installation and testing phases, the Contractor shall supplement the narrative with twenty four (24) or more color photographs as digital files on a CD to show the status and/or problem areas of the work in progress. The file format shall be "JPEG" format for raster graphic images and shall be "Windows Metafile" format for vector graphic images. PATH may request additional information be provided to provide additional clarity or details to the monthly report.

107.1.2 Master Project Schedule

An electronic MPS shall be created, maintained, and updated as described in TS Section 19.1.2.1.

- A. The schedule shall show the project milestones in calendar days, with NTP as the starting date and all key project activities with their durations shown in working days. Activities with durations of greater than 20 days shall be broken down into connected activities of no more than 20 days. The project milestones and activities shall be logically connected with NTP as a start date and the Final Completion date as the end date. No other start and end activities shall exist.
- B. The Contract milestones consist of the contractual milestones identified in Articles 201 and 302, and milestones for the CDRL list in TS Section 19. Each project milestone shall be fixed and may be changed only if allowed by PATH in writing.
- C. The Contract activities shall consist of activities related to manufacturing, assembly, testing, inspection points and FAs, shipments, deliveries, installation, and acceptance. Only one responsible party shall be assigned per each activity, with such responsible parties being: the Contractor, a Subcontractor, PATH or a third party, e.g. the Federal Railroad Administration. When applicable, an activity of the Contractor shall be resource loaded, using at least one category for labor. PATH may require the Contractor to provide additional electronic coding of the activities to be used for summaries, reports and formatting.
- D. If the accepted MPS indicates that project will be completed in less than the contractual time, the resulting positive float shall be a resource available to both parties.
- E. The schedule shall be submitted in paper format, on 11" x 17" sheets, and in electronic format on a CD. A one page time scale summary schedule also shall be included for executive briefings and presentations. The schedule shall be time scaled, have a clearly marked critical path and include the columns in the following order: Activity Identification (ID) number, activity description, responsibility, original duration, remaining duration, percent complete, early and late start, total float, and activity area with bars.

- F. An updated schedule shall show three bars for each activity, top bar –updated status, middle bar –latest status and bottom bar –baseline status.
- G. For project summary and major activities, the schedule shall be accompanied with a diagram showing two graphs - the baseline goal percentage and actual percentage of completion - and two monthly vertical bars, showing the baseline resources and updated resources.
- H. The schedule shall be in sufficient detail to distinguish the major design submittals and all deliverables, planned proof-of-design tests and first article inspections, major hardware and software design locations, fabrication points, any major modification programs, shipments, deliveries, and testing at PATH's designated facilities. The schedule shall include Subcontractor activities to an equivalent level of detail, including critical path and logic of the activities.

107.2 Master Project Schedule Updating

The Contractor shall maintain and update the MPS for the approval of the Project Manager monthly. The schedule shall be prepared in such a manner as to permit the orderly planning, organization, and execution of the Work and shall be sufficiently detailed to accurately depict all the Work required by the Contract. Additional specific requirements for the preparation, maintenance and updating of the MPS are described in TS Section 19.

If the Contractor and/or any Subcontractor(s) falls behind on the Critical Path as shown on the updated Master Project Schedule, then the Contractor, within ten (10) calendar days thereafter, shall prepare and submit to the Project Manager for review and approval a recovery schedule demonstrating the Contractor's program and proposed plan to regain lost schedule progress and to meet the earliest Completion Date or any other key Milestone date that is causing the lateness condition. The Project Manager will notify the Contractor whether the schedule is acceptable or describe changes which must be made to the schedule. Within seven (7) calendar days after Approval (or Conditional Approval) of a recovery schedule by the Project Manager, the Contractor shall incorporate and fully reflect such schedule (including the Project Manager's comments) into the updated MPS.

All costs incurred by the Contractor in preparing and achieving the recovery schedule shall be borne by the Contractor and shall not result in a change to the Total Contract Price.

In addition to the foregoing: (a) if any critical path activity completion date in the approved MPS is not achieved within twenty (20) days after its planned completion, the Project Manager shall have the right to order the Contractor to accelerate completion of the late activities by whatever means necessary without any change in the Contract Price; and (b) if any critical path activity completion date is not achieved within thirty (30) days after its planned completion PATH shall have the right to complete such late activities by whatever means PATH deems appropriate, and to deduct costs of completion from the Contract Price. PATH also may exercise any other remedy it deems appropriate, including termination for failure to diligently prosecute the Work. These remedies may be exercised at any time, provided that the Project is not completed in accordance with the Contract.

Should the Contractor fail to comply with any material provisions of this Article, PATH shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even

though such payment has already been certified as due) such sums as it deems necessary to protect PATH, all as more fully provided in Article 306, "Withholding of Payments".

Subject to the provisions of Article 204 and 401, neither the acceptance, review or approval of any updated MPS or other data submitted by the Contractor pursuant to this Article, nor any other action on the part of PATH under this Article, shall be in any way deemed as a representation by PATH that the Contractor can or will be permitted to follow a particular schedule or sequence of operations or that by following any such schedule or sequence the Contractor can or will complete the Work by the time(s) required by the Contract or by any other time(s); nor shall the approval of any updated Master Project Schedule or other such data relieve the Contractor of its obligation to complete the Contract by the time(s) required in the Contract, even though the schedule approved may be inconsistent with such completion.

Any approval under this Article shall be construed merely to mean that the Project Manager knew of no good reason at that time to object thereto. No acceptance, review or approval or any other action under this Article shall limit, affect or impair the Contractor's obligation to perform all Work by the time(s) required by the Contract and in accordance with all other provisions of the Contract.

The performance of the Work by the time(s) required in the Contract, after taking into account extensions to which the Contractor may be entitled under Article 203, "Extension of Time", may require the use by the Contractor of overtime labor, additional shifts or additional plant and equipment and/or other measures. In any event, the Contractor shall anticipate, avoid and mitigate the effects of all delays, whether or not such delays involve activities with free float. The Project Manager or representative will have the right at any time when in their judgment the Work is not proceeding in accordance with the approved updated MPS or at any time when it is likely that the Work may not be completed by the time(s) required in the Contract, even though the Contractor is proceeding in accordance with the approved updated Master Project Schedule, to order the Contractor, without additional compensation, to employ additional shifts, to increase the number of labor forces employed, to use additional plant or equipment, or to take such other steps as may be necessary or required to assure the completion of various operations within the time(s) allotted thereto in the approved schedule or by the aforesaid completion time(s).

No action on the part of the Contractor pursuant to this Article shall be construed as a request by it for an extension of the time(s) for completion required by the Contract. A request for an extension of time shall be deemed made only if it complies with the requirements of Article 203, "Extension of Time". No extensions of time(s) for completion shall be inferred because of any action, omission to act, or statement on behalf of PATH pursuant to this Article. Extensions of time, if any, shall be granted only pursuant to Article 203, "Extension of Time".

No later than the first Progress Review, the Contractor shall present for PATH review: one electronic file of the proposed report narrative format and draft content in native program format (e.g., Microsoft Word); one electronic file of the report narrative format and draft content in Adobe Acrobat format; one electronic file of the MPS in customer readable format (Suretrak); one electronic file of the MPS in Adobe Acrobat format; and one (1) original paper copy and two (2) paper copies of the proposed monthly updated MPSS. PATH will review and comment on the first MPSS in fifteen (15) working days, and if necessary include the updated list of activities to be included in the second MPSS submittal. The same

number of electronic (excluding the native word processing file) and paper files, original, and paper copies of the second submittal consisting of the actual monthly updated MPSS, including narrative and MPS, shall be submitted on the 10th day of the second month following PATH comments to the first submittal (e.g. PATH comments on June 23, the Contractor submits the second set of documents on August 10 for preceding months).

The Contractor payments will not be processed unless PATH Approves or Conditionally Approves the current monthly updated MPSS.

Article 108 Order of Precedence

In the event of any conflict, ambiguity or inconsistency within the Contract, the order of precedence shall be as follows:

- A. Letter of Acceptance
- B. Specific Contract Terms and Conditions.
- C. Standard Terms and Conditions.
- D. Compliance Matrix.
- E. The Technical Specification (including all Appendices).

Article 109 Removal and Disposal of Hazardous Materials

The Contractor shall be prepared to respond to all contaminated materials, hazardous wastes, and other environmental concerns as required by law. Hazardous materials which may reasonably be expected to exist and can be handled without specialized equipment or training (such as lead-acid batteries) shall be removed using procedures established in the Contractor's proposed disposal plan, subject to the Project Manager's approval, at no additional cost to PATH. Contractor shall submit evidence of proper disposal of these hazardous materials to the Project Manager.

If during the course of the Work, the Contractor becomes aware of any contaminated materials or hazardous waste or has cause to suspect the presence of such materials or waste not previously identified and made part of the Work of this Contract, then the Contractor shall immediately notify the Project Manager by telephone or in person, to be followed immediately by written notification. The notification shall include what contaminated materials or hazardous waste have been found, specifying the nature, location, and impact on removal Work of such materials. The Contractor shall immediately stop Work in and secure the area against injury to persons or damage to property pending further instructions from the Project Manager.

Following receipt of the notice, the Project Manager will promptly meet with the Contractor's project manager and develop a plan for performing more detailed investigations (if necessary), and for proceeding (if necessary) with removal, encapsulation, or other mitigation activities. The Contractor shall conduct all tests that are required by law.

The Contractor shall exercise reasonable measures to avoid or mitigate special handling or disposal requirements of the contaminated materials or hazardous waste. If the Contractor actually incurs increased costs resulting from such special handling including testing or disposal of contaminated materials or hazardous waste, then the Contractor shall be reimbursed for such increased costs on a Net Cost basis. Net Cost Work shall be computed in the same manner as is compensation for Extra Work, including any percentage addition

to cost, as set forth in the clause of the Contract providing compensation for Extra Work. Performance of such Net Cost Work shall be subject to all provisions of the Contract, including, but not limited to, the notice requirements, relating to performance of Extra Work. Compensation for said Net Cost Work shall not be charged against the total amount of compensation authorized for Extra Work. As part of the Contractor's duty to mitigate, PATH shall have the right to direct the Contractor to perform the Work in a manner which will result in the lowest cost to PATH, provided, however, such direction does not adversely affect the Work.

Article 110 Contractor Representatives

The Proposer's project manager, who at the time of Contract award shall become the Contractor's project manager, shall be the main contact person on this project.

At the time of Contract award, the Contractor shall immediately supply to PATH the address, email, phone number, and fax number of the Contractor's project manager, the personnel required in TS Section 19, and other key personnel as determined by the Project Manager.

No substitution of the Contractor's project manager or any project's office employees required in TS Section 19, or any other key personnel assigned to the Project will be permitted without PATH's prior approval, which shall not be unreasonably withheld or delayed. PATH reserves the right to require an employee replacement.

Article 111 Local Content

The Contractor shall comply with the approved Local Content Plan and guarantees that it shall achieve no less than 10% of the total Contract Price of participation by local businesses. Any changes to the approved Local Content Plan shall be subject to the review and approval of PATH. The Contractor's compliance with the Local Content Plan shall be subject to audit.

The Contractor shall submit an updated Local Content Plan to PATH every 182 days following Notice to Proceed. The updated Plan shall include the amount actually paid to each firm listed on the form, as well as any changes that may have occurred, such as changes to the activity category of the work, the firms performing local content work, or the dollar amount to be spent per firm. Failure to submit updated plans or failure to comply with the approved Local Content Plan may result in the withholding of payments in accordance with Article 306, "Withholding of Payments".

Local Content is defined as the performance of all or a portion of the Work at sites within the states of New York and New Jersey by the Contractor, and by local businesses as set forth in the approved Local Content Plan. A local business shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers goods manufactured, produced, or assembled, or provides services, and which is located within the geographical boundaries of the states of New York or New Jersey.

Article 112 Removal and Disposal of Signal System Components

As described in TS Section 2.2.4, Contractor shall remove retired signal system equipment. PATH may identify up to 25 pieces of the original signal system, which the Contractor shall label with the location where each piece was removed and return to PATH for safekeeping.

Unless otherwise directed by PATH, Contractor shall dispose of all removed components at its own cost and expense.

Article 113 M/WBE Subcontracting Provisions

The Port Authority of NY & NJ has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-owned Businesses (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The successful Proposer will use every good faith effort to provide for meaningful participation by Port Authority certified M/WBEs as defined in this document, in all procurement and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. Good faith efforts include 1) dividing the services and materials to be procured into smaller portions where feasible, 2) giving reasonable advance notice of specific subcontracting and purchasing opportunities to such firms as may be appropriate, 3) soliciting services and materials from M/WBEs, which are certified by the Port Authority and 4) insuring that provision is made for timely progress payments to the M/WBEs.

The Port Authority has a list of certified M/WBE firms, which are available to the Contractor at its request. The Port Authority makes no representation as to the qualifications and ability of these firms to perform under this Contract. The Contractor may use firms, which are not on the list but will be required to submit, to the Port Authority's Office of Business and Job Opportunity (OBJO) for certification, the names of M/WBE firms it proposes to use. Only Port Authority certified M/WBE firms may be considered to meet the goals. For inquiries and assistance, please contact OBJO at (212) 435-7819.

To the maximum extent feasible and consistent with the Contractor's exercise of good business judgment, the Contractor shall make a good faith effort to include 12% of the total Contract price for participation by MBE's and 5% of the Total Contract Price for participation by WBE's in all procurement, subcontracting and ancillary service opportunities associated with this Contract. The Contractor shall submit a M/WBE Participation Plan (Plan), which shall consist of the following:

1. Descriptions of the specific scope of work each M/WBE firm will perform.
2. A list of the name and address of any M/WBE included in the Plan, including each firm's Port Authority certification number.
 - (a) If none are identified, describe the process for selecting participant firms.
3. Indicate the percentage of MBE and WBE participation expected to be achieved with the arrangement described in the Plan
4. Completed Form B.5.

Chapter 2 DELIVERY AND ACCEPTANCE

Article 201 Time for Completion and Delivery Schedule

Time for completion/delivery schedule for the ATC System. The Contractor shall deliver and install ATC System components, Initial Provisions, Special Tools, Test Equipment and provide training and manuals per the following Contractual Milestone Schedule:

Ref	Contractual Milestone	Time from NTP
1.	NTP	0
2.	Management Plan, Contract Schedule & Quality Assurance Program Plan Submitted	No later than 60 days
3.	Complete CDR	No later than 180 days
4.	Provide Pre-Production Set of carborne ATC equipment without software	No later than 275 days
5.	Deliver first hardware based Vehicle Interface Emulator	No later than 270 days
6.	Complete PDR	No later than 300 days
7.	Complete FDR	No later than 480 days
8.	Deliver first set of carborne ATC equipment	No later than 640 days
9.	Test track ready for ATC testing	No later than 727 days
10.	Deliver final set of carborne ATC equipment	No later than 960 days
11.	All PA-5 vehicles equipped, tested and ready for ATC revenue service	No later than 1025 days
12.	OCC ATC equipment at Hoban delivered and installed (including data communication system)	No later than 1095 days
13.	Contractor will submit to PATH the necessary documentation and data for Orthstar to update their simulator.	No later than 700 days
14.	Successful completion of the Pilot Course training - plus delivery of manuals and test equipment - to the extent required to permit the first ATC cutover to revenue service.	No later than 1278 days

<u>Ref</u>	<u>Contractual Milestone</u>	<u>Time from NTP</u>
15.	All safety certification documentation approved – all FRA issues regarding revenue service under ATC resolved ¹	No later than 1400 days
16.	Newark to Harrison station cutover to ATC revenue service operation (including OCC cutover), which shall include delivery and acceptance of sufficient Initial Provisions for that section ²	No later than 1460 days
17.	All wayside ATC equipment delivered and installed (including data communication system)	No later than 1675 days
18.	All remaining sections of PATH cutover to ATC revenue service operation, which shall include delivery and acceptance of sufficient Initial Provisions for each section ²	No later than 1825 days
19.	OCC ATC equipment at NTCC delivered and installed (including data communication system)	No later than 1916 days
20.	ATC System Conditional Acceptance ²	No later than 2008 days
21.	Updated materials deposited in Escrow	No later than 2050 days
22.	Remaining retired signal equipment removed	No later than 2120 days
23.	Successful completion of the Availability and Reliability Demonstration	No later than 2279 days

Note:

- ¹ - Contractor shall support PATH in obtaining any required FRA approvals.
- ² - Cutover to ATC revenue service operation follows Conditional Acceptance of the section being cutover (line items 16 and 18 in the above table). ATC System Conditional Acceptance refers to Conditional Acceptance of the ATC System (line item 20 in the above table) as defined in Article 205.

Article 202 Time for Completion and Damages for Delay

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that it can and will complete the performance of the Work within the times hereinbefore stipulated or within the times as extended in accordance with Article 203, "Extension of Time". Inasmuch as the damage and loss to PATH which will result from delay in completing the performance of the Work within the time herein stipulated will include items of loss for which the amount will be incapable or very difficult of accurate

estimation, it is hereby expressly agreed that such damages will be liquidated and paid as follows:

	<u>Contractual Milestone</u>	<u>Liquidated Damages for each day of delay</u>
A	Deliver first set of carborne ATC equipment	\$500.00
B	All wayside ATC equipment delivered and installed (including data communication system)	\$1,000.00
C	Successful completion of the Pilot Course training - plus delivery of manuals and test equipment - to the extent required to permit the first ATC cutover to revenue service.	\$1,000.00
D	Newark to Harrison station cutover to ATC revenue service operation (including OCC cutover)	\$2,500.00
E	ATC System Conditional Acceptance	\$4,000.00

PATH shall have the right to deduct such liquidated damage assessments from any monies due or which may become due hereunder. If the amount due the Contractor shall be less than the amount of liquidated damages due PATH or if there is no amount due, the Contractor shall pay the difference upon demand by PATH. Notwithstanding the foregoing, to the extent liquidated damages may result from the Contractor's performance in respect to Milestones A, B or C, and yet the Contractor timely performs and achieves the completion time requirements in respect to Milestone D and therefore is not assessed liquidated damages for Milestones D, all liquidated damages sums for Milestones A, B, and C that were previously withheld by PATH or paid by the Contractor to PATH, shall be paid or returned to the Contractor. In addition, to the extent liquidated damages may result from the Contractor's performance in respect to Milestones A, B, C, or D and yet the Contractor timely performs and achieves the completion time requirements in respect to Milestone E and therefore is not assessed liquidated damages for Milestones E, all liquidated damages sums for Milestones A, B, C, and D that were previously withheld by PATH or paid by the Contractor to PATH, shall be paid or returned to the Contractor.

The liquidated damages assessment schedules for ATC System do not relieve the Contractor of the obligation to take all reasonable precautions, efforts and measures required by Article 203 to avoid or mitigate delays in the Work.

The liquidated damages under paragraphs A, B, C, D, and E shall be cumulative.

202.1 Loss of Revenue Service Time

Liability for loss of revenue service time, as described herein, shall commence upon the first revenue service cutover of the ATC System and shall extend through Final Completion.

In the event that any design, software fault or error, installation error or omission, any computer system error or omission, or any other work performed pursuant to this Contract, fails to perform in such a manner as to cause:

1. A portion of the ATC System to become entirely inoperative for a period of time greater than one hour and which renders PATH unable to operate trains in compliance with federal, state, and local transit safety standards for the specified minimum time, the Contractor shall be liable to PATH for liquidated damages. For this loss of revenue service time, the Contractor shall pay to PATH liquidated damages in the amount of \$15,000.00 for the first hour (or part thereof) following the initial hour, and \$25,000.00 for each additional hour (or part thereof) thereafter.

The Contractor's liability for damages under this Article shall not apply to any disruption that is attributable to PATH, its employees, agents or other contractors, or by the failure of any equipment or installation of the existing signal system (except to the extent that such failure results from the negligence or fault of the Contractor) or to any event of Force Majeure.

202.2 Cap on Liquidated Damages

The liquidated damages under this Article 202 shall be cumulative, but shall in no event exceed 5% of the Total Contract Price. In the event of a delay, PATH only will be entitled to recover the liquidated damages as provided for herein, rather than its actual damages due to the delay.

Article 203 Extension of Time

The time provided for the completion of the Contract will be extended (subject, however, to the provisions of this Article) only if, in the opinion of the Project Manager, acting fairly and impartially, the Contractor is necessarily delayed by a cause, which meets any of the following conditions:

- A. Such cause is one of the following events (hereinafter, a "Force Majeure"):
 - 1) Any material destruction of or damage to, or any interruption, suspension or interference with, the Work caused by acts of God; natural disaster including but not limited to landslides, lightning, earthquakes, fires, explosions, floods; epidemic, quarantine, acts of a public enemy, wars, blockades, terrorism (or any imminent threat of the foregoing), riots, rebellions, sabotage, insurrections, civil disturbances or any similar occurrences to the foregoing;
 - 2) Any national, regional, or local industry-wide labor strikes, work stoppages, boycotts or walkouts or any national, regional, local or industry-wide manufacturing plant labor strikes, work stoppages, boycotts or walkouts;
 - 3) Any Change-In-Law, as defined under Article 102, "Definitions";
 - 4) Any other cause that is not or was not within the reasonable control of the party claiming Force Majeure, provided that, Force Majeure shall not include any such event to the extent that it results from the fault or negligence of the Contractor or its Subcontractors or Suppliers (of any tier).
- B. Such cause that comes into existence after the opening of Proposals on the Contract and neither was nor could have been anticipated by investigation before such opening.

In any event, even though a cause of delay meets any of the above conditions, an extension of time will be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling; however, Contractor shall not be obliged to incur substantial additional or unanticipated costs and/or expenses in regard to such mitigation effort), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which could not have affected the performance of the Contract were it not for the fault of the Contractor.

Any reference herein to the Contractor shall be deemed to include Subcontractors and material suppliers, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract, and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time will be that necessary to make up the time actually lost, subject to the provisions of this numbered Article, and will be only for the portion of the Contract actually delayed. The Project Manager may defer all or part of the decision on an extension, and any extension may be rescinded or shortened if it subsequently is found that the delays can be overcome or reduced by the exercise of reasonable precautions, efforts and measures.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Project Manager within ten (10) working days after the time when it knows or should know of any cause which might under any circumstances result in delay for which it claims or may claim an extension of time (including those causes for which PATH is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of PATH, and since, with sufficient opportunity, PATH might, if it so elects, attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the Contractor's obligations, and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Project Manager that it is. To this end, the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive.

In case the Contractor shall be delayed at any time or for any period by two or more of such overlapping causes, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted, which shall provide an appropriate extension on account of the corresponding delay.

Article 204 Delays to Contractor, Cancellation for Delay, Emergency Delay, and Idle Employees**204.1 Delays to Contractor**

As between the Contractor and PATH, the Contractor assumes the risk of all suspensions or of delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Article and Contract for such suspension or delays, and except to the extent, if any, that compensation may be agreed to by the Project Manager in writing. If additional compensation is authorized by the Project Manager, it shall be charged against the total amount of compensation authorized for Net Cost Work.

Subject only to such exceptions agreed to by the Project Manager, the Contractor shall bear the burden of all costs, expenses and liabilities which it may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, PATH makes no guarantee as to when the maintenance facilities, revenue service line or test site or any part thereof will be available for the performance of the Contract or as to whether conditions will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time. In the event of adverse weather conditions or emergencies on PATH making it impractical for work to be performed by the Contractor, an extension of time equivalent to the lost time will be granted.

Wherever in connection with this Contract it is required, expressly or otherwise, that PATH perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guarantee is made by PATH as to the time of such performance, and the delay of PATH in fulfilling such requirement shall not result in liability of any kind on the part of PATH except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.

204.2 Cancellation for Delay

If the performance of the Contract or any portion of it shall, in the opinion of the Project Manager (which will be reasonably applied) be materially delayed, whether or not through the fault of the Contractor, by any cause which affects the Contractor's ability to perform the Contract without affecting to the same degree PATH's own ability to perform it, either directly or through others, PATH has the right at any time during the existence of such delay to cancel this Contract as to any portion not yet performed, without prejudice to the rights, liabilities and obligations of the parties under this Contract arising out of portions already performed, provided, however, that such right of cancellation shall not exist if the delay be due to any wrongful act or omission of PATH. If through no fault of the Contractor, this Contract is cancelled, an allowance shall be made for actual, reasonable costs incurred by

the Contractor including demobilization, but no allowance shall be made for anticipated profits for such portions of the Work not performed.

The Contractor shall have no right to rescind or terminate this Contract by reason of any delay, obstruction or interference of any kind or duration whatsoever.

204.3 Compensation for Emergency Delay

If the Contractor is specifically directed by the Project Manager to suspend its operations as stipulated in Article 210, PATH Operations and Conditions, or if the Contractor is specifically directed not to start its operations at a time when operations are permitted to start as stipulated in such Article 210, and if solely because of such suspension or direction not to start any of the Contractor's or subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle (i.e., there are no other tasks, efforts, or activities that the best efforts of the Contractor could find to be performed by the resources that otherwise would be idle), during at least 30 consecutive minutes of the first hour or any portion of subsequent hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Engineer which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages. Amounts paid under this provision shall be charged against the total amount of compensation authorized for Net Cost Work.

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, it shall give prompt written notice to the Project Manager stating the reasons why it believes such payments should be made and shall moreover, furnish to the Project Manager at the end of each day, a memorandum showing the name, payroll title, and employer of each of the employees described in the preceding paragraph, and the description and owner for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Project Manager to verify the Contractor's information at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on its part that the Contractor is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being the conditions precedent to payment under this numbered clause.

204.4 Idle Employees

If any Contractor's or subcontractor's employees are necessarily kept continuously idle and wholly unoccupied (which condition the Contractor will use its best efforts to mitigate) for any full day or full work shift during which they would be engaged in the performance of the Work at the Site but for causes due solely to acts or omissions of PATH occurring after the opening of Proposals on this Contract, and except to the extent that such idleness is not due to any cause within the control of the Contractor or of any of its Subcontractors or Materialmen or its or their employees, then PATH shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and subject to a right to a consequent extension of time being granted to the Contractor in full

satisfaction of and in liquidation of all claims for damages because of such act or omission of PATH or the Project Manager) an amount equal to that which the employer actually pays such employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations, and a proper proportion of the taxes actually paid by the employer pursuant to law. Amounts paid under this provision shall be charged against the total amount of compensation authorized for Net Cost Work.

If any full-time assigned employees at the Contractor's Project Office (Exhibit C) and up to five (5) dedicated software engineers not located at Project Office are necessarily kept continuously idle and wholly unoccupied (which condition the Contractor will use its best efforts to mitigate) for any five (5) consecutive full days during which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of PATH occurring after the opening of Proposals on this Contract, and except to the extent that such idleness is not due to any cause within the control of the Contractor or of any of its Subcontractors or Materialmen or its or their employees, then PATH shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, except for actual and necessary non-personnel costs and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of PATH or the Project Manager) an amount equal to the amount in the list per idled person per day during such full days of idleness. Amounts paid under this provision shall be charged against the total amount of compensation authorized for Net Cost Work. Amounts detailed in Exhibit C are payable without any markup.

The Contractor shall give written notice to the Project Manager before the end of the first full day of idleness (whether or not PATH is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that the Contractor's or subcontractor's employees have been kept idle under circumstances which might result in payment under this numbered clause; and the Contractor shall furnish with such notice, for all the days that have occurred, a memorandum showing the name, payroll title, salary rate and employer of each of the employees claimed to have been kept idle, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations. The Contractor shall give written notice to the Project Manager before the end of the fifth full consecutive day for which the Contractor's Project Office personnel (Exhibit C) and up to five (5) dedicated software engineers not located at Project Office have been kept idle under circumstances which might result in payment under this numbered clause. The furnishing of said notice and memoranda shall be a condition precedent to payment under this numbered clause.

The Project Manager will reasonably consider extending the contractual time of performance if the Contractor activities affected by the idle period are on the Critical Path of the MPS.

204.5 Suspension of 90 Days or More

If the performance of the Contract or any portion of it, pursuant to an order of the Project Manager is suspended through no fault of the Contractor, the Contractor will receive relief as described herein when the duration of the suspension is noted as 90 consecutive days or more.

Upon receipt of a suspension order, the Contractor shall stop work, taking all reasonable steps to minimize the costs of the suspension and ensuring the safety of all work sites, storage areas, and other locations.

The Contractor shall receive an extension of its time of performance equal to the duration of the suspension plus such reasonable time for demobilization and remobilization as the Project Manager reasonably may determine, but should the cumulative total number of days that would be provided exceed 270 days, the Contract will be considered to have been terminated for convenience, unless the Parties mutually agree otherwise.

In addition, the Contractor shall receive an equitable adjustment to the Total Contract Price, as determined by the Project Manager for the actual, reasonable costs incurred by the Contractor including demobilization and remobilization costs. Any equitable adjustment to the Total Contract Price as provided herein shall be charged against the total amount of compensation authorized.

Article 205 Acceptance

- A. After completion and approval of all testing activities for an ATC System component, item of equipment, or cutover of a section to ATC System revenue operation, the Project Manager will issue a Notice of Conditional Acceptance, which Notice will state the date when Conditional Acceptance has occurred for such component, item of equipment, or cutover segment. Such Notice will list as Open Items all defects and deficiencies that remain to be corrected and shall state that the ATC System component or equipment or cutover to ATC System revenue operation is accepted on condition that the Contractor remains responsible for any necessary repairs or other corrective action until the Open Items are remedied. Any work hereunder shall be such as to make the component or equipment fully meet the TS and shall comply with the provisions of the Article 703, "General Guarantee/Warranty".
- 1) If the Contractor fails to remedy an Open Item within fourteen (14) days, or, where it is unreasonable for the work to be completed within fourteen (14) days, then within such greater period of time expressly authorized in writing by the Project Manager, the Project Manager may (i) deliver a Notice of Rejection that shall have the same force and effect as if the ATC System component, item of equipment, or cutover segment had been rejected upon its initial inspection per Article 206, "Rejection", or (ii) upon five (5) days notice to the Contractor, do or cause to be done, at the Contractor's expense, any necessary work to remedy an Open Item. Where it is unreasonable for the Contractor to remedy the Open Item within fourteen (14) days, the Contractor shall submit, within seven (7) days of its receipt of the Notice of Conditional Acceptance, a schedule for the completion of the remedial work, specifying the time period for completion, for the Project Manager's review and approval, which approval will not be unreasonably withheld.
- B. After completion and approval of all testing activities up to and including Pre-revenue Service Tests (reference TS Section 17.6); all operating and maintenance documents, training materials; and, the training of a sufficient number of PATH employees in the operation and maintenance of the ATC System, the Contractor will receive Notice of ATC System Conditional Acceptance from PATH. ATC System Conditional Acceptance means that PATH may safely and effectively operate

revenue service governed by the ATC System through all PATH ATC territory in all modes of operation including ATO Mode. All ATC functionality as specified in the TS shall be provided and available for use by PATH as a necessary prerequisite to ATC System Conditional Acceptance and no restrictions or safeguards beyond those inherent in the ATC System shall be required for PATH to operate revenue service. No ATC System equipment will be accepted by PATH prior to ATC System Conditional Acceptance.

- C. The Notice of ATC System Conditional Acceptance will state the date when Conditional Acceptance of the ATC System has occurred and is Contractual Milestone E, Article 202, "Time for Completion and Damages for Delay". Such Notice will list as Open Items all defects and deficiencies that remain to be corrected and shall state that the ATC System is accepted on condition that the Contractor remains responsible for any necessary repairs or other corrective action until the Open Items are remedied. Any work hereunder shall be such as to make the equipment fully meet the Specifications and shall comply with the provisions of the Article 703, "General Guarantee/Warranty".
- D. If the Contractor fails to remedy an Open Item within fourteen (14) days, or, where it is unreasonable for the work to be completed within fourteen (14) days, then within such greater period of time expressly authorized in writing by the Project Manager, the Project Manager may (i) deliver a Notice of Rejection which shall have the same force and effect as if the ATC System had been rejected upon its initial inspection per Article 206, "Rejection", or (ii) upon five (5) days notice to the Contractor, do or cause to be done, at the Contractor's expense, any necessary work to remedy an Open Item. Where it is unreasonable for the Contractor to remedy the Open Items within fourteen (14) days, the Contractor shall submit within seven (7) days of its receipt of the Notice of ATC System Conditional Acceptance a schedule for the completion of the remedial work, specifying the time period for completion, for the Project Manager's review and approval, which approval will not be unreasonably withheld.

Article 206 Rejection

If the inspection of a component, an item of ATC equipment, or a segment cutover to ATC revenue operation [hereinafter in this Article referred to as "element of the ATC System"], discloses that the element of the ATC System is, in the opinion of the Project Manager, unfit for service, or if the element of ATC System, had been Conditionally Accepted but the Contractor has failed to remedy the Open Items within the time specified in Article 205, Acceptance, a Notice of Rejection may be given to the Contractor indicating that such element of the ATC System is rejected. At PATH's discretion, such element of the ATC System may be returned to the Contractor at the Contractor's expense for corrective action to make the element of the ATC System fully conform to the requirements of the Specifications.

All expenses and costs incurred by PATH in connection with rejection, including without limitation, the removal of said element of the ATC System, re-inspection and retesting shall be borne by the Contractor.

Risk of loss of any Conditionally Accepted element of the ATC System rejected hereunder shall be borne by the Contractor upon the issuance of the Notice of Rejection.

Article 207 Title to Materials

All items and materials to become part of the permanent construction shall be and become the property of PATH upon delivery at the construction site or upon being especially adapted for use in or as a part of the permanent construction, whichever may first occur, subject however to the Contractor's assumption of risk of loss or damage to the permanent construction prior to the rendition of a Notice of Conditional Acceptance of the ATC System (other than loss or damage to the portions of the permanent construction with respect to which revenue service operations have begun), and the Contractor shall forthwith repair, replace and make good any such loss or damage to the permanent construction without cost to PATH.

The Contractor shall promptly furnish to PATH such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of PATH.

Article 208 Options

PATH may exercise the Options set forth in this Article, by providing written notice to the Contractor at any point up to Final Completion (Article 303), except as otherwise specifically provided herein. The exercise of any such Option shall be in PATH's sole and absolute discretion. All Options shall be delivered and performed in accordance with a reasonable timetable mutually established by the Contractor and PATH. Payment for Options shall be charged against the amount authorized for Extra Work or Net Cost work as determined by the Project Manager. The Option Prices are unit or lump sum prices and are not subject to any mark-up. Option prices are not subject to escalation except as otherwise specifically provided herein.

PATH will have the option to require that new signals (complete with LED array, signal head, foundations, interfaces, etc.) be provided for all home locations proposed by the Contractor, as per Price Option form 3.2, item A. Option A pricing is valid for 230 days after NTP. As an alternative to PATH-supplied trip stops in accordance with TS Section 8.3.1.3, PATH will have the option to require that the Contractor provide the new trip machines, valves, complete with all mounting equipment and interfaces, at all of those locations where new trip stops are required, as per Price Option form 3.2, item B. Option B pricing is valid for 230 days after NTP.

PATH will have the option to require the Contractor to provide additional carborne ATC System components for installation on any PA-5 vehicles procured. The Contractor shall be compensated for such option per the unit price on Exhibit G.

PATH will have the option to require the Contractor to supply and install all signage at the Lump Sum price on Price Form 3.2, item D. Option D pricing is valid for 12 months after NTP.

PATH will have the option to extend the period of warranty for a maximum of three additional consecutive one-year extensions upon written notification to the Contractor by

PATH. The Contractor shall be compensated for such additional warranty period(s) in accordance with Option E per Exhibit I.

PATH will have the option to require the Contractor to provide a Crew Schedule system (reference TS Section 6.3.11). The Contractor shall be compensated for such option per the amount shown on Price Form 3.2, item F. Details regarding the Crew Schedule system pricing are found in Exhibit H. As provided for in Exhibit H, the price for item F includes the cost of the standard crew schedule system and the cost to provide the number of days of software development shown on the Exhibit to modify the standard crew schedule system to meet PATH's requirements. In the event that additional software development time is required beyond the number of days set forth in the Exhibit such time will be paid as Net Cost Work as per the Daily Rate in Exhibit C without mark-up. In the event that fewer days are required than are shown on the Exhibit, a credit will be provided to PATH. The quoted price will be valid for 6 months after the NTP. Pricing for alternative configurations are listed in Exhibit H. Alternative configurations may be exercised as options within six months of NTP at the price listed in Exhibit H.

PATH will have the option to require the Contractor to remove all retired bungalows, wayside equipment and cables with the exception of express cables at the Lump Sum price shown on Price Form 3.2, item G. All retired express cables will be removed by PATH at its convenience. Option G pricing is valid for 12 months after NTP.

PATH will have the option to require the Contractor to provide new consoles, furniture, workstations, and overview display equipment at the NTCC at the Lump Sum price shown on Price Form 3.2, item J. Option J pricing is valid for 6 months after NTP.

PATH will have the option to require the Contractor to supply separate training for Road Car Inspector at the Lump Sum price shown on Price Form 3.2, item L. Option L pricing is valid for 230 days after NTP.

PATH will have the option to require the Contractor to supply 14 training sessions for the Signal Supervisor at the Lump Sum price shown on Price Form 3.2, item M. Option M pricing is valid for 1000 days after NTP.

PATH will have the option to require the Contractor to supply separate training sessions for Tower Operator, Trainmaster, Train Dispatcher, Transportation Supervisor's and OCC Personnel at the Lump Sum price shown on Price Form 3.2, item N. Option N pricing is valid for 230 days after NTP.

PATH will have the option to require the Contractor to supply separate training sessions for Transportation Inspector at the Lump Sum price shown on Price Form 3.2, item O. Option O pricing is valid for 230 days after NTP.

PATH will have the option to require the Contractor to provide and install 25 signals, trip stops and all associated equipment for locations shown in Exhibit D at the Lump Sum price shown on Price Form 3.2, item P. Option P pricing is valid for 230 days after NTP.

PATH will have the option to not provide the Contractor 25 weekend shutdowns of either tunnel A or B for 53 continuous hours for installation, test, and cutover activities at the Lump Sum price shown on Price Form 3.2, item Q. Option Q pricing is valid for 210 days after receipt of an acceptable Master Project Schedule.

PATH will have the option to require that the Contractor install carborne ATC equipment sets on PA-5 vehicles. If this option is exercised by PATH, the Contractor shall be compensated for such option per the unit price on Price Form 3.2, item R. Option R pricing is valid until and shall be exercised no later than 3 months before start of train installation.

PATH will have the option to require that the Contractor use the acceleration rate adjustment for schedule regulation (catch up provision). The Contractor shall be compensated for such option per the Lump Sum price on Price Form 3.2, item S. Option S pricing is valid for 7 months after NTP.

PATH will have the option to not allow the Contractor to use Tefzel wire for wiring within Bungalows in the outside areas. In such event, the Contractor shall be compensated by the Lump Sum amount shown on Price Form 3.2, item T. Option T pricing is valid for 230 days after NTP.

PATH will have the option to require the Contractor to use Technical Specification compliant messenger wire in tunnel areas. In such event, the Contractor shall be compensated by the Lump Sum amount shown on Price Form 3.2, item U. Option U pricing is valid for 90 days after NTP.

PATH will have the option to require a new employee pickup pushbutton, corresponding wayside indicators and any other wayside ATC equipment required to stop a train at a location on the west bound track of C yard for a requested employee pickup. If this option is exercised by PATH, the Contractor shall be compensated for such option per the unit price on Price Form 3.2, item V. Option V pricing is valid for 365 days after NTP.

PATH will have the option to require the Contractor to provide spares as defined in the Technical Specification in lieu of the staging material listed in Exhibit E. In such event, the Contractor shall be compensated by the Lump Sum amount shown under Price Form 3.2, item W. Option W pricing is valid for 230 days after NTP.

Article 209 Net Cost Items

The Contractor shall be reimbursed for the cost of the following items of Net Cost Work on a Net Cost basis if directed by the Project Manager to perform such Work:

1. The construction of additional bungalows, complete with HVAC, security, and fire detection (design, supply, install).
2. Installation of Carborne equipment on PA 5 Car.
3. Implementation of additional security improvements.
4. Other items as identified in the Contract or by the Project Manager as Net Cost.

Net Cost compensation for item 1 shall be calculated as per the square feet pricing in Price Form, Section 3.4, Price for Net Cost Items, multiplied by the quantity purchased. Net Cost work for item 2 will be calculated as per Price Form 3.2, item R. Net Cost Work for items described elsewhere in the Contract and item 3 shall be computed in the same manner as is compensation for Extra Work, including any percentage addition to cost (except as specifically stated otherwise in this Contract), as set forth in Article 401 of the Contract providing compensation for Extra Work. Performance of such Net Cost Work shall be

subject to all provisions of the Contract, including, but not limited to, the notice requirements, relating to performance of Extra Work. Compensation for said Net Cost Work shall not be charged against the total amount of compensation authorized for other Extra Work. PATH shall have the right to direct the Contractor to perform the Work in a manner which will result in the lowest cost to PATH, provided, however, such direction does not adversely affect the Work.

Article 210 PATH Operations and Conditions

Delivery and unloading of material or equipment, loading or unloading of material, equipment, debris, Contractor's employees, Subcontractors, material, or other personnel over whom the Contractor has control, to or from a PATH work train or Contractor's Rail Transportation, and access to PATH tracks for placement and removal of Contractor's Rail Transportation, will be at PATH's C or D Yard. If either C Yard or D Yard is not available due to other operations, PATH will make available other suitable yard space and tracks. The Contractor, Subcontractors and Materialmen shall observe the Work site provisions below and in TS Section 16.1.2 in performing all construction tasks:

A. Construction Site Conditions

- 1) Schedule and perform the Work in the sequence shown on the Contract Drawings, if any, in such a manner as not to delay, endanger, or interfere with PATH operations. To the extent feasible, the scheduled sequence, if any, and the times of the Contractor's operations once approved, will be adhered to and operations of PATH and others will be scheduled so as to cause the least interference with the Contractor's operations. However, should the Project Manager deem that any portion of the area in which the Contractor is working is required by PATH, the Contractor will be required to suspend operations and remove personnel, and obstructing plant, equipment and materials from such areas, within ½ hour of notice to suspend operations and stand by, if necessary, until directed by the Project Manager to resume operations in such areas.
- 2) Should the Contractor be specifically directed to suspend operations as provided in A.1, and if solely because of such direction and not due to fault of the Contractor, the Contractor is necessarily kept idle at the construction site or otherwise incurs a loss, the Contractor will be compensated as stipulated in the provisions of Article 204.3, "Compensation for Emergency Delays".
- 3) To enable the Contractor to plan Work of the Contract, and to enable PATH to plan train service operations, maintenance operations, and operations of others, prepare and submit to the Project Manager for approval in accordance with section K "Coordination" hereof, a three week rolling schedule of operations for Work of the Contract every Monday.
- 4) At least 7 days but not more than 10 days prior to performing excavation, call 1-800-272-4480 and provide the information required for excavation(s) in New York and call 1-800-272-1000 and provide the information required for excavation(s) in New Jersey.
- 5) Take all precautions necessary for protection of persons and property during dust or fragment generating operations, concrete mixing or placing, painting or other operations which may stain, soil or damage property, or injure persons. Provide and erect waterproof, fire-resistant, UL labeled tarpaulins with flame spread rating of 15 or less or other protective enclosures as approved by the Project Manager.

- 6) The Contractor, employees of the Contractor, Subcontractors, Materialmen or other persons over whom the Contractor has control (hereinafter in this Section "Contractor's Personnel") shall conform to the following:
 - (a) Do not park any vehicles, including construction vehicles, company vehicles or personal vehicles within any area of PATH property without prior approval of the Project Manager, and no representation is made that parking, if approved, will be available throughout the Work of the Contract.
 - (b) Do not enter upon PATH right-of-way unless PATH flagger assigned to the Contractor is present.
 - (c) Do not permit material, equipment or other objects to lie within or project into the PATH right-of-way.
 - (d) Provide sound suppression devices on gasoline and diesel powered construction equipment and pneumatic tools as required to maintain noise exposure below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for Construction (OSHA). Maintain such sound suppression devices in proper operating condition throughout the time of their use and make adjustments and repair as required to maintain noise within exposure levels stipulated in 29 CFR 1926.52, Table D-2.
 - (e) Combustible products or flammable materials shall be stored in proper containers, subject to the approval of the Project Manager.
 - (f) Restrict smoking to areas designated by the Project Manager for this purpose.
 - (g) At all times while performing Work, require workers to wear reflective safety vests, hard hats and boots with non-slip type soles. Reflective safety vests shall have a visible reflective surface of not less than 100 square inches on front and back.
 - (h) Do not burn or bury debris of any type on PATH property, or wash waste material down sewers or into waterways.
 - 7) In the event of damage to or disruption of existing construction, except if such damage or disruption results from acts or omissions of PATH, the Contractor shall repair, replace or reinstall such construction to the satisfaction of the Project Manager. Should the Contractor fail to perform such repair or replacement, PATH reserves the right to perform such Work and deduct from the Contractor's compensation an amount representing the cost of such Work, as determined by the Project Manager. However, PATH will give reasonable written notice to the Contractor of its intent to repair or replace before proceeding.
 - 8) The Contractor shall provide and maintain at areas of Work, two "Pyrene 95-P20M" extinguishers as manufactured by RC Industries, Inc., Linden, N.J., or approved equal UL rated 20A-80BC 20 pound dry chemical multi-purpose fire extinguishers.
- B. Not Used
- C. Construction Site Conditions in Tunnels and Stations
- 1) The use of propane heaters within tunnels or at underground stations is prohibited. Gasoline or diesel powered construction equipment within tunnels or at underground stations is prohibited, unless specifically approved by the Project Manager.
 - 2) Use of liquids having a flashpoint below 73 degrees F and boiling point below 100 degrees F is prohibited, unless specifically approved by the Project Manager.

- 3) Provide and operate air-moving equipment when fume-generating operations are in progress. During such operations provide air monitoring and test for toxicity (Parts per Million, PPM), oxygen deficiency and combustible gas (%Lower Explosive Limit, LEL).
 - 4) Work will be permitted in only one tunnel at any one time unless otherwise shown on the Contract Drawings or specifically approved by the Project Manager.
- D. Access To Areas of Work:
- 1) Work of this Contract is at areas that are not accessible by road. Transportation for personnel, material, equipment, or debris removal shall be provided in accordance with "PATH Rail Transportation" per item G below.
- E. Material and Equipment Delivery and Removal:
- 1) For Work at areas that are not accessible by road, deliver material and equipment via truck to the PATH C or D Yard near the intersection of Academy Street and Mill Road, Jersey City, New Jersey.
 - 2) Due to the limited space available at the PATH C or D Yard, operations, during performances of this Contract, shall comply with the following:
 - (a) Limit deliveries to such material and equipment that will be promptly loaded on PATH work trains or Contractor's Rail Transportation for transportation, or can be confined within the "Area Available for Contractor's Use" at C or D Yard, if any.
 - (b) Confine loading or unloading operations within the "Areas Available for Contractor's Use", if any, except that for material and equipment delivered via truck to C or D Yard, the Contractor will also be permitted to use, for off-loading only, a loading platform. Such loading platform use shall be subject to availability of space and PATH does not guarantee the availability of the loading platform.
 - (c) Promptly unload and remove materials or debris returned to C or D Yard via PATH rail transportation per item G or Contractor's Rail Transportation per item H below.
- F. Hours of Work
- 1) Perform Work of the Contract at or on PATH facilities, right-of-way, and property (hereinafter "on PATH") in accordance with the provisions of this Article and TS Section 16.1.2.
 - 2) No Work shall be performed on PATH between December 18 and January 2.
 - 3) Notwithstanding anything to the contrary herein, for the duration of the Contract, no closure of any PATH tracks is permitted during the following periods:
 - (a) Memorial Day weekend (6:00 A.M. Friday through 6:00 A.M. Tuesday)
 - (b) Independence Day weekend (6:00 A.M. Friday through 6:00 A.M. Tuesday if the holiday falls on a Monday; 6:00 A.M. Thursday through 6:00 A.M. Monday if the holiday falls on a Friday; and 6:00 A.M. the day before to 6:00 A.M. the day after if the holiday falls in the middle of the week.)
 - (c) Labor Day weekend (6:00 A.M. Friday through 6:00 A.M. Tuesday)
 - (d) Mother's Day and Father's Day weekends (8:00 A.M. Saturday through 6:00 A.M. Monday.)
 - (e) Thanksgiving weekend (6:00 A.M. Wednesday through 6:00 A.M. Monday)

- (f) Easter weekend (6:00 A.M. Friday through 6:00 A.M. Monday)
 - (g) From 6:00 A.M. the day before to 6:00 A.M. the day after the start of Rosh Hashanah, Yom Kippur, Passover and Hanukkah.
 - (h) Columbus Day weekend (6:00 A.M. Friday through 6:00 A.M. Tuesday)
 - (i) From 6:00 A.M. the day before to 6:00 A.M. the day after Veteran's Day.
 - (j) Any other legal holiday(s) in the states in which the Work is being performed.
- 4) Some of the Work of the Contract is to be performed on an operating railroad. Therefore, PATH does not guarantee that PATH rail transportation will be available precisely at the beginning and end of each specified time period. Arrival times of PATH rail transportation will vary as described in TS Section 16.1.2.
- G. PATH Rail Transportation
- 1) If required, PATH will furnish work trains at C or D Yard and operate them subject to the following conditions upon their use:
 - (a) Refer to TS Section 16.1.2 for provisions regarding the availability of work trains.
 - (b) Each flatcar loading area is approximately 35 feet long and 7.5 feet wide with a maximum 20-ton load capacity. The maximum height of load is limited to the motorman's line-of-sight or 4 feet whichever is less. All loaded material and equipment shall be secured in place and shall be subject to PATH inspections and approval.
 - (c) A work train flatcar may remain at the areas of Work as a storage platform for the Contractor's material and equipment for the approved scheduled time of use at such areas of Work. More than one work train flatcar may remain at the areas of Work as storage platforms for the Contractor's material and equipment, if approved by the Project Manager.
 - (d) Unless otherwise specifically permitted by the Project Manager, return each flatcar to PATH at end of each day for which approval for use was granted.
 - (e) Remove material, equipment or debris and broom clean work train flatcars at the end of each time of approved use.
 - 2) Under no circumstances will the Contractor be permitted to use PATH passenger trains for transporting material or equipment of any kind in connection with performance of the Work.
 - 3) The Contractor's personnel shall not use PATH passenger trains for transportation in connection with performance of the Work, unless specifically approved in advance by the Project Manager and such use, if granted, shall be subject to the limitations and conditions imposed by the Project Manager for such transportation.
 - 4) Requests for PATH rail transportation will be monitored by the Project Manager. Should the Project Manager determine that flatcars are not required for a Contractor operation, flatcars will not be furnished with a PATH work train.
 - 5) Make arrangements for PATH rail transportation and Contractor's Rail Transportation in accordance with "Coordination" hereof.
 - 6) In the event of damage to any work train component by the Contractor, PATH will deduct from the Contractor's compensation an amount representing the cost of required repairs or replacements as determined by the Project Manager.

- H. Contractor's Rail Transportation:
- 1) In lieu of utilizing PATH rail transportation, the Contractor may provide at its option and expense, self-propelled maintenance-of-way (MOW) vehicles, specialized maintenance, or other similar vehicles (such vehicles hereinafter referred to as "MOW vehicles") for use on PATH tracks subject to the provisions stipulated herein.
 - 2) In addition to the requirements herein, the times and conditions of MOW vehicles operation shall be the same as those stipulated for PATH rail transportation except as noted in 4 below.
 - 3) Access to PATH tracks for placement and removal of MOW vehicles is available only at "C" and "D" yards.
 - 4) The services of a PATH pilot are required at all times of operation of MOW vehicles on PATH tracks. Make arrangements for a PATH pilot in accordance with "Coordination" herein.
 - 5) When not in active use in connection with performance of the Work, remove MOW vehicles on PATH rails after each workday. MOW vehicles shall be capable of clearing tripper arms and other obstructions. Promptly remove such equipment from PATH property when its use is no longer required.
 - 6) Such a MOW vehicles will be subject to the review and approval of PATH. PATH will require 90 days to review the equipment.
 - 7) The MOW vehicles shall meet exhaust standards of the latest United States Environmental Protection Agency regulations at the time of delivery for work in a tunnel.
- I. PATH Flagger Service:
- 1) PATH will provide a maximum number of flagmen tours as specified in TS Section 16.1.2 without charge to the Contractor and their use is required for the following operations in connection with performance of the Work:
 - (a) Work within 10 feet of the right-of-way.
 - (b) Work that requires crossing or obstruction of tracks.
 - (c) Use of PATH rail transportation or Contractor's rail transportation.
 - (d) Work that in any way interferes with or interrupts PATH train service operations.
 - (e) Work, which, in the sole discretion of the Project Manager, requires flagmen for safety purposes.
- J. Traction Power and Existing Utilities
- 1) The Contractor's attention is called to the fact that there will be high voltage electric lines and rails for PATH traction power at or adjacent to the areas of Work and no representation is made that such lines and rails will be de-energized during performance of the Work of the Contract. The Contractor shall take all necessary precautions to protect its personnel and others affected by its operations from injury from such high voltage electric lines and rails. Such lines and rails will remain energized for PATH operations except where shut-off is approved by the Project Manager and accomplished by a PATH Power Railman.
 - 2) Maintain operation of existing utility services such as compressed air, water, sewers, electricity, ventilation or fire protection and PATH surveillance cameras, signal and communication systems during performance of Work of the Contract, except as absolutely necessary for cutoff, cutover or other change of the affected systems, as approved by the Project Manager. Coordinate with the Project Manager prior to interrupting or otherwise affecting any operating system, utility or service.

- 3) Shut-off and turn-on of traction power or existing utility, signal or communication services will be performed by others without cost to the Contractor up to a maximum number of Power Railman services as specified in TS Section 16.1.2.
 - 4) If required for Work of the Contract, PATH will provide compressed air at 90 psi in the vicinity of the area of Work. Provide valved connections to existing facilities and extend with hoses as required.
 - 5) Notify the Project Manager of such shut-off or turn-on requirements in accordance with "Coordination" hereof.
- K. Coordination:
- 1) The progress schedule required under the TS Section 19.1.1.3 entitled "Progress Review Reports" shall contain, but not be limited to, the following items:
 - a) Description of operations, location of Work in tunnels, and station closings, if any.
 - b) Start and completion dates of each operation.
 - c) Dates of material and equipment delivery to C or D Yard.
 - d) Dates and times of Work that:
 - i. Require closing of PATH stations or tunnels
 - ii. Require crossing or obstruction of tracks
 - iii. Is within or closer than 10 feet to right-of-way
 - iv. Interferes with or interrupts PATH train service operations
 - v. Require use of Contractor's MOW equipment, if any.
 - e) Submittal of the progress schedule does not constitute three (3) weeks advance written notification of services, track allocation, work area permissions, or any other PATH provided or required coordination as such advance notification is required in this Article or in TS Section 16.1.2.
 - 2) Submit written notification to the Project Manager not later than three (3) weeks in advance for all Work on PATH, including when the following services are required:
 - (a) PATH rail transportation service
 - (b) Services of PATH pilot for Contractor's Rail Transportation
 - (c) PATH flagger, train crews, Tower Operators, and Power Railman services
 - 3) The Contractor shall comply with the badge requirement for entry to these areas.
 - 4) Written notification shall include, but not limited to, the following items:
 - (a) For PATH rail transportation service:
 - The dates and locations of areas of Work.
 - Whether or not flatcar will be required to remain in position as storage platform at areas of Work; and if so, locations of such areas.
 - Number of Contractor's personnel to be transported.
 - (b) For services of PATH pilot:
 - The dates, times and locations of MOW equipment delivery to PATH track access points.
 - The dates, times and locations of areas of work destinations of Contractor's Rail Transportation.
 - Whether or not Contractor's Rail Transportation will be positioned at areas of work as a storage platform; and if so, locations of such areas.

- (c) For PATH flagger, train crews for Contractor's Rail Transportation, and Tower Operators services:
 - The dates, times and locations of area of Work.
 - Description of operations to be performed at areas of Work.
- 5) Where Power Railman services are required, notify the Project Manager not less than 3 weeks prior to the anticipated need for such services. Each notification shall be written and shall include:
 - (a) The dates, times and locations of areas of Work involved.
 - (b) Description of what utility or service shut-off or turn-on is required.
 - (c) Duration of shut-off times.
- L. Coordination Rescheduling or Cancellation:
 - 1) Should the Contractor require a rescheduling or cancellation of such services for the approved days, he shall submit written notification of such rescheduling or cancellation to the Project Manager not less than 48 hours in advance of each day for which approval was given. Failure by the Contractor to provide such notification of rescheduling or cancellation shall result either (1) in the use of one of the permitted tours, shifts, or occurrences (as applicable) described by TS Section 16.1.2 or (2) if the permitted quantities per TS Section 16.1.2 of the applicable tours, shifts, or occurrences have been exceeded or are not otherwise addressed by TS Section 16.1.2, in the deduction by PATH of the following amounts from the Contractor's compensation:
 - (a) For PATH rail transportation: \$1100 for each prior approved 6-hour tour or part thereof.
 - (b) For PATH pilot: \$600 for each prior approved 6-hour tour or part thereof.
 - (c) For PATH flagger services: \$432 per flag person for each prior approved 8-hour tour or part thereof.
 - (d) For PATH Power Railmen shut-off or turn-on of traction power or other utility or service: \$572 for each shut-off or turn-on previously approved.
 - (e) For PATH station closing: \$1,000 per day.
 - (f) For PATH Tower Operator: \$ 600 each prior approved 8-hour tour or part thereof.
 - (g) For Test Trains: \$1100 for each prior approved 6-hour tour or part thereof.
 - (h) For PATH Employee In Charge (EIC): \$ 600 per person for each prior approved 8-hour tour or part thereof.
- M. Additional Services
 - 1) Should the Contractor require additional services of PATH in addition to that set forth in TS Section 16.1.2, it shall submit written notification in accordance of section K hereof. The additional services of PATH if feasible, will be made available to the Contractor at the additional costs specified in section L hereof. Additional services of Employee-in-Charge (EIC) are not available in excess to that set forth in TS Section 16.1.2.
- N. Frangible Mock-ups:
 - 1) Not less than two weeks prior to erection or installation of permanent construction, temporary construction, scaffolding, platforms or other construction aids within PATH tunnels or at locations above or adjacent to the right-of-way, construct frangible mock-up, which duplicates edge and end profiles of such proposed erection or installation. The mock-up shall be structurally adequate to resist without

displacement the positive and negative wind loads imposed by passing PATH train operations but not cause damage to or create a hazard for PATH trains in the event that such end and edge profiles obstruct required PATH railway clearances.

- 2) When directed by the Project Manager, dismantle mock-up and remove from property.
- O. Railroad Worker Protection:
- 1) PATH requires that all Contractor personnel who may enter the track area at any time be certified by successfully completing the "PATH ON-TRACK SAFETY PROGRAM" in compliance with the Rules and Regulations set forth in Federal Railroad Administration (FRA) Regulation 49 CFR. Part 214, Subpart C, entitled "RAILROAD WORKER PROTECTION". Contractor personnel not certified under this program will not be permitted to enter PATH track area. Once a month, PATH will provide a four-hour certification class, at no cost to the Contractor, which includes a certification test to supervisory staff representing the Contractor. The Contractor's supervisory staff will then be required to train and certify all additional Contractor personnel that may be performing Work of the Contract. A letter certifying that the listed Contractor personnel have been trained on the "PATH ON-TRACK SAFETY PROGRAM" and that they fully understand and will comply with all requirements of FRA rules shall be filed with PATH's Safety Supervisor at One Path Plaza, Jersey City, NJ 07306, Sixth Floor, within 48 hours of such training. Contractor personnel wishing to enter track area are required to have in their possession photo identification and Railroad Worker Protection Card at all times.
- P. Protection:
- 1) No requirement of or omission to require any precautions under this Contract shall be deemed to limit or impair any responsibility or obligation assumed by the Contractor under or in connection with this Contract and the Contractor shall at all times maintain adequate protection to safeguard the public and all persons engaged in Work and shall take such precautions as will accomplish such end, without undue interference with the public or the operations of PATH.
- Q. Other Railroads:
- 1) This Section provides for Contractor's relationship with Railroads on whose property PATH tracks are located. Contractor's performance of its obligations under this Section shall not result in any additional cost to PATH.
 - 2) In this numbered section only, "Chief Engineer" shall mean Railroad's Vice President, Chief Engineer, Senior Project Manager, or a duly authorized representative; and "Railroad" shall mean National Railroad Passenger Corporation (Amtrak) or CSX or Conrail or New Jersey Transit.
 - 3) Pre-Entry Meeting: Before Contractor enters onto Railroad's property, a pre-entry meeting shall be held at which time Contractor shall submit for written approval of the Chief Engineer plans computations and detailed description of proposed methods for accomplishing the work, including methods for protecting the Railroad's traffic. Any such written approval shall not relieve Contractor of his complete responsibility for the adequacy and safety of its operation.
 - 4) PATH has not obtained Right of Entry permits to enter onto other Railroad's property. PATH will make reasonable efforts to coordinate meetings between the other Railroads and the Contractor. The responsibility for securing Right of Entry and any other required permissions and approvals to enter another Railroad's property shall remain with the Contractor. The Contractor is also responsible for any associated costs including services of other Railroad's flagmen and other employees if required. PATH cannot guarantee that such permits will be granted to the Contractor.

- Contractor shall adhere to all requirements established in the Right of Entry permits from other Railroads.
- 5) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety and continuity, and Contractor shall conduct his operations in compliance with all regulations, and requirements of the Railroad (including these Specifications) with respect to any work performed on, over, under within or adjacent to the Railroad's property. Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of the Railroad's safety regulations shall be grounds for the immediate suspension of the Contractor's work, and the re-training of all personnel, at the Contractor's expense.
 - 6) Maintenance of Safe Conditions: If tracks or other property of the Railroad are endangered during the Work, Contractor shall immediately take such steps as may be directed by the Railroad to restore safe conditions, and upon failure of Contractor to immediately carry out such direction the Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to the Railroad's trains, tracks, right-of-way or other property caused by the operations of Contractor, shall be paid by Contractor and at no cost to PATH.
 - 7) Protection in General: Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of Railroad traffic. Any Inspectors, Truck Foreman, Track Watchmen, Flagmen, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for Contractor shall obtain protective services from the Railroad. Contractor shall pay the cost of it directly to the Railroad. The provision of such employees by the Railroad, and any other precautionary measures taken by the Railroad, shall not relieve Contractor from its complete responsibility for the adequacy and safety of their operations.
 - 8) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and the Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted near overhead wires, except when protected by a Class A employee of the Railroad. Contractor shall supply an adequate length of grounding cable (4/0 cooper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.
 - 9) Fouling of Track or Wire: No work will be permitted within twenty-five (25) feet of centerline of track or the energized wire or have potential of getting within 25 feet of track wire without the approve of the Chief Engineer or his Representative. Contractor shall conduct its work so that no part of any equipment or material shall foul an active track or overhead wire without the written permission of the Chief Engineer or his Representative. When Contractor desires to foul an active track, it must provide the Chief Engineer or his Representative with the Contractor's site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of the Railroad. Any equipment or material shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire and shall require the presence of the proper Railroad protection personnel.

If acceptable to the Chief Engineer or his Representative, a Safety Barrier (approved temporary fence or barricade) may be installed at fifteen- (15) feet from centerline of track or overhead wire to afford the Contractor a work area that is not considered fouling. Nevertheless protection personnel may be required at the discretion of the Chief Engineer or his Representative.

- 10) Track Outages: Contractor shall verify the time and schedule of track outages with the Railroad before scheduling any work on, over, under within, or adjacent to the Railroad's right-of-way. Assume that the Railroad will not guarantee the availability of any track outage at any particular time. Schedule all work to be performed in such a manner as not to interfere with Railroad operations. Use all necessary care and precaution to avoid accidents, delay or interference with the Railroad's trains or other property.
- 11) Equipment Condition: All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class conditions so as to prevent failures that might cause delay to trains or damage to the Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer or his Representative. Under no circumstances shall any equipment or materials be placed or stored within twenty-five (25) feet from the centerline of an outside track, except as approved by the Site Specific Safety Work Plan. To ensure compliance with this requirement, Contractor must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer or his Representative. Contractor will be issued warning stickers, which must be placed in the opening cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.
- 12) Storage of Materials and Equipment: No material or equipment shall be stored on the Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that the Railroad will not be liable for loss or damage to such material or equipment from any cause.
- 13) Condition of the Railroad's Property: Contractor shall keep the Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Contractor shall remove from the Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of the Contractor and shall leave the Railroad's property in a condition satisfactory to the Chief Engineer.
- 14) Safety Training: All individuals, including representatives and employees of the Contractor, before entering onto the Railroad's property or coming within twenty-five (25) feet of the centerline of the track or energized wire shall first attend the Railroad's Safety Contractor/Lease Employee Training Class. PATH's Safety Representative will provide the Safety Orientation Class to the Contractor's "Train the Trainer" and all the necessary training and test documentation to train Contractor's other personnel. An I.D. will be issued and must be worn/displayed while on Railroad property. All costs of complying with the Railroad's safety training shall be at the sole expense of the Contractor. The Contractor shall appoint qualified person as its Safety Representative. The Safety Representative shall continuously assure that all individuals comply with Railroad's safety requirements. Maintain all safety training records with site-specific work plan.
- 15) No Charges to the Railroad: It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for

which the Railroad is to be billed by Contractor, unless the Railroad gives a written request that such work be performed at the Railroad's Expense.

Chapter 3 PRICE AND PAYMENT

Article 301 Guide for Payments

PATH will pay the Contractor for the performance of Work under this Contract in the form of milestone payments as specified in Article 302. The Total Price for each Line Item shall be as shown in Price Summary Forms attached hereto. The organization of payment tables is shown in Table 1.

Table 1

Line Item	Milestone	Table
1	Project Management	2
2	Operations Control Center Equipment	3
3	ATC Wayside Equipment	4
4	Interlocking Equipment	5
5	Trackside Equipment	6
6	Bungalows/Equipment Room Modifications	7
7	Signal Power Equipment	8
8	Existing Equipment Removals	9
9	ATC Carborne Equipment	10
10	Data Communications Equipment	11
11	PTC System Solutions to Comply with RSIA of 2008	12
12	System Safety / Safety Certifications	13
13	Inspection and Testing	15
14	Training	15
15	Support Services	16

301.1 PATH Payment Process

The Project Manager will review the Contractor's payment application for the Work and certification of Milestones completed and, if it is found satisfactory, will certify to PATH the Contractor's compensation earned for this Work. PATH will, within thirty (30) days after the receipt (Receipt of Invoice) of each such satisfactory application for payment, pay to the Contractor by check or electronic fund transfer the sum(s) so certified.

Within seven (7) days of the receipt of any sum attributable to the Work performed by a Subcontractor or within such later period as is provided in the agreement between the Contractor and the Subcontractor; the Contractor shall pay to the Subcontractor said sum, less such amount, if any, that the Contractor is authorized to retain under such subcontract or purchase agreement.

The Contractor shall submit a maximum of one consolidated invoice per month for all completed Milestones as described in Article 302, but each invoice may contain multiple items.

The Contractor may submit an invoice for approved Extra Work whenever the Project Manager agrees such Extra Work, or agreed element of such Extra Work, is acceptably completed. Each Extra Work item shall be invoiced separately and clearly identified on its face with the Extra Work number and description of the Extra Work.

The Contractor may submit an invoice for approved Net Cost Work whenever the Project Manager agrees such Net Cost Work, or agreed milestone of such Net Cost Work, is acceptably completed. Each Net Cost Work item shall be invoiced separately and clearly identified on its face with the Net Cost Work number and description of the Net Cost Work.

To be considered a proper invoice, an invoice must be in a form acceptable to PATH, be submitted in accordance with the requirements of this Chapter, and be accompanied by all required supporting documentation.

Nothing provided herein shall create any obligation on the part of PATH to pay or to ensure the payment by the Contractor of any monies to any Subcontractor or Supplier, nor create any relationship in Contract or otherwise between any Subcontractor or Supplier and PATH.

301.2 No Waiver

No payment or advance for Extra Work or Net Cost Work or any portions of the Work shall be construed as relieving the Contractor from the responsibility for Work upon which payments have been made or the restoration of damaged Work, or as waiving the right of PATH to require the fulfillment of the terms of the Contract.

Article 302 Milestone Payments

302.1 Milestone Payments, General Provisions

The Milestones described in the following Tables 2 through 16, when reached or achieved (as determined in the sole opinion of the Project Manager), shall constitute the basis for certification to PATH by the Project Manager of requests for payments to be made to the Contractor.

The Contractor's invoice form shall be organized and presented in accordance with the listed Price Items, with each Milestone listed by Price Item.

In the line items in the tables 2 through 16, cutover of either equipment or section of PATH system to ATC System revenue service operation follows Conditional Acceptance of the equipment or section being cutover, whereas ATC System Conditional Acceptance is Milestone E, Article 202 and refers to the issuance of the Notice of ATC System Conditional Acceptance, per Article 205.

302.2 Milestone Payments, Project Management (line item1)

Table 2

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Management Plans, Contract Schedule and Quality Assurance Program Plans Approved	18.000	28.000
3.00	Approval of CDR – All ATC Subsystems	14.400	42.400
4.00	Approval of PDR – All ATC Subsystems	14.400	56.800
5.00	Approval of FDR – All ATC Subsystems	14.400	71.200
6.00	ATC Equipment Delivered		71.200
6.01	Delivery of ZC	0.225	71.425
6.02	Delivery of DCS Equipment	0.225	71.650
6.03	Delivery of 1st set of Carborne Equipment	0.225	71.875
6.04	Delivery of 30th set of Carborne Equipment	0.225	72.100
6.05	Delivery of 60th set of Carborne Equipment	0.225	72.325
6.06	Delivery of 90th set of Carborne Equipment	0.225	72.550
6.07	Delivery of 130th set of Carborne Equipment	0.225	72.775
6.08	Delivery of OCC ATC Equipment	0.225	73.000
7.00	ATC Equipment Installed		
7.01	Installation of ZC	0.225	73.225
7.02	Installation of DCS Equipment	0.225	73.450
7.03	Installation of 1st set of Carborne Equipment	0.225	73.675
7.04	Installation of 30th set of Carborne Equipment	0.225	73.900
7.05	Installation of 60th set of Carborne Equipment	0.225	74.125
7.06	Installation of 90th set of Carborne Equipment	0.225	74.350
7.07	Installation of 130th set of Carborne Equipment	0.225	74.575
7.08	Installation of OCC ATC Equipment	0.225	74.800
8.00	ATC Pilot Training Complete		
8.01	Submit Training Plan	0.900	75.700
8.02	Training CBTC Familiarization (Pilot)	0.900	76.600
9.00	ATC Final Training Complete		
9.01	Submit Training Plan	0.225	76.825
9.02	Train the Trainers process begins	0.225	77.050
9.03	Direct Training of PATH Personnel begins	0.225	77.275
9.04	Training System Administrator	0.225	77.500
9.05	Training Train Engineers	0.225	77.725
9.06	Training OCC Personnel	0.225	77.950
9.07	Training Inspectors and Maintainers	0.225	78.175
9.08	Training Repair Shop Personnel	0.225	78.400
10.00	All ATC Manuals, Initial Provisions, Special Tools and Test Equipment Delivered	9.000	87.400
11.00	Sections of the Line Cut-over to ATC revenue service operations		
11.01	Revenue Service in Section 1	1.157	88.557
11.02	Revenue Service in Section 2	1.157	89.714
11.03	Revenue Service in Section 3	1.157	90.871
11.04	Revenue Service in Section 4	1.157	92.028
11.05	Revenue Service in Section 5	1.157	93.185
11.06	Revenue Service in Section 6	1.157	94.342
11.07	Revenue Service in Section 7	1.158	95.500
12.00	ATC System Conditional Acceptance		

Ref.	Milestone	% Of Total Line Item Price	Cumulative
12.01	Conditional Acceptance for Section 1	0.313	95.813
12.02	Conditional Acceptance for Section 2	0.313	96.126
12.03	Conditional Acceptance for Section 3	0.313	96.439
12.04	Conditional Acceptance for Section 4	0.313	96.752
12.05	Conditional Acceptance for Section 5	0.313	97.065
12.06	Conditional Acceptance for Section 6	0.313	97.378
12.07	Conditional Acceptance for Section 7	0.313	97.691
12.08	ATC System Conditional Acceptance	0.309	98.000
13.00	Final Completion	2.000	100.000

302.3 Milestone Payments, Operations Control Center Equipment (line item 2)

Table 3

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Approval of CDR – Control Center Equipment	4.500	14.500
3.00	Approval of PDR – Control Center Equipment	9.000	23.500
4.00	Approval of FDR – Control Center Equipment	13.500	37.000
5.00	Hoban OCC Equipment Installation Complete	4.500	41.500
6.00	Tower Operator Equipment Installation Complete	4.500	46.000
7.00	Hoban OCC Equipment Cutover Complete	9.000	55.000
8.00	New Train Control Center Equipment Delivered	9.000	64.000
9.00	New Train Control Center Equipment Installation Complete	4.500	68.500
10.00	New Train Control Center Equipment Cutover Complete	18.000	86.500
11.00	Sections of the Line Cutover to ATC revenue service operation		
11.01	Revenue Service in Section 1	1.286	87.786
11.02	Revenue Service in Section 2	1.286	89.072
11.03	Revenue Service in Section 3	1.286	90.358
11.04	Revenue Service in Section 4	1.286	91.644
11.05	Revenue Service in Section 5	1.286	92.930
11.06	Revenue Service in Section 6	1.286	94.216
11.07	Revenue Service in Section 7	1.284	95.500
12.00	ATC System Conditional Acceptance		
12.01	Conditional Acceptance for Section 1	0.313	95.813
12.02	Conditional Acceptance for Section 2	0.313	96.126
12.03	Conditional Acceptance for Section 3	0.313	96.439
12.04	Conditional Acceptance for Section 4	0.313	96.752
12.05	Conditional Acceptance for Section 5	0.313	97.065
12.06	Conditional Acceptance for Section 6	0.313	97.378
12.07	Conditional Acceptance for Section 7	0.313	97.691
12.08	ATC System Conditional Acceptance	0.309	98.000
13.00	Final Completion	2.000	100.000

302.4 Milestone Payments, ATC Wayside Equipment (line item 3)

Table 4

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Approval of CDR – ATC Wayside Equipment	4.500	14.500
3.00	Approval of PDR – ATC Wayside Equipment	9.000	23.500
4.00	Approval of FDR – ATC Wayside Equipment	13.500	37.000
5.00	ATC Wayside Equipment Installation Complete to support ATC Operations between Newark to Harrison		
5.01	Site Survey - Newark to Harrison Station	0.900	37.900
5.02	Install Trough - Newark to Harrison Station	0.900	38.800
5.03	Install Poles - Newark to Harrison Station	0.900	39.700
5.04	Install Brackets - Newark to Harrison Station	0.900	40.600
5.05	Install Messenger Wire - Newark to Harrison Station	0.900	41.500
5.06	Install Conduits - Newark to Harrison Station	0.900	42.400
5.07	Install Interim Cable - Newark to Harrison Station	0.900	43.300
5.08	Install INTL Cable - Newark to Harrison Station	0.900	44.200
5.09	Install Fiber and Signal Cable - Newark to Harrison Station	0.900	45.100
5.10	Install Strap Cable - Newark to Harrison Station	0.900	46.000
5.11	Install Transponders - Newark to Harrison Station	0.900	46.900
5.12	Install Tower Equipment - Newark to Harrison Station	0.900	47.800
5.13	Install Signs - Newark to Harrison Station	0.900	48.700
5.14	Install CBTC Wayside Equipment - Newark to Harrison Station	0.900	49.600
5.15	Installation Testing Complete - Newark to Harrison Station	0.900	50.500
6.00	Newark to Harrison Station Cutover to ATC revenue service operations Complete		
6.01	Installation complete - Newark to Harrison Station	1.917	52.417
6.02	Installation Testing Complete - Newark to Harrison Station	1.917	54.334
6.03	CBTC Field Testing Complete - Newark to Harrison Station	1.917	56.251
6.04	CBTC Commissioning Complete - Newark to Harrison Station	1.917	58.168
6.05	CBTC Pre-Revenue Service Tests Complete - Newark to Harrison Station	1.917	60.085
6.06	Revenue Service - Newark to Harrison Station	1.915	62.000
7.00	ATC Wayside Equipment installation complete		
7.01	ATC Wayside Equipment installation start - Section 1	0.964	62.964
7.02	ATC Wayside Equipment installation complete - Section 1	0.964	63.928
7.03	ATC Wayside Equipment installation start - Section 2	0.964	64.892
7.04	ATC Wayside Equipment installation complete - Section 2	0.964	65.856
7.05	ATC Wayside Equipment installation start -	0.964	66.820

Ref.	Milestone	% Of Total Line Item Price	Cumulative
	Section 3		
7.06	ATC Wayside Equipment installation complete - Section 3	0.964	67.784
7.07	ATC Wayside Equipment installation start - Section 4	0.964	68.748
7.08	ATC Wayside Equipment installation complete - Section 4	0.964	69.712
7.09	ATC Wayside Equipment installation start - Section 5	0.964	70.676
7.10	ATC Wayside Equipment installation complete - Section 5	0.964	71.640
7.11	ATC Wayside Equipment installation start - Section 6	0.964	72.604
7.12	ATC Wayside Equipment installation complete - Section 6	0.964	73.568
7.13	ATC Wayside Equipment installation start - Section 7	0.964	74.532
7.14	ATC Wayside Equipment installation complete - Section 7	0.968	75.500
8.00	Sections of the Line Cutover to ATC revenue service operation		
8.01	Revenue Service in Section 1	2.571	78.071
8.02	Revenue Service in Section 2	2.571	80.642
8.03	Revenue Service in Section 3	2.571	83.213
8.04	Revenue Service in Section 4	2.571	85.784
8.05	Revenue Service in Section 5	2.571	88.355
8.06	Revenue Service in Section 6	2.571	90.926
8.07	Revenue Service in Section 7	2.574	93.500
9.00	ATC System Conditional Acceptance		
9.01	Conditional Acceptance for Section 1	0.563	94.063
9.02	Conditional Acceptance for Section 2	0.563	94.626
9.03	Conditional Acceptance for Section 3	0.563	95.189
9.04	Conditional Acceptance for Section 4	0.563	95.752
9.05	Conditional Acceptance for Section 5	0.563	96.315
9.06	Conditional Acceptance for Section 6	0.563	96.878
9.07	Conditional Acceptance for Section 7	0.563	97.441
9.08	ATC System Conditional Acceptance	0.559	98.000
10.00	Final Completion	2.000	100.000

302.5 Milestone Payments, Interlocking Equipment (line item 4)

Table 5

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Approval of CDR – Interlocking Equipment	14.400	24.400
3.00	Approval of PDR – Interlocking Equipment		
3.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	0.576	24.976
3.02	POWER/KINNEY (NEW) 10'X32'	0.576	25.552

Ref.	Milestone	% Of Total Line Item Price	Cumulative
3.03	NEWARK BUNGALOW POCKET (NEW) 10'X32'	0.576	26.128
3.04	HARRISON WEST (NEW) 10'X49'	0.576	26.704
3.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	0.576	27.280
3.06	GRAPE (NEW) 10'X32'	0.576	27.856
3.07	HACK WEST (NEW) 10'X32'	0.576	28.432
3.08	WESTSIDE (NEW) 10'X32'	0.576	29.008
3.09	KEARNEY (COMBINED HOUSES) 10'X34'	0.576	29.584
3.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	0.576	30.160
3.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	0.576	30.736
3.12	C YARD	0.576	31.312
3.13	SUMMIT (NEW) 10'X38'	0.576	31.888
3.14	PORTAL (NEW) 10'X44'	0.576	32.464
3.15	CHRISTOPHER "RR"	0.576	33.040
3.16	WTC E "RR"	0.576	33.616
3.17	WTC F "RR"	0.576	34.192
3.18	WTC MAIN "RR"	0.576	34.768
3.19	CAISSON 1 LOWER-2 "RR"	0.576	35.344
3.20	CAISSON 1 UPPER -1"RR"	0.576	35.920
3.21	GROVE "RR"	0.576	36.496
3.22	HENDERSON "RR"	0.576	37.072
3.23	EXCHANGE PLACE SIGNAL "RR"	0.576	37.648
3.24	HOBOKEN SIGNAL "RR"	0.576	38.224
3.25	33rd ST. "RR"	0.576	38.800
4.00	Approval of FDR – Interlocking Equipment		
4.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	0.576	39.376
4.02	POWER/KINNEY (NEW) 10'X32'	0.576	39.952
4.03	NEWARK BUNGALOW POCKET (NEW) 10'X32'	0.576	40.528
4.04	HARRISON WEST (NEW) 10'X49'	0.576	41.104
4.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	0.576	41.680
4.06	GRAPE (NEW) 10'X32'	0.576	42.256
4.07	HACK WEST (NEW) 10'X32'	0.576	42.832
4.08	WESTSIDE (NEW) 10'X32'	0.576	43.408
4.09	KEARNEY (COMBINED HOUSES) 10'X34'	0.576	43.984
4.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	0.576	44.560
4.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	0.576	45.136
4.12	C YARD	0.576	45.712
4.13	SUMMIT (NEW) 10'X38'	0.576	46.288
4.14	PORTAL (NEW) 10'X44'	0.576	46.864
4.15	CHRISTOPHER "RR"	0.576	47.440
4.16	WTC E "RR"	0.576	48.016
4.17	WTC F "RR"	0.576	48.592
4.18	WTC MAIN "RR"	0.576	49.168
4.19	CAISSON 1 LOWER-2 "RR"	0.576	49.744
4.20	CAISSON 1 UPPER -1"RR"	0.576	50.320
4.21	GROVE "RR"	0.576	50.896
4.22	HENDERSON "RR"	0.576	51.472

Ref.	Milestone	% Of Total Line Item Price	Cumulative
4.23	EXCHANGE PLACE SIGNAL "RR"	0.576	52.048
4.24	HOBOKEN SIGNAL "RR"	0.576	52.624
4.25	33rd ST. "RR"	0.576	53.200
5.00	Installation of First Interlocking Complete	9.000	62.200
6.00	Cutover of First Interlocking Complete	13.500	75.700
7.00	Installation of Interlockings Complete		
7.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	0.540	76.240
7.02	POWER/KINNEY (NEW) 10'X32'	0.540	76.780
7.03	NEWARK BUNGALOW POCKET (NEW) 10'X32'	0.540	77.320
7.04	HARRISON WEST (NEW) 10'X49'	0.540	77.860
7.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	0.540	78.400
7.06	GRAPE (NEW) 10'X32'	0.540	78.940
7.07	HACK WEST (NEW) 10'X32'	0.540	79.480
7.08	WESTSIDE (NEW) 10'X32'	0.540	80.020
7.09	KEARNEY (COMBINED HOUSES) 10'X34'	0.540	80.560
7.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	0.540	81.100
7.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	0.540	81.640
7.12	C YARD	0.540	82.180
7.13	SUMMIT (NEW) 10'X38'	0.540	82.720
7.14	PORTAL (NEW) 10'X44'	0.540	83.260
7.15	CHRISTOPHER "RR"	0.540	83.800
7.16	WTC E "RR"	0.540	84.340
7.17	WTC F "RR"	0.540	84.880
7.18	WTC MAIN "RR"	0.540	85.420
7.19	CAISSON 1 LOWER-2 "RR"	0.540	85.960
7.20	CAISSON 1 UPPER -1"RR"	0.540	86.500
7.21	GROVE "RR"	0.540	87.040
7.22	HENDERSON "RR"	0.540	87.580
7.23	EXCHANGE PLACE SIGNAL "RR"	0.540	88.120
7.24	HOBOKEN SIGNAL "RR"	0.540	88.660
7.25	33rd ST. "RR"	0.540	89.200
8.00	Cutover of Interlockings Complete		
8.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	0.176	89.376
8.02	POWER/KINNEY (NEW) 10'X32'	0.176	89.552
8.03	NEWARK BUNGALOW POCKET (NEW) 10'X32'	0.176	89.728
8.04	HARRISON WEST (NEW) 10'X49'	0.176	89.904
8.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	0.176	90.080
8.06	GRAPE (NEW) 10'X32'	0.176	90.256
8.07	HACK WEST (NEW) 10'X32'	0.176	90.432
8.08	WESTSIDE (NEW) 10'X32'	0.176	90.608
8.09	KEARNEY (COMBINED HOUSES) 10'X34'	0.176	90.784
8.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	0.176	90.960
8.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	0.176	91.136
8.12	C YARD	0.176	91.312
8.13	SUMMIT (NEW) 10'X38'	0.176	91.488

Ref.	Milestone	% Of Total Line Item Price	Cumulative
8.14	PORTAL (NEW) 10'X44'	0.176	91.664
8.15	CHRISTOPHER "RR"	0.176	91.840
8.16	WTC E "RR"	0.176	92.016
8.17	WTC F "RR"	0.176	92.192
8.18	WTC MAIN "RR"	0.176	92.368
8.19	CAISSON 1 LOWER-2 "RR"	0.176	92.544
8.20	CAISSON 1 UPPER -1"RR"	0.176	92.720
8.21	GROVE "RR"	0.176	92.896
8.22	HENDERSON "RR"	0.176	93.072
8.23	EXCHANGE PLACE SIGNAL "RR"	0.176	93.248
8.24	HOBOKEN SIGNAL "RR"	0.176	93.424
8.25	33rd ST. "RR"	0.176	93.600
9.00	ATC System Conditional Acceptance		
9.01	Conditional Acceptance for Section 1	0.550	94.150
9.02	Conditional Acceptance for Section 2	0.550	94.700
9.03	Conditional Acceptance for Section 3	0.550	95.250
9.04	Conditional Acceptance for Section 4	0.550	95.800
9.05	Conditional Acceptance for Section 5	0.550	96.350
9.06	Conditional Acceptance for Section 6	0.550	96.900
9.07	Conditional Acceptance for Section 7	0.550	97.450
9.08	ATC System Conditional Acceptance	0.550	98.000
10.00	Final Completion	2.000	100.000

302.6 Milestone Payments, Trackside Equipment (line item 5)

Table 6

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.000	Mobilization	10.000	10.000
2.000	Track Circuits (1.5.1)		
2.001	Safetran Design & Delivery		
2.002	POWER/KINNEY	0.248	10.248
2.003	NEWARK	0.249	10.497
2.004	HARRISON WEST	0.248	10.745
2.005	TEST TRACK	0.249	10.994
2.006	HAR EAST & MAINLINE XING	0.248	11.242
2.007	KEARNEY	0.248	11.490
2.008	HACK WEST	0.249	11.739
2.009	GRAPE	0.248	11.987
2.010	WESTSIDE	0.249	12.236
2.011	JS Bungalow	0.248	12.484
2.012	JS Main	0.248	12.732
2.013	SUMMIT	0.249	12.981
2.014	C YARD	0.248	13.229
2.015	PORTAL	0.249	13.478
2.016	GROVE "RR"	0.248	13.726
2.017	HENDERSON "RR"	0.248	13.974
2.018	EXCHANGE PLACE SIGNAL "RR"	0.249	14.223
2.019	WTC E "RR"	0.248	14.471
2.020	WTC F "RR"	0.249	14.720
2.021	WTC MAIN "RR"	0.248	14.968

Ref.	Milestone	% Of Total Line Item Price	Cumulative
2.022	CAISSON 1 UPPER "RR"	0.248	15.216
2.023	CAISSON 1 LOWER "RR"	0.249	15.465
2.024	HOBOKEN SIGNAL "RR"	0.248	15.713
2.025	CHRISTOPHER "RR"	0.249	15.962
2.026	33rd ST. "RR"	0.248	16.210
2.027	Installation Design		
2.028	EWR WEST	0.052	16.262
2.029	HAR-EWR	0.026	16.288
2.030	TEST TRACK	0.017	16.305
2.031	HAR E&W	0.087	16.392
2.032	KEARNY WEST	0.017	16.409
2.033	KEARNY-HACK	0.043	16.452
2.034	HACK-WESTSIDE	0.052	16.504
2.035	JS WEST	0.138	16.642
2.036	JS EAST & PLAT	0.104	16.746
2.037	PORTAL C/D	0.052	16.798
2.038	PORTAL - EXP TRACK G	0.026	16.824
2.039	PORTAL - EXP TRACK H	0.026	16.850
2.040	EXP-PAV-CAIS E/J/D	0.035	16.885
2.041	EXP-PAV-CAIS F/K/C	0.035	16.920
2.042	CAIS-HOB A/E	0.017	16.937
2.043	CAIS-HOB B/F	0.017	16.954
2.044	CAIS-CHS B	0.017	16.971
2.045	CAIS-CHS A	0.018	16.989
2.046	CHS-14 B	0.017	17.006
2.047	CHS-14 A	0.017	17.023
2.048	14-33 B	0.026	17.049
2.049	14-33 A	0.026	17.075
2.050	Deliver "S" Bonds	0.346	17.421
2.051	Deliver Junction Boxes	0.346	17.767
2.052	Deliver Cable	0.692	18.459
2.053	Install Conduit		
2.054	EWR WEST	0.094	18.553
2.055	HAR-EWR	0.047	18.600
2.056	TEST TRACK	0.031	18.631
2.057	HAR E&W	0.156	18.787
2.058	KEARNY WEST	0.031	18.818
2.059	KEARNY-HACK	0.078	18.896
2.060	HACK-WESTSIDE	0.093	18.989
2.061	JS WEST	0.249	19.238
2.062	JS EAST & PLAT	0.187	19.425
2.063	PORTAL C/D	0.093	19.518
2.064	PORTAL - EXP TRACK G	0.047	19.565
2.065	PORTAL - EXP TRACK H	0.047	19.612
2.066	EXP-PAV-CAIS E/J/D	0.062	19.674
2.067	EXP-PAV-CAIS F/K/C	0.062	19.736
2.068	CAIS-HOB A/E	0.032	19.768
2.069	CAIS-HOB B/F	0.031	19.799
2.070	CAIS-CHS B	0.031	19.830
2.071	CAIS-CHS A	0.031	19.861
2.072	CHS-14 B	0.031	19.892

Ref.	Milestone	% Of Total Line Item Price	Cumulative
2.073	CHS-14 A	0.031	19.923
2.074	14-33 B	0.047	19.970
2.075	14-33 A	0.047	20.017
2.076	Install Boxes		
2.077	EWR WEST	0.083	20.100
2.078	HAR-EWR	0.041	20.141
2.079	TEST TRACK	0.028	20.169
2.080	HAR E&W	0.138	20.307
2.081	KEARNY WEST	0.028	20.335
2.082	KEARNY-HACK	0.069	20.404
2.083	HACK-WESTSIDE	0.083	20.487
2.084	JS WEST	0.222	20.709
2.085	JS EAST & PLAT	0.166	20.875
2.086	PORTAL C/D	0.083	20.958
2.087	PORTAL - EXP TRACK G	0.042	21.000
2.088	PORTAL - EXP TRACK H	0.041	21.041
2.089	EXP-PAV-CAIS E/J/D	0.055	21.096
2.090	EXP-PAV-CAIS F/K/C	0.056	21.152
2.091	CAIS-HOB A/E	0.027	21.179
2.092	CAIS-HOB B/F	0.028	21.207
2.093	CAIS-CHS B	0.028	21.235
2.094	CAIS-CHS A	0.028	21.263
2.095	CHS-14 B	0.027	21.290
2.096	CHS-14 A	0.028	21.318
2.097	14-33 B	0.041	21.359
2.098	14-33 A	0.042	21.401
2.099	Terminate Boxes		
2.100	EWR WEST	0.031	21.432
2.101	HAR-EWR	0.016	21.448
2.102	TEST TRACK	0.010	21.458
2.103	HAR E&W	0.052	21.510
2.104	KEARNY WEST	0.010	21.520
2.105	KEARNY-HACK	0.026	21.546
2.106	HACK-WESTSIDE	0.031	21.577
2.107	JS WEST	0.084	21.661
2.108	JS EAST & PLAT	0.062	21.723
2.109	PORTAL C/D	0.031	21.754
2.110	PORTAL - EXP TRACK G	0.016	21.770
2.111	PORTAL - EXP TRACK H	0.015	21.785
2.112	EXP-PAV-CAIS E/J/D	0.021	21.806
2.113	EXP-PAV-CAIS F/K/C	0.021	21.827
2.114	CAIS-HOB A/E	0.010	21.837
2.115	CAIS-HOB B/F	0.010	21.847
2.116	CAIS-CHS B	0.011	21.858
2.117	CAIS-CHS A	0.010	21.868
2.118	CHS-14 B	0.011	21.879
2.119	CHS-14 A	0.010	21.889
2.120	14-33 B	0.015	21.904
2.121	14-33 A	0.016	21.920
2.122	Install Bonds		
2.123	EWR WEST	0.172	22.092

Ref.	Milestone	% Of Total Line Item Price	Cumulative
2.124	HAR-EWR	0.086	22.178
2.125	TEST TRACK	0.058	22.236
2.126	HAR E&W	0.287	22.523
2.127	KEARNY WEST	0.057	22.580
2.128	KEARNY-HACK	0.144	22.724
2.129	HACK-WESTSIDE	0.172	22.896
2.130	JS WEST	0.459	23.355
2.131	JS EAST & PLAT	0.345	23.700
2.132	PORTAL C/D	0.172	23.872
2.133	PORTAL - EXP TRACK G	0.086	23.958
2.134	PORTAL - EXP TRACK H	0.086	24.044
2.135	EXP-PAV-CAIS E/J/D	0.115	24.159
2.136	EXP-PAV-CAIS F/K/C	0.115	24.274
2.137	CAIS-HOB A/E	0.058	24.332
2.138	CAIS-HOB B/F	0.058	24.390
2.139	CAIS-CHS B	0.057	24.447
2.140	CAIS-CHS A	0.058	24.505
2.141	CHS-14 B	0.057	24.562
2.142	CHS-14 A	0.058	24.620
2.143	14-33 B	0.087	24.707
2.144	14-33 A	0.087	24.794
3.000	Transponders (1.5.2)		
3.001	STS Design & Delivery	0.269	25.063
3.002	Install Transponders		
3.003	EWR WEST	0.061	25.124
3.004	HAR-EWR	0.031	25.155
3.005	TEST TRACK	0.020	25.175
3.006	HAR E&W	0.102	25.277
3.007	KEARNY WEST	0.020	25.297
3.008	KEARNY-HACK	0.051	25.348
3.009	HACK-WESTSIDE	0.061	25.409
3.010	JS WEST	0.163	25.572
3.011	JS EAST & PLAT	0.122	25.694
3.012	PORTAL C/D	0.061	25.755
3.013	PORTAL - EXP TRACK G	0.031	25.786
3.014	PORTAL - EXP TRACK H	0.030	25.816
3.015	EXP-PAV-CAIS E/J/D	0.041	25.857
3.016	EXP-PAV-CAIS F/K/C	0.041	25.898
3.017	CAIS-HOB A/E	0.020	25.918
3.018	CAIS-HOB B/F	0.021	25.939
3.019	CAIS-CHS B	0.020	25.959
3.020	CAIS-CHS A	0.020	25.979
3.021	CHS-14 B	0.021	26.000
3.022	CHS-14 A	0.020	26.020
3.023	14-33 B	0.031	26.051
3.024	14-33 A	0.031	26.082
4.000	Tray, Messenger, Trough		
4.001	Installation Design		
4.002	EWR WEST	0.169	26.251
4.003	HAR-EWR	0.085	26.336
4.004	TEST TRACK	0.057	26.393

Ref.	Milestone	% Of Total Line Item Price	Cumulative
4.005	HAR E&W	0.282	26.675
4.006	KEARNY WEST	0.056	26.731
4.007	KEARNY-HACK	0.141	26.872
4.008	HACK-WESTSIDE	0.169	27.041
4.009	JS WEST	0.452	27.493
4.010	JS EAST & PLAT	0.339	27.832
4.011	PORTAL C/D	0.169	28.001
4.012	PORTAL - EXP TRACK G	0.085	28.086
4.013	PORTAL - EXP TRACK H	0.085	28.171
4.014	EXP-PAV-CAIS E/J/D	0.113	28.284
4.015	EXP-PAV-CAIS F/K/C	0.113	28.397
4.016	CAIS-HOB A/E	0.056	28.453
4.017	CAIS-HOB B/F	0.056	28.509
4.018	CAIS-CHS B	0.057	28.566
4.019	CAIS-CHS A	0.056	28.622
4.020	CHS-14 B	0.057	28.679
4.021	CHS-14 A	0.056	28.735
4.022	14-33 B	0.085	28.820
4.023	14-33 A	0.084	28.904
4.024	Deliver Tray	0.706	29.610
4.025	Deliver Messenger	0.706	30.316
4.026	Deliver Poles	0.529	30.845
4.027	Deliver Brackets	0.529	31.374
4.028	Deliver Trough	1.058	32.432
4.029	Deliver Straps	0.529	32.961
4.030	Install Tray		
4.031	PORTAL - EXP TRACK G	0.477	33.438
4.032	PORTAL - EXP TRACK H	0.476	33.914
4.033	EXP-PAV-CAIS E/J/D	0.191	34.105
4.034	EXP-PAV-CAIS F/K/C	0.190	34.295
4.035	CAIS-HOB A/E	0.254	34.549
4.036	CAIS-HOB B/F	0.254	34.803
4.037	CAIS-CHS B	0.032	34.835
4.038	CAIS-CHS A	0.032	34.867
4.039	CHS-14 B	0.286	35.153
4.040	CHS-14 A	0.286	35.439
4.041	14-33 B	0.349	35.788
4.042	14-33 A	0.349	36.137
4.043	Install Messenger		
4.044	EWR WEST	0.254	36.391
4.045	HAR-EWR	0.141	36.532
4.046	HAR E&W	0.381	36.913
4.047	KEARNY-HACK	0.381	37.294
4.048	HACK-WESTSIDE	0.381	37.675
4.050	JS EAST & PLAT	0.494	38.169
4.051	EXP-PAV-CAIS E/J/D	0.141	38.310
4.052	EXP-PAV-CAIS F/K/C	0.141	38.451
4.055	CAIS-CHS B	0.254	38.705
4.056	CAIS-CHS A	0.254	38.959
4.061	Install Poles		38.959
4.062	HACK-WESTSIDE	0.423	39.382

Ref.	Milestone	% Of Total Line Item Price	Cumulative
4.063	JS EAST & PLAT	2.399	41.781
4.064	Install Brackets		
4.065	EWR WEST	0.350	42.131
4.066	HAR-EWR	0.194	42.325
4.067	HAR E&W	0.523	42.848
4.068	KEARNY-HACK	0.524	43.372
4.069	HACK-WESTSIDE	0.524	43.896
4.070	JS EAST & PLAT	0.679	44.575
4.071	EXP-PAV-CAIS E/J/D	0.194	44.769
4.072	EXP-PAV-CAIS F/K/C	0.194	44.963
4.073	CAIS-CHS B	0.350	45.313
4.074	CAIS-CHS A	0.349	45.662
4.075	Install Trough		
4.076	TEST TRACK	0.339	46.001
4.077	HAR E&W	0.875	46.876
4.0771	KEARNY WEST	0.282	47.158
4.0772	KEARNY-HACK	0.141	47.299
4.078	JS WEST	0.423	47.722
4.079	JS EAST & PLAT	0.423	48.145
4.080	PORTAL C/D	0.339	48.484
4.081	Install Straps		
4.082	EWR WEST	0.350	48.834
4.083	HAR-EWR	0.194	49.028
4.084	HAR E&W	0.524	49.552
4.085	KEARNY-HACK	0.524	50.076
4.086	HACK-WESTSIDE	0.524	50.600
4.087	JS EAST & PLAT	0.679	51.279
4.088	EXP-PAV-CAIS E/J/D	0.194	51.473
4.089	EXP-PAV-CAIS F/K/C	0.194	51.667
4.090	CAIS-CHS B	0.349	52.016
4.091	CAIS-CHS A	0.349	52.365
4.092	Install Conduits		
4.093	EWR WEST	0.233	52.598
4.094	HAR-EWR	0.116	52.714
4.095	TEST TRACK	0.078	52.792
4.096	HAR E&W	0.388	53.180
4.097	KEARNY WEST	0.078	53.258
4.098	KEARNY-HACK	0.194	53.452
4.099	HACK-WESTSIDE	0.232	53.684
4.100	JS WEST	0.621	54.305
4.101	JS EAST & PLAT	0.466	54.771
4.102	PORTAL C/D	0.233	55.004
4.103	PORTAL - EXP TRACK G	0.116	55.120
4.104	PORTAL - EXP TRACK H	0.117	55.237
4.105	EXP-PAV-CAIS E/J/D	0.155	55.392
4.106	EXP-PAV-CAIS F/K/C	0.155	55.547
4.107	CAIS-HOB A/E	0.078	55.625
4.108	CAIS-HOB B/F	0.077	55.702
4.109	CAIS-CHS B	0.078	55.780
4.110	CAIS-CHS A	0.078	55.858
4.111	CHS-14 B	0.077	55.935

Ref.	Milestone	% Of Total Line Item Price	Cumulative
4.112	CHS-14 A	0.078	56.013
4.113	14-33 B	0.116	56.129
4.114	14-33 A	0.116	56.245
5.000	Wire and Cable (1.5.4)		
5.001	Safetran Design		
5.002	POWER/KINNEY	0.051	56.296
5.003	NEWARK	0.052	56.348
5.004	HARRISON WEST	0.051	56.399
5.005	TEST TRACK	0.052	56.451
5.006	HAR EAST & MAINLINE XING	0.051	56.502
5.007	KEARNEY	0.052	56.554
5.008	HACK WEST	0.051	56.605
5.009	GRAPE	0.052	56.657
5.010	WESTSIDE	0.051	56.708
5.011	JS Bungalow	0.052	56.760
5.012	JS Main	0.051	56.811
5.013	SUMMIT	0.052	56.863
5.014	C YARD	0.051	56.914
5.015	PORTAL	0.052	56.966
5.016	GROVE "RR"	0.051	57.017
5.017	HENDERSON "RR"	0.052	57.069
5.018	EXCHANGE PLACE SIGNAL "RR"	0.051	57.120
5.019	WTC E "RR"	0.052	57.172
5.020	WTC F "RR"	0.052	57.224
5.021	WTC MAIN "RR"	0.051	57.275
5.022	CAISSON 1 UPPER "RR"	0.052	57.327
5.023	CAISSON 1 LOWER "RR"	0.051	57.378
5.024	HOBOKEN SIGNAL "RR"	0.052	57.430
5.025	CHRISTOPHER "RR"	0.051	57.481
5.026	33rd ST. "RR"	0.052	57.533
5.027	Installation Design		
5.028	EWR WEST	0.156	57.689
5.029	HAR-EWR	0.078	57.767
5.030	TEST TRACK	0.052	57.819
5.031	HAR E&W	0.261	58.080
5.032	KEARNY WEST	0.052	58.132
5.033	KEARNY-HACK	0.131	58.263
5.034	HACK-WESTSIDE	0.156	58.419
5.035	JS WEST	0.418	58.837
5.036	JS EAST & PLAT	0.312	59.149
5.037	PORTAL C/D	0.157	59.306
5.038	PORTAL - EXP TRACK G	0.078	59.384
5.039	PORTAL - EXP TRACK H	0.078	59.462
5.040	EXP-PAV-CAIS E/J/D	0.105	59.567
5.041	EXP-PAV-CAIS F/K/C	0.104	59.671
5.042	CAIS-HOB A/E	0.052	59.723
5.043	CAIS-HOB B/F	0.052	59.775
5.044	CAIS-CHS B	0.053	59.828
5.045	CAIS-CHS A	0.052	59.880
5.046	CHS-14 B	0.052	59.932
5.047	CHS-14 A	0.052	59.984

Ref.	Milestone	% Of Total Line Item Price	Cumulative
5.048	14-33 B	0.078	60.062
5.049	14-33 A	0.079	60.141
5.050	Deliver Cable	5.867	66.008
5.051	Deliver Junction Boxes	0.326	66.334
5.052	Install Junction Boxes		
5.053	EWR WEST	0.079	66.413
5.054	HAR-EWR	0.039	66.452
5.055	TEST TRACK	0.026	66.478
5.056	HAR E&W	0.130	66.608
5.057	KEARNY WEST	0.026	66.634
5.058	KEARNY-HACK	0.066	66.700
5.059	HACK-WESTSIDE	0.078	66.778
5.060	JS WEST	0.208	66.986
5.061	JS EAST & PLAT	0.157	67.143
5.062	PORTAL C/D	0.078	67.221
5.063	PORTAL - EXP TRACK G	0.039	67.260
5.064	PORTAL - EXP TRACK H	0.039	67.299
5.065	EXP-PAV-CAIS E/J/D	0.053	67.352
5.066	EXP-PAV-CAIS F/K/C	0.052	67.404
5.067	CAIS-HOB A/E	0.026	67.430
5.068	CAIS-HOB B/F	0.026	67.456
5.069	CAIS-CHS B	0.026	67.482
5.070	CAIS-CHS A	0.026	67.508
5.071	CHS-14 B	0.026	67.534
5.072	CHS-14 A	0.026	67.560
5.073	14-33 B	0.039	67.599
5.074	14-33 A	0.039	67.638
5.075	Terminate Junction Boxes		
5.076	EWR WEST	0.137	67.775
5.077	HAR-EWR	0.068	67.843
5.078	TEST TRACK	0.046	67.889
5.079	HAR E&W	0.228	68.117
5.080	KEARNY WEST	0.046	68.163
5.081	KEARNY-HACK	0.114	68.277
5.082	HACK-WESTSIDE	0.137	68.414
5.083	JS WEST	0.365	68.779
5.084	JS EAST & PLAT	0.274	69.053
5.085	PORTAL C/D	0.137	69.190
5.086	PORTAL - EXP TRACK G	0.069	69.259
5.087	PORTAL - EXP TRACK H	0.068	69.327
5.088	EXP-PAV-CAIS E/J/D	0.091	69.418
5.089	EXP-PAV-CAIS F/K/C	0.092	69.510
5.090	CAIS-HOB A/E	0.045	69.555
5.091	CAIS-HOB B/F	0.046	69.601
5.092	CAIS-CHS B	0.046	69.647
5.093	CAIS-CHS A	0.045	69.692
5.094	CHS-14 B	0.046	69.738
5.095	CHS-14 A	0.046	69.784
5.096	14-33 B	0.068	69.852
5.097	14-33 A	0.068	69.920
5.098	Install Cable		

Ref.	Milestone	% Of Total Line Item Price	Cumulative
5.099	EWR WEST	0.813	70.733
5.100	HAR-EWR	0.406	71.139
5.101	TEST TRACK	0.271	71.410
5.102	HAR E&W	1.355	72.765
5.103	KEARNY WEST	0.271	73.036
5.104	KEARNY-HACK	0.677	73.713
5.105	HACK-WESTSIDE	0.813	74.526
5.106	JS WEST	2.167	76.693
5.107	JS EAST & PLAT	1.625	78.318
5.108	PORTAL C/D	0.813	79.131
5.109	PORTAL - EXP TRACK G	0.407	79.538
5.110	PORTAL - EXP TRACK H	0.406	79.944
5.111	EXP-PAV-CAIS E/J/D	0.542	80.486
5.112	EXP-PAV-CAIS F/K/C	0.541	81.027
5.113	CAIS-HOB A/E	0.271	81.298
5.114	CAIS-HOB B/F	0.271	81.569
5.115	CAIS-CHS B	0.271	81.840
5.116	CAIS-CHS A	0.271	82.111
5.117	CHS-14 B	0.271	82.382
5.118	CHS-14 A	0.271	82.653
5.119	14-33 B	0.406	83.059
5.120	14-33 A	0.407	83.466
5.121	Test Cable		
5.122	EWR WEST	0.039	83.505
5.123	HAR-EWR	0.019	83.524
5.124	TEST TRACK	0.013	83.537
5.125	HAR E&W	0.066	83.603
5.126	KEARNY WEST	0.013	83.616
5.127	KEARNY-HACK	0.032	83.648
5.128	HACK-WESTSIDE	0.039	83.687
5.129	JS WEST	0.105	83.792
5.130	JS EAST & PLAT	0.078	83.870
5.131	PORTAL C/D	0.039	83.909
5.132	PORTAL - EXP TRACK G	0.020	83.929
5.133	PORTAL - EXP TRACK H	0.019	83.948
5.134	EXP-PAV-CAIS E/J/D	0.026	83.974
5.135	EXP-PAV-CAIS F/K/C	0.026	84.000
5.136	CAIS-HOB A/E	0.013	84.013
5.137	CAIS-HOB B/F	0.013	84.026
5.138	CAIS-CHS B	0.013	84.039
5.139	CAIS-CHS A	0.013	84.052
5.140	CHS-14 B	0.013	84.065
5.141	CHS-14 A	0.014	84.079
5.142	14-33 B	0.019	84.098
5.143	14-33 A	0.020	84.118
6.000	Grade Crossings (1.5.5)		
6.001	Safetran Design & Supply		
6.002	HAR EAST & MAINLINE XING	0.036	84.154
6.003	JS Main	0.035	84.189
6.004	Install Crossing		
6.005	HAR E&W	0.120	84.309

Ref.	Milestone	% Of Total Line Item Price	Cumulative
6.006	JS WEST	0.013	84.322
6.007	Test Crossing		84.322
6.008	HAR E&W	0.012	84.334
6.009	JS WEST	0.002	84.336
7.000	Employee Pushbutton (1.5.6)		
7.001	Safetran Design & Supply		
7.002	HAR EAST & MAINLINE XING	0.004	84.340
7.003	HACK WEST	0.004	84.344
7.004	GRAPE	0.004	84.348
7.005	C YARD	0.004	84.352
7.006	GROVE "RR"	0.004	84.356
7.007	CAISSON 1 UPPER "RR"	0.004	84.360
7.008	CAISSON 1 LOWER "RR"	0.004	84.364
7.009	Install Pushbutton		
7.010	HAR E&W	0.204	84.568
7.011	JS WEST	0.059	84.627
7.012	JS EAST & PLAT	0.058	84.685
7.013	EXP-PAV-CAIS E/J/D	0.024	84.709
7.014	EXP-PAV-CAIS F/K/C	0.024	84.733
7.015	CAIS-CHS B	0.011	84.744
7.016	CAIS-CHS A	0.012	84.756
7.017	Install SWH		
7.018	HAR E&W	0.014	84.770
7.019	JS WEST	0.004	84.774
7.020	JS EAST & PLAT	0.005	84.779
7.021	EXP-PAV-CAIS E/J/D	0.001	84.780
7.022	EXP-PAV-CAIS F/K/C	0.002	84.782
7.023	CAIS-CHS B	0.001	84.783
7.024	CAIS-CHS A	0.001	84.784
7.025	Test Pushbutton		
7.026	HAR E&W	0.005	84.789
7.027	JS WEST	0.002	84.791
7.028	JS EAST & PLAT	0.002	84.793
7.030	EXP-PAV-CAIS F/K/C	0.001	84.794
7.032	CAIS-CHS A	0.001	84.795
7.033	Test SWH		
7.034	HAR E&W	0.005	84.800
7.035	JS WEST	0.002	84.802
7.036	JS EAST & PLAT	0.002	84.804
7.038	EXP-PAV-CAIS F/K/C	0.001	84.805
8.000	Interfaces (1.5.7)		
8.001	Safetran Design & Supply		
8.002	NEWARK	0.0010	84.806
8.003	HARRISON WEST	0.0007	84.807
8.004	TEST TRACK	0.0008	84.808
8.005	HAR EAST & MAINLINE XING	0.0007	84.808
8.006	KEARNEY	0.0008	84.809
8.007	HACK WEST	0.0007	84.810
8.008	GRAPE	0.0008	84.811
8.009	WESTSIDE	0.0007	84.811
8.010	JS Bungalow	0.0008	84.812

Ref.	Milestone	% Of Total Line Item Price	Cumulative
8.011	JS Main	0.0007	84.813
8.012	SUMMIT	0.0008	84.814
8.013	C YARD	0.0007	84.814
8.014	PORTAL	0.0008	84.815
8.015	GROVE "RR"	0.0007	84.816
8.016	HENDERSON "RR"	0.0008	84.817
8.017	EXCHANGE PLACE SIGNAL "RR"	0.0007	84.817
8.018	WTC E "RR"	0.0008	84.818
8.019	WTC F "RR"	0.0007	84.819
8.020	WTC MAIN "RR"	0.0008	84.820
8.021	CAISSON 1 UPPER "RR"	0.0007	84.820
8.022	CAISSON 1 LOWER "RR"	0.0008	84.821
8.023	HOBOKEN SIGNAL "RR"	0.0007	84.822
8.024	CHRISTOPHER "RR"	0.0008	84.823
8.025	33rd ST. "RR"	0.0007	84.823
8.026	Install Equipment		
8.027	EWR WEST	0.1258	84.949
8.028	HAR-EWR	0.068	85.017
8.029	TEST TRACK	0.046	85.063
8.030	HAR E&W	0.227	85.290
8.031	KEARNY WEST	0.046	85.336
8.032	KEARNY-HACK	0.113	85.449
8.033	HACK-WESTSIDE	0.136	85.585
8.034	JS WEST	0.364	85.949
8.035	JS EAST & PLAT	0.272	86.221
8.036	PORTAL C/D	0.137	86.358
8.037	PORTAL - EXP TRACK G	0.068	86.426
8.038	PORTAL - EXP TRACK H	0.068	86.494
8.039	EXP-PAV-CAIS E/J/D	0.091	86.585
8.040	EXP-PAV-CAIS F/K/C	0.091	86.676
8.041	CAIS-HOB A/E	0.045	86.721
8.042	CAIS-HOB B/F	0.046	86.767
8.043	CAIS-CHS B	0.045	86.812
8.044	CAIS-CHS A	0.046	86.858
8.045	CHS-14 B	0.045	86.903
8.046	CHS-14 A	0.045	86.948
8.047	14-33 B	0.069	87.017
8.048	14-33 A	0.068	87.085
8.049	Test Equipment		
8.050	EWR WEST	0.029	87.114
8.051	HAR-EWR	0.015	87.129
8.052	TEST TRACK	0.009	87.138
8.053	HAR E&W	0.049	87.187
8.054	KEARNY WEST	0.010	87.197
8.055	KEARNY-HACK	0.024	87.221
8.056	HACK-WESTSIDE	0.029	87.250
8.057	JS WEST	0.078	87.328
8.058	JS EAST & PLAT	0.058	87.386
8.059	PORTAL C/D	0.030	87.416
8.060	PORTAL - EXP TRACK G	0.014	87.430
8.061	PORTAL - EXP TRACK H	0.015	87.445

Ref.	Milestone	% Of Total Line Item Price	Cumulative
8.062	EXP-PAV-CAIS E/J/D	0.019	87.464
8.063	EXP-PAV-CAIS F/K/C	0.020	87.484
8.064	CAIS-HOB A/E	0.011	87.495
8.065	CAIS-HOB B/F	0.011	87.506
8.066	CAIS-CHS B	0.011	87.517
8.067	CAIS-CHS A	0.011	87.528
8.068	CHS-14 B	0.011	87.539
8.069	CHS-14 A	0.009	87.548
8.070	14-33 B	0.015	87.563
8.071	14-33 A	0.015	87.578
9.000	Signs (1.5.8)		
9.001	Deliver Signs	0.315	87.893
9.002	Install Signs		87.893
10.000	New Signals & Stops (1.5.10)		
10.001	Safetran Design & Delivery		
10.002	POWER/KINNEY	0.088	87.981
10.003	NEWARK	0.089	88.070
10.004	HARRISON WEST	0.088	88.158
10.005	TEST TRACK	0.089	88.247
10.006	HAR EAST & MAINLINE XING	0.088	88.335
10.007	KEARNEY	0.089	88.424
10.008	HACK WEST	0.088	88.512
10.009	GRAPE	0.089	88.601
10.010	WESTSIDE	0.089	88.690
10.011	JS Bungalow	0.088	88.778
10.012	JS Main	0.089	88.867
10.013	SUMMIT	0.088	88.955
10.014	C YARD	0.089	89.044
10.015	PORTAL	0.088	89.132
10.016	GROVE "RR"	0.089	89.221
10.017	HENDERSON "RR"	0.088	89.309
10.018	EXCHANGE PLACE SIGNAL "RR"	0.089	89.398
10.019	WTC E "RR"	0.088	89.486
10.020	WTC F "RR"	0.089	89.575
10.021	WTC MAIN "RR"	0.089	89.664
10.022	CAISSON 1 UPPER "RR"	0.088	89.752
10.023	CAISSON 1 LOWER "RR"	0.089	89.841
10.024	HOBOKEN SIGNAL "RR"	0.088	89.929
10.025	CHRISTOPHER "RR"	0.089	90.018
10.026	33rd ST. "RR"	0.088	90.106
10.027	Install Stop		
10.028	EWR WEST	0.107	90.213
10.029	HAR-EWR	0.053	90.266
10.030	TEST TRACK	0.036	90.302
10.031	HAR E&W	0.178	90.480
10.032	KEARNY WEST	0.036	90.516
10.033	KEARNY-HACK	0.089	90.605
10.034	HACK-WESTSIDE	0.106	90.711
10.035	JS WEST	0.285	90.996
10.036	JS EAST & PLAT	0.214	91.210
10.037	PORTAL C/D	0.106	91.316

Ref.	Milestone	% Of Total Line Item Price	Cumulative
10.038	PORTAL - EXP TRACK G	0.054	91.370
10.039	PORTAL - EXP TRACK H	0.053	91.423
10.040	EXP-PAV-CAIS E/J/D	0.071	91.494
10.041	EXP-PAV-CAIS F/K/C	0.072	91.566
10.042	CAIS-HOB A/E	0.035	91.601
10.043	CAIS-HOB B/F	0.036	91.637
10.044	CAIS-CHS B	0.035	91.672
10.045	CAIS-CHS A	0.036	91.708
10.046	CHS-14 B	0.036	91.744
10.047	CHS-14 A	0.035	91.779
10.048	14-33 B	0.053	91.832
10.049	14-33 A	0.054	91.886
10.050	Install Signal		
10.051	EWR WEST	0.104	91.990
10.052	HAR-EWR	0.053	92.043
10.053	TEST TRACK	0.034	92.077
10.054	HAR E&W	0.174	92.251
10.055	KEARNY WEST	0.035	92.286
10.056	KEARNY-HACK	0.087	92.373
10.057	HACK-WESTSIDE	0.105	92.478
10.058	JS WEST	0.278	92.756
10.059	JS EAST & PLAT	0.209	92.965
10.060	PORTAL C/D	0.104	93.069
10.061	PORTAL - EXP TRACK G	0.053	93.122
10.062	PORTAL - EXP TRACK H	0.052	93.174
10.063	EXP-PAV-CAIS E/J/D	0.069	93.243
10.064	EXP-PAV-CAIS F/K/C	0.070	93.313
10.065	CAIS-HOB A/E	0.035	93.348
10.066	CAIS-HOB B/F	0.035	93.383
10.067	CAIS-CHS B	0.034	93.417
10.068	CAIS-CHS A	0.035	93.452
10.069	CHS-14 B	0.035	93.487
10.070	CHS-14 A	0.035	93.522
10.071	14-33 B	0.052	93.574
10.072	14-33 A	0.052	93.626
10.073	Install Conduit		
10.074	EWR WEST	0.049	93.675
10.075	HAR-EWR	0.024	93.699
10.076	TEST TRACK	0.016	93.715
10.077	HAR E&W	0.081	93.796
10.078	KEARNY WEST	0.016	93.812
10.079	KEARNY-HACK	0.040	93.852
10.080	HACK-WESTSIDE	0.048	93.900
10.081	JS WEST	0.129	94.029
10.082	JS EAST & PLAT	0.097	94.126
10.083	PORTAL C/D	0.048	94.174
10.084	PORTAL - EXP TRACK G	0.025	94.199
10.085	PORTAL - EXP TRACK H	0.024	94.223
10.086	EXP-PAV-CAIS E/J/D	0.032	94.255
10.087	EXP-PAV-CAIS F/K/C	0.032	94.287
10.088	CAIS-HOB A/E	0.016	94.303

Ref.	Milestone	% Of Total Line Item Price	Cumulative
10.089	CAIS-HOB B/F	0.017	94.320
10.090	CAIS-CHS B	0.016	94.336
10.091	CAIS-CHS A	0.016	94.352
10.092	CHS-14 B	0.016	94.368
10.093	CHS-14 A	0.016	94.384
10.094	14-33 B	0.024	94.408
10.095	14-33 A	0.024	94.432
10.096	Terminate Stop		
10.097	EWR WEST	0.021	94.453
10.098	HAR-EWR	0.011	94.464
10.099	TEST TRACK	0.007	94.471
10.100	HAR E&W	0.036	94.507
10.101	KEARNY WEST	0.007	94.514
10.102	KEARNY-HACK	0.018	94.532
10.103	HACK-WESTSIDE	0.021	94.553
10.104	JS WEST	0.057	94.610
10.105	JS EAST & PLAT	0.043	94.653
10.106	PORTAL C/D	0.021	94.674
10.107	PORTAL - EXP TRACK G	0.011	94.685
10.108	PORTAL - EXP TRACK H	0.011	94.696
10.109	EXP-PAV-CAIS E/J/D	0.014	94.710
10.110	EXP-PAV-CAIS F/K/C	0.014	94.724
10.111	CAIS-HOB A/E	0.007	94.731
10.112	CAIS-HOB B/F	0.007	94.738
10.113	CAIS-CHS B	0.008	94.746
10.114	CAIS-CHS A	0.007	94.753
10.115	CHS-14 B	0.007	94.760
10.116	CHS-14 A	0.007	94.767
10.117	14-33 B	0.011	94.778
10.118	14-33 A	0.010	94.788
10.119	Terminate Signal		
10.120	EWR WEST	0.021	94.809
10.121	HAR-EWR	0.011	94.820
10.122	TEST TRACK	0.007	94.827
10.123	HAR E&W	0.036	94.863
10.124	KEARNY WEST	0.007	94.870
10.125	KEARNY-HACK	0.018	94.888
10.126	HACK-WESTSIDE	0.021	94.909
10.127	JS WEST	0.057	94.966
10.128	JS EAST & PLAT	0.043	95.009
10.129	PORTAL C/D	0.021	95.030
10.130	PORTAL - EXP TRACK G	0.011	95.041
10.131	PORTAL - EXP TRACK H	0.011	95.052
10.132	EXP-PAV-CAIS E/J/D	0.014	95.066
10.133	EXP-PAV-CAIS F/K/C	0.014	95.080
10.134	CAIS-HOB A/E	0.007	95.087
10.135	CAIS-HOB B/F	0.007	95.094
10.136	CAIS-CHS B	0.008	95.102
10.137	CAIS-CHS A	0.007	95.109
10.138	CHS-14 B	0.007	95.116
10.139	CHS-14 A	0.007	95.123

Ref.	Milestone	% Of Total Line Item Price	Cumulative
10.140	14-33 B	0.011	95.134
10.141	14-33 A	0.011	95.145
10.142	Test Stop		
10.143	EWR WEST	0.010	95.155
10.144	HAR-EWR	0.005	95.160
10.145	TEST TRACK	0.004	95.164
10.146	HAR E&W	0.018	95.182
10.147	KEARNY WEST	0.003	95.185
10.148	KEARNY-HACK	0.009	95.194
10.149	HACK-WESTSIDE	0.011	95.205
10.150	JS WEST	0.028	95.233
10.151	JS EAST & PLAT	0.022	95.255
10.152	PORTAL C/D	0.010	95.265
10.153	PORTAL - EXP TRACK G	0.006	95.271
10.154	PORTAL - EXP TRACK H	0.005	95.276
10.155	EXP-PAV-CAIS E/J/D	0.007	95.283
10.156	EXP-PAV-CAIS F/K/C	0.007	95.290
10.157	CAIS-HOB A/E	0.004	95.294
10.158	CAIS-HOB B/F	0.003	95.297
10.159	CAIS-CHS B	0.004	95.301
10.160	CAIS-CHS A	0.003	95.304
10.161	CHS-14 B	0.004	95.308
10.162	CHS-14 A	0.004	95.312
10.163	14-33 B	0.005	95.317
10.164	14-33 A	0.005	95.322
10.165	Test Signal		
10.166	EWR WEST	0.011	95.333
10.167	HAR-EWR	0.005	95.338
10.168	TEST TRACK	0.004	95.342
10.169	HAR E&W	0.018	95.360
10.170	KEARNY WEST	0.003	95.363
10.171	KEARNY-HACK	0.009	95.372
10.172	HACK-WESTSIDE	0.011	95.383
10.173	JS WEST	0.028	95.411
10.174	JS EAST & PLAT	0.022	95.433
10.175	PORTAL C/D	0.010	95.443
10.176	PORTAL - EXP TRACK G	0.006	95.449
10.177	PORTAL - EXP TRACK H	0.005	95.454
10.178	EXP-PAV-CAIS E/J/D	0.007	95.461
10.179	EXP-PAV-CAIS F/K/C	0.007	95.468
10.180	CAIS-HOB A/E	0.004	95.472
10.181	CAIS-HOB B/F	0.003	95.475
10.182	CAIS-CHS B	0.004	95.479
10.183	CAIS-CHS A	0.003	95.482
10.184	CHS-14 B	0.004	95.486
10.185	CHS-14 A	0.003	95.489
10.186	14-33 B	0.006	95.495
10.187	14-33 A	0.005	95.500
11.000	Conditional Acceptance		
11.001	Section 1		
11.002	Test Track	0.059	95.559

Ref.	Milestone	% Of Total Line Item Price	Cumulative
11.003	Power/Kinney	0.059	95.618
11.004	Newark	0.059	95.677
11.005	Harrison West	0.059	95.736
11.006	Harrison East	0.059	95.795
11.007	Kearny	0.059	95.854
11.008	Section 2		
11.009	Grape	0.119	95.973
11.010	Hack West	0.119	96.092
11.011	West Side	0.119	96.211
11.012	Section 3		
11.013	Journal Square Bungalow	0.059	96.270
11.014	Journal Square Main	0.059	96.329
11.015	Summit	0.059	96.388
11.016	Portal	0.059	96.447
11.017	C-Yard	0.059	96.506
11.018	Grove	0.059	96.565
11.019	Section 4		
11.020	Henderson	0.179	96.744
11.021	Exchange Place	0.179	96.923
11.022	Section 5		
11.023	WTC - E	0.120	97.043
11.024	WTC - F	0.120	97.163
11.025	WTC - Main	0.120	97.283
11.026	Section 6		
11.027	Caissons 1 Upper	0.120	97.403
11.028	Caissons 1 Lower	0.120	97.523
11.029	Hoboken	0.120	97.643
11.030	Section 7		
11.031	Christopher	0.179	97.822
11.032	33rd Street	0.178	98.000
12.000	Final Completion	2.000	100.000

302.7 Milestone Payments, Bungalows/Equipment Room Modifications (Line Item 6)

Table 7

Ref.	Milestone	% Of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Existing Equipment Room Modifications		
2.01	C YARD	0.750	10.750
2.02	CHRISTOPHER "RR"	0.750	11.500
2.03	WTC E "RR"	0.750	12.250
2.04	WTC F "RR"	0.750	13.000
2.05	WTC MAIN "RR"	0.750	13.750
2.06	CAISSON 1 LOWER-2 "RR"	0.750	14.500
2.07	CAISSON 1 UPPER -1"RR"	0.750	15.250
2.08	GROVE "RR"	0.750	16.000
2.09	HENDERSON "RR"	0.750	16.750
2.10	EXCHANGE PLACE SIGNAL "RR"	0.750	17.500
2.11	HOBOKEN SIGNAL "RR"	0.750	18.250
2.12	33rd ST. "RR"	0.750	19.000

Ref.	Milestone	% Of Total Line Item Price	Cumulative
3.00	Additional new Bungalows complete with HVAC, security, fire detection (design, supply, install)		
3.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	2.308	21.308
3.02	POWER/KINNEY (NEW) 10'X32'	2.308	23.616
3.03	NEWARK BUNGALOW POCKET (NEW) 10'X32'	2.308	25.924
3.04	HARRISON WEST (NEW) 10'X49'	2.308	28.232
3.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	2.308	30.540
3.06	GRAPE (NEW) 10'X32'	2.308	32.848
3.07	HACK WEST (NEW) 10'X32'	2.308	35.156
3.08	WESTSIDE (NEW) 10'X32'	2.308	37.464
3.09	KEARNEY (COMBINED HOUSES) 10'X34'	2.308	39.772
3.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	2.308	42.080
3.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	2.308	44.388
3.12	SUMMIT (NEW) 10'X38'	2.308	46.696
3.13	PORTAL (NEW) 10'X44'	2.304	49.000
4.00	Set of Complete Temporary Facilities Required (design, supply, install, remove)		
4.01	YARD EAST "RR" (STAGGING EQUIPMENT)	3.100	52.100
4.02	TOMLINSON TOWER "RR" (STAGGING EQUIPMENT)	3.100	55.200
4.03	NEWARK "RR"(STAGGING EQUIPMENT)	3.100	58.300
4.04	HACK EAST & HACK BRIDGE TOWER "RR" (STAGGING EQUIPMENT)	3.100	61.400
4.05	JOURNAL SQUARE & MOORE TOWER (STAGGING EQUIPMENT)	3.100	64.500
4.06	BALDWIN (STAGGING EQUIPMENT)	3.100	67.600
4.07	CHESTNUT (STAGGING EQUIPMENT)	3.100	70.700
4.08	WALDO (STAGGING EQUIPMENT)	3.100	73.800
4.09	C YARD (STAGGING EQUIPMENT)	3.100	76.900
4.10	YARD WEST RELAY ROOM "RR" (STAGGING EQUIPMENT)	3.100	80.000
4.11	KEARNEY EAST, (STAGGING EQUIPMENT)	3.100	83.100
4.12	GROVE "RR" (STAGGING EQUIPMENT)	3.100	86.200
4.13	HENDERSON "RR" (STAGGING EQUIPMENT)	3.100	89.300
4.14	HOBOKEN TEMP. HOUSE 10x20 WITH EQUIPMENT	3.100	92.400
4.15	33rd ST TEMP. HOUSE 10x20 WITH EQUIPMENT	3.100	95.500
5.00	Conditional Acceptance	2.500	98.000
6.00	Final Completion	2.000	100.000

302.8 Milestone Payments, Signal Power Equipment (line item 7)

Table 8

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Signal Power Equipment (design, supply, install)		

Ref.	Milestone	% of Total Line Item Price	Cumulative
2.01	TEST TRACK LOCATED IN HARRISON TRACK "M" 10'X34'	2.540	12.540
2.02	POWER/KINNEY (NEW) 10'X32'	2.540	15.080
2.03	NEWARK BUNGALOW POCKET(NEW) 10'X32'	2.540	17.620
2.04	HARRISON WEST (NEW) 10'X49'	2.540	20.160
2.05	HARRISON EAST & HARRISON MAINLINE XING (NEW) 10'X44'	2.540	22.700
2.06	GRAPE (NEW) 10'X32'	2.540	25.240
2.07	HACK WEST (NEW) 10'X32'	2.540	27.780
2.08	WESTSIDE (NEW) 10'X32'	2.540	30.320
2.09	KEARNEY (COMBINED HOUSES) 10'X34'	2.540	32.860
2.10	JOURNAL SQUARE BUNGALOW (NEW) 10'X38'	2.540	35.400
2.11	JOURNAL SQUARE MAIN "RR"(NEW) XING 10'X38'	2.540	37.940
2.12	C YARD	2.540	40.480
2.13	SUMMIT (NEW) 10'X38'	2.540	43.020
2.14	PORTAL (NEW) 10'X44'	2.540	45.560
2.15	CHRISTOPHER "RR"	2.540	48.100
2.16	WTC E "RR"	2.540	50.640
2.17	WTC F "RR"	2.540	53.180
2.18	WTC MAIN "RR"	2.540	55.720
2.19	CAISSON 1 LOWER-2 "RR"	2.540	58.260
2.20	CAISSON 1 UPPER -1"RR"	2.540	60.800
2.21	GROVE "RR"	2.540	63.340
2.22	HENDERSON "RR"	2.540	65.880
2.23	EXCHANGE PLACE SIGNAL "RR"	2.540	68.420
2.24	HOBOKEN SIGNAL "RR"	2.540	70.960
2.25	33rd ST. "RR"	2.540	73.500
3.00	Deliver Batteries/UPS	10.000	83.500
4.00	Deliver Cable	8.000	91.500
5.00	Deliver Power Equipment	4.000	95.500
6.00	Conditional Acceptance	2.500	98.000
7.00	Final Completion	2.000	100.000

302.9 Milestone Payments, Existing Equipment Removals (line item 8)

Table 9

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Remove OCC	5.000	15.000
3.00	Remove Room		
3.01	PORTAL - EXP TRACK H	3.900	18.900
3.02	EXP-PAV-CAIS E/J/D	3.000	21.900
3.03	CAIS-HOB B/F	1.800	23.700
3.04	CAIS-CHS B	1.800	25.500
3.05	CHS-14 B	1.800	27.300
3.06	14-33 B	1.800	29.100
3.07	WTC TERM	0.900	30.000
4.00	Trackside Removals		
4.01	EWR WEST	2.820	32.820

Ref.	Milestone	% of Total Line Item Price	Cumulative
4.02	HAR-EWR	1.410	34.230
4.03	TEST TRACK	0.940	35.170
4.04	HAR E&W	4.700	39.870
4.05	KEARNY WEST	0.940	40.810
4.06	KEARNY-HACK	2.350	43.160
4.07	HACK-WESTSIDE	2.820	45.980
4.08	JS WEST	7.520	53.500
4.09	JS EAST & PLAT	5.640	59.140
4.10	PORTAL C/D	2.820	61.960
4.11	PORTAL - EXP TRACK G	1.410	63.370
4.12	PORTAL - EXP TRACK H	1.410	64.780
4.13	EXP-PAV-CAIS E/J/D	1.880	66.660
4.14	EXP-PAV-CAIS F/K/C	1.880	68.540
4.15	CAIS-HOB A/E	0.940	69.480
4.16	CAIS-HOB B/F	0.940	70.420
4.17	CAIS-CHS B	0.940	71.360
4.18	CAIS-CHS A	0.940	72.300
4.19	CHS-14 B	0.940	73.240
4.20	CHS-14 A	0.940	74.180
4.21	14-33 B	1.410	75.590
4.22	14-33 A	1.410	77.000
4.23	WTC TERM		
5.00	Remove Signal Power Equipment		
5.01	EWR WEST	1.480	78.480
5.02	TEST TRACK	0.740	79.220
5.03	HAR E&W	1.480	80.700
5.04	KEARNY WEST	0.740	81.440
5.05	KEARNY-HACK	1.480	82.920
5.06	HACK-WESTSIDE	0.740	83.660
5.07	JS WEST	2.960	86.620
5.08	JS EAST & PLAT	1.480	88.100
5.09	PORTAL C/D	0.740	88.840
5.10	PORTAL - EXP TRACK H	2.220	91.060
5.11	EXP-PAV-CAIS E/J/D	1.480	92.540
5.12	CAIS-HOB B/F	0.740	93.280
5.13	CAIS-CHS B	0.740	94.020
5.14	CHS-14 B	0.740	94.760
5.15	14-33 A	0.740	95.500
6.00	Conditional Acceptance	2.500	98.000
7.00	Final Completion	2.000	100.000

302.10 Milestone Payments, ATC Carborne Equipment (line item 9)

Table 10

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Approval of CDR – ATC Carborne Equipment	4.500	14.500
3.00	Approval of PDR – ATC Carborne Equipment	9.000	23.500
4.00	Approval of FDR – ATC Carborne Equipment	13.500	37.000
5.00	Delivery of First Set of ATC Carborne Equipment	11.500	48.500

Ref.	Milestone	% of Total Line Item Price	Cumulative
	complete		
6.00	Installation of ATC Carborne Equipment Complete		
6.01	Installation of Carborne Equipment on units 1-5	1.385	49.885
6.02	Installation of Carborne Equipment on units 6-10	1.385	51.270
6.03	Installation of Carborne Equipment on units 11-15	1.385	52.655
6.04	Installation of Carborne Equipment on units 16-20	1.385	54.040
6.05	Installation of Carborne Equipment on units 21-25	1.385	55.425
6.06	Installation of Carborne Equipment on units 26-30	1.385	56.810
6.07	Installation of Carborne Equipment on units 31-35	1.385	58.195
6.08	Installation of Carborne Equipment on units 36-40	1.385	59.580
6.09	Installation of Carborne Equipment on units 41-45	1.385	60.965
6.10	Installation of Carborne Equipment on units 46-50	1.385	62.350
6.11	Installation of Carborne Equipment on units 51-55	1.385	63.735
6.12	Installation of Carborne Equipment on units 56-60	1.385	65.120
6.13	Installation of Carborne Equipment on units 61-65	1.385	66.505
6.14	Installation of Carborne Equipment on units 66-70	1.385	67.890
6.15	Installation of Carborne Equipment on units 71-75	1.385	69.275
6.16	Installation of Carborne Equipment on units 76-80	1.385	70.660
6.17	Installation of Carborne Equipment on units 81-85	1.385	72.045
6.18	Installation of Carborne Equipment on units 86-90	1.385	73.430
6.19	Installation of Carborne Equipment on units 91-95	1.385	74.815
6.20	Installation of Carborne Equipment on units 96-100	1.385	76.200
6.21	Installation of Carborne Equipment on units 101-105	1.385	77.585
6.22	Installation of Carborne Equipment on units 106-110	1.385	78.970
6.23	Installation of Carborne Equipment on units 111-115	1.385	80.355
6.24	Installation of Carborne Equipment on units 116-120	1.385	81.740
6.25	Installation of Carborne Equipment on units 121-125	1.385	83.125
6.26	Installation of Carborne Equipment on units 126-130	1.375	84.500
7.00	Newark to Harrison Station Cutover to ATC revenue service operation Complete	9.000	93.500
8.00	ATC System Conditional Acceptance		
8.01	Conditional Acceptance for Section 1	0.563	94.063
8.02	Conditional Acceptance for Section 2	0.563	94.626
8.03	Conditional Acceptance for Section 3	0.563	95.189
8.04	Conditional Acceptance for Section 4	0.563	95.752
8.05	Conditional Acceptance for Section 5	0.563	96.315
8.06	Conditional Acceptance for Section 6	0.563	96.878
8.07	Conditional Acceptance for Section 7	0.563	97.441
8.08	ATC System Conditional Acceptance	0.559	98.000
9.00	Final Completion	2.000	100.000

302.11 Milestone Payments, Data Communications Equipment (line item 10)

Table 11

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Approval of CDR – Data Comm Equipment	4.500	14.500
3.00	Approval of PDR – Data Comm Equipment	9.000	23.500
4.00	Approval of FDR – Data Comm Equipment	13.500	37.000
5.00	Data Communications Equipment Installation Complete to support ATC Operations between Newark to Harrison		
5.01	Manufacturing of DCS Equipment begins	3.600	40.600
5.02	FACI (Factory Acceptance Tests) of DCS Equipment complete	3.600	44.200
5.03	Delivery of DCS Equipment begins	3.600	47.800
5.04	Delivery of DCS Equipment complete	3.600	51.400
5.05	Installation of DCS Equipment complete - Newark to Harrison	3.600	55.000
6.00	Newark to Harrison Station Cutover to ATC revenue service operation Complete	9.000	64.000
7.00	Data Communications Equipment Installation Complete		
7.01	EWR WEST	0.900	64.900
7.02	HAR-EWR	0.540	65.440
7.03	TEST TRACK	0.360	65.800
7.04	HAR E&W	1.620	67.420
7.05	KEARNY WEST	0.360	67.780
7.06	KEARNY-HACK	0.900	68.680
7.07	HACK-WESTSIDE	0.900	69.580
7.08	JS WEST	2.520	72.100
7.09	JS EAST & PLAT	2.160	74.260
7.10	PORTAL C/D	0.900	75.160
7.11	PORTAL - EXP TRACK G	0.540	75.700
7.12	PORTAL - EXP TRACK H	0.540	76.240
7.13	EXP-PAV-CAIS E/J/D	0.720	76.960
7.14	EXP-PAV-CAIS F/K/C	0.720	77.680
7.15	CAIS-HOB A/E	0.360	78.040
7.16	CAIS-HOB B/F	0.360	78.400
7.17	CAIS-CHS B	0.360	78.760
7.18	CAIS-CHS A	0.360	79.120
7.19	CHS-14 B	0.360	79.480
7.20	CHS-14 A	0.360	79.840
7.21	14-33 B	0.540	80.380
7.22	14-33 A	0.540	80.920
7.23	WTC TERM	1.080	82.000
8.00	Sections of the Line Cutover to ATC revenue service operation		
8.01	Revenue Service in Section 1	1.643	83.643
8.02	Revenue Service in Section 2	1.643	85.286
8.03	Revenue Service in Section 3	1.643	86.929
8.04	Revenue Service in Section 4	1.643	88.572
8.05	Revenue Service in Section 5	1.643	90.215
8.06	Revenue Service in Section 6	1.643	91.858

Ref.	Milestone	% of Total Line Item Price	Cumulative
8.07	Revenue Service in Section 7	1.642	93.500
9.00	ATC System Conditional Acceptance		
9.01	Conditional Acceptance for Section 1	0.563	94.063
9.02	Conditional Acceptance for Section 2	0.563	94.626
9.03	Conditional Acceptance for Section 3	0.563	95.189
9.04	Conditional Acceptance for Section 4	0.563	95.752
9.05	Conditional Acceptance for Section 5	0.563	96.315
9.06	Conditional Acceptance for Section 6	0.563	96.878
9.07	Conditional Acceptance for Section 7	0.563	97.441
9.08	ATC System Conditional Acceptance	0.559	98.000
10.00	Final Completion	2.000	100.000

**302.12 Milestone Payments, PTC System Solution to Comply with the RSIA 2008
(line item 11)**

Table 12

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Submit PTC Implementation Plan and PTC Development Plan to FRA	18.000	28.000
3.00	FRA Acceptance of Implementation Plan	18.000	46.000
4.00	FRA Acceptance of Development Plan	18.000	64.000
5.00	FIRST Cutover to ATC revenue service operation Complete	16.000	80.000
6.00	All Safety Certification Documents Approved	13.500	93.500
7.00	ATC System Conditional Acceptance		
7.01	Conditional Acceptance for Section 1	0.563	94.063
7.02	Conditional Acceptance for Section 2	0.563	94.626
7.03	Conditional Acceptance for Section 3	0.563	95.189
7.04	Conditional Acceptance for Section 4	0.563	95.752
7.05	Conditional Acceptance for Section 5	0.563	96.315
7.06	Conditional Acceptance for Section 6	0.563	96.878
7.07	Conditional Acceptance for Section 7	0.563	97.441
7.08	ATC System Conditional Acceptance	0.559	98.000
8.00	Final Completion	2.000	100.000

302.13 Milestone Payments, System Safety/Safety Certification (line item 12)

Table 13

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	System Safety Program Plan approved	10.600	20.600
3.00	Preliminary Product Safety Plan Submitted	14.400	35.000
4.00	Final Product Safety Plan Approved	22.500	57.500
5.00	Newark to Harrison Station Cutover to ATC revenue service operation Complete	13.500	71.000
6.00	All Safety Certification Documents Approved	9.000	80.000
7.00	Sections of the Line Cutover to ATC revenue service operation		

Ref.	Milestone	% of Total Line Item Price	Cumulative
7.01	Revenue Service in Section 1	1.929	81.929
7.02	Revenue Service in Section 2	1.929	83.858
7.03	Revenue Service in Section 3	1.929	85.787
7.04	Revenue Service in Section 4	1.929	87.716
7.05	Revenue Service in Section 5	1.929	89.645
7.06	Revenue Service in Section 6	1.929	91.574
7.07	Revenue Service in Section 7	1.926	93.500
8.00	ATC System Conditional Acceptance		
8.01	Conditional Acceptance for Section 1	0.563	94.063
8.02	Conditional Acceptance for Section 2	0.563	94.626
8.03	Conditional Acceptance for Section 3	0.563	95.189
8.04	Conditional Acceptance for Section 4	0.563	95.752
8.05	Conditional Acceptance for Section 5	0.563	96.315
8.06	Conditional Acceptance for Section 6	0.563	96.878
8.07	Conditional Acceptance for Section 7	0.563	97.441
8.08	ATC System Conditional Acceptance	0.559	98.000
9.00	Final Completion	2.000	100.000

302.14 Milestone Payments, Inspection and Testing (line item 13)

Table 14

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	All Factory Test Plans Approved – All ATC subsystems	7.000	17.000
3.00	All Factory Tests Completed – Operations Control Center Equipment	4.500	21.500
4.00	All Factory Tests Completed – ATC Wayside Equipment	4.500	26.000
5.00	All Factory Tests Completed – Interlocking Equipment	4.500	30.500
6.00	All Factory Tests Completed – ATC Carborne Equipment	4.500	35.000
7.00	All Factory Test Completed – Data Communications Equipment	4.500	39.500
8.00	Factory Integrated Systems Tests Completed	4.500	44.000
9.00	All Field Test Procedures Approved	4.500	48.500
10.00	Post-Installation Test Completed - Operations Control Center Equipment	4.500	53.000
11.00	Post-Installation Test Completed - ATC Wayside Equipment	4.500	57.500
12.00	Post-Installation Test Completed - Interlocking Equipment	4.500	62.000
13.00	Post-Installation Test Completed – ATC Carborne Equipment	4.500	66.500
14.00	Post-Installation Test Completed – Data Communications Equipment	4.500	71.000
15.00	Field Integrated System Test Completed	4.500	75.500
16.00	Authority Directed Tests Completed	4.500	80.000
17.00	Newark to Harrison Station Cutover to ATC revenue	4.500	84.500

Ref.	Milestone	% of Total Line Item Price	Cumulative
	service operation Complete		
18.00	Sections of the Line Cutover to ATC revenue service operation	4.500	89.000
19.00	ATC System Conditional Acceptance		
19.01	Conditional Acceptance for Section 1	0.563	89.563
19.02	Conditional Acceptance for Section 2	0.563	90.126
19.03	Conditional Acceptance for Section 3	0.563	90.689
19.04	Conditional Acceptance for Section 4	0.563	91.252
19.05	Conditional Acceptance for Section 5	0.563	91.815
19.06	Conditional Acceptance for Section 6	0.563	92.378
19.07	Conditional Acceptance for Section 7	0.563	92.941
19.08	ATC System Conditional Acceptance	0.559	93.500
20.00	Availability and Reliability Demonstrations Completed	4.500	98.000
21.00	Final Completion	2.000	100.000

302.15 Milestone Payments, Training (line item 14)

Table 15

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	Training Program Plan Approved	11.500	21.500
3.00	ATC System Simulator Delivered and Accepted	10.000	31.500
4.00	Training Completed – (1) Management Familiarization		
4.01	Training Aids and Materials – Submitted	1.600	33.100
4.02	Training Aids and Materials - Approved as Noted	1.600	34.700
4.03	Training #1 (Pilot) delivered	1.600	36.300
4.04	Training #2 delivered	1.600	37.900
4.05	Training #3 delivered	1.600	39.500
5.00	Training Completed – (2) Train Engineer and Train Conductor		
5.01	Training Aids and Materials – Submitted	1.333	40.833
5.02	Training Aids and Materials - Approved as Noted	1.333	42.166
5.03	Training #1 (Pilot) delivered	1.333	43.499
5.04	Training #2 delivered	1.333	44.832
5.05	Training #3 delivered	1.333	46.165
5.06	Training #4 delivered	1.335	47.500
6.00	Training Completed – (3) Car Inspector's and Maintainer's including Road Car Inspector		
6.01	Training Aids and Materials – Submitted	1.333	48.833
6.02	Training Aids and Materials - Approved as Noted	1.333	50.166
6.03	Training #1 (Pilot) delivered	1.333	51.499
6.04	Training #2 delivered	1.333	52.832
6.05	Training #3 delivered	1.333	54.165
6.06	Training #4 delivered	1.335	55.500
7.00	Training Completed – (4) Signal Supervisor's and Maintainer's		
7.01	Training Aids and Materials – Submitted	1.111	56.611
7.02	Training Aids and Materials - Approved as Noted	1.111	57.722

Ref.	Milestone	% of Total Line Item Price	Cumulative
7.03	Training #1 delivered	1.111	58.833
7.04	Training #2 delivered	1.111	59.944
7.05	Training #3 delivered	1.111	61.055
7.06	Training #4 delivered	1.111	62.166
7.07	Training #5 delivered	1.111	63.277
7.08	Training #6 delivered	1.111	64.388
7.09	Training #7 delivered	1.112	65.500
8.00	Training Completed – (5) Signal Engineer's and Supervisor's		
8.01	Training Aids and Materials – Submitted	2.000	67.500
8.02	Training Aids and Materials - Approved as Noted	2.000	69.500
8.03	Training #1 delivered	2.000	71.500
8.04	Training #2 delivered	2.000	73.500
9.00	Training Completed – (6) System Administrator		
9.01	Training Aids and Materials – Submitted	1.667	75.167
9.02	Training Aids and Materials - Approved as Noted	1.667	76.834
9.03	Training #1 delivered	1.666	78.500
10.00	Training Completed – (7) Tower Op., Trainmaster; Train Dispatcher; Transp. Inspectors, Transp. Supervisor and OCC Personnel		
10.01	Training Aids and Materials – Submitted	1.000	79.500
10.02	Training Aids and Materials - Approved as Noted	1.000	80.500
10.03	Training #1 delivered	1.000	81.500
10.04	Training #2 delivered	1.000	82.500
10.05	Training #3 delivered	1.000	83.500
10.06	Training #4 delivered	1.000	84.500
10.07	Training #5 delivered	1.000	85.500
10.08	Training #6 delivered	1.000	86.500
10.09	Training #7 delivered	1.000	87.500
10.10	Training #8 delivered	1.000	88.500
11.00	Training Completed – (8) Radio Shop and Communications (PS&C) Personnel		88.500
11.01	Training Aids and Materials – Submitted	1.000	89.500
11.02	Training Aids and Materials - Approved as Noted	1.000	90.500
11.03	Training #1 (Pilot) delivered	1.000	91.500
11.04	Training #2 delivered	1.000	92.500
11.05	Training #3 delivered	1.000	93.500
12.00	ATC System Conditional Acceptance		
12.01	Conditional Acceptance for Section 1	0.563	94.063
12.02	Conditional Acceptance for Section 2	0.563	94.626
12.03	Conditional Acceptance for Section 3	0.563	95.189
12.04	Conditional Acceptance for Section 4	0.563	95.752
12.05	Conditional Acceptance for Section 5	0.563	96.315
12.06	Conditional Acceptance for Section 6	0.563	96.878
12.07	Conditional Acceptance for Section 7	0.563	97.441
12.08	ATC System Conditional Acceptance	0.559	98.000
13.00	Final Completion	2.000	100.000

302.16 Milestone Payments, Support Services (Line Item 15)

Table 16

Ref.	Milestone	% of Total Line Item Price	Cumulative
1.00	Mobilization	10.000	10.000
2.00	All Manuals Delivered – Operations Control Center Equipment	5.800	15.800
3.00	All Manuals Accepted – Operations Control Center Equipment	5.800	21.600
4.00	All Manuals Delivered – ATC Wayside Equipment	4.500	26.100
5.00	All Manuals Accepted – ATC Wayside Equipment	4.500	30.600
6.00	All Manuals Delivered – Interlocking Equipment	4.500	35.100
7.00	All Manuals Accepted – Interlocking Equipment	4.500	39.600
8.00	All Manuals Delivered – ATC Carborne Equipment	4.500	44.100
9.00	All Manuals Accepted – ATC Carborne Equipment	4.500	48.600
10.00	All Manuals Delivered – Data Communications Equipment	4.500	53.100
11.00	All Manuals Accepted – Data Communications Equipment	4.500	57.600
12.00	Initial Provisions Delivered and Accepted		
12.01	Relays Delivered and Accepted	1.200	58.800
12.02	Parts for Microprocessor-Based Interlocking Control System (SSI) Delivered and Accepted	1.200	60.000
12.03	Parts for Zone Controller Delivered and Accepted	1.200	61.200
12.04	Carborne ATC Equipment package Delivered and Accepted	1.200	62.400
12.05	Signals Delivered and Accepted	1.200	63.600
12.06	Track Circuit Equipment Delivered and Accepted	1.200	64.800
12.07	ATC System Data Communications Equipment Delivered and Accepted	1.200	66.000
12.08	Batteries Delivered and Accepted	1.200	67.200
12.09	Displays and monitors Delivered and Accepted	1.200	68.400
12.10	Transponders Delivered and Accepted	1.200	69.600
12.11	Parts for Grade Crossing Equipment Delivered and Accepted	1.200	70.800
12.12	Bungalow HP/AC Equipment Delivered and Accepted	1.200	72.000
12.13	Wayside Indicators and Pushbutton - Employee Pick Up Delivered and Accepted	1.200	73.200
12.14	Signal Power Transfer Switch Delivered and Accepted	1.200	74.400
12.15	Signal Multi-conductor Cable Delivered and Accepted	1.200	75.600
13.00	Special Tools Delivered and Accepted		
13.01	Vital Relay Adjustment Tools Delivered and Accepted	2.225	77.825
13.02	Special Tools Delivered and Accepted	2.225	80.050
13.03	Fiber Optic Tool Kit Delivered and Accepted	2.225	82.275
13.04	LAN Network Tool Kit Delivered and Accepted	2.225	84.500
14.00	Diagnostic Test Equipment Delivered and Accepted		
14.01	Diagnostic Computer, if not combined with local control panel (Section 18.4.1 of the Technical Specification) Delivered and Accepted	1.286	85.786

Ref.	Milestone	% of Total Line Item Price	Cumulative
14.02	Portable Test Equipment (Section 18.4.3 of the Technical Specification) Delivered and Accepted	1.286	87.072
14.03	ATC Test Software for PA-5 Railcar Portable Test Equipment (Section 18.4.3.1 of the Technical Specification) Delivered and Accepted	1.286	88.358
14.04	Carborne ATC Bench Test Equipment (Section 18.4.4 of the Technical Specification) Delivered and Accepted	1.286	89.644
14.05	ATC Test Rack Systems (Section 18.4.4 of the Technical Specification) Delivered and Accepted	1.286	90.930
14.06	Set of Special Test Equipment (Section 18.4.5 of the Technical Specification) Delivered and Accepted	1.286	92.216
14.07	Set of Spare Printed Circuit Boards of each type for every PTE, BTE and workstations except laptops Delivered and Accepted	1.284	93.500
15.00	Warranty Support Completed	0.000	93.500
16.00	ATC System Conditional Acceptance		
16.01	Conditional Acceptance for Section 1	0.563	94.063
16.02	Conditional Acceptance for Section 2	0.563	94.626
16.03	Conditional Acceptance for Section 3	0.563	95.189
16.04	Conditional Acceptance for Section 4	0.563	95.752
16.05	Conditional Acceptance for Section 5	0.563	96.315
16.06	Conditional Acceptance for Section 6	0.563	96.878
16.07	Conditional Acceptance for Section 7	0.563	97.441
16.08	ATC System Conditional Acceptance	0.559	98.000
17.00	Final Completion	2.000	100.000

Article 303 Final Completion Certification

After the satisfactory completion of all Work whatsoever required under this Contract, including the General Guarantee/Warranty obligations per Article 703, and the making of such tests and inspections as required by the Contract, the Project Manager will render to PATH and to the Contractor a certificate in writing (herein called the Certificate of Final Completion) certifying that all Work under this Contract, including Extra Work, has been completed in accordance with the Contract and the requirements of the Project Manager, and certifying the date as of which it was so completed.

The rendition of the Certificate of Final Completion shall not be construed to constitute an extension of the Contractor's time for performance in the event that it has failed to complete the Work in accordance with the terms of this Contract. Moreover, the acceptance of the Final Completion by PATH shall not operate to release the Contractor from any obligations under or upon this Contract.

Article 304 Final Payments

304.1 Final Completion Payment

As part of the requirements for payment of Final Completion, the Contractor shall provide a list of hardware and software that constitute the ATC System which may become obsolete

within the service life required by the Contract and provide a plan to cover the obsolescence of any parts of the system. After rendition of the Certificate of Final Completion by the Project Manager, and upon receipt from the Contractor of such information as may be required, the Project Manager will certify in writing to PATH and to the Contractor the total compensation earned by the Contractor for the Work.

The Contractor shall thereupon (i) certify to PATH in writing that it has paid and caused its Subcontractors and Suppliers to pay the due amounts (ii) certify to PATH in writing that it has completed and caused its Subcontractors and Suppliers to fulfill the Contractual warranty, and (iii) furnish to PATH a detailed sworn statement of all unsettled claims, just and unjust, of its own and of Subcontractors, material suppliers and other third persons then outstanding, stating the amounts, and which it has reason to believe may thereafter be made on account of the Work.

Within thirty (30) days after the Project Manager's issuance of such Certificate of Compensation Earned (or within thirty (30) days after the receipt of the documents provided for in the immediately preceding paragraph), PATH will pay to the Contractor by check or electronic fund transfer the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which throughout this Contract shall be called the Final Payment.

304.2 Conditions Associated with the Contractor's Acceptance of Final Payments

The acceptance by the Contractor, or by anyone claiming by or through it, of Final Payments shall be and shall operate as a release to PATH of all claims and of all liability to the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of PATH and others relating to or arising out of the Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment, however, final or otherwise, shall operate to release the Contractor from any obligations in connection with this Contract or the Contract Guarantee.

The Contractor's agreement as provided in the immediately preceding paragraph shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph above shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by PATH or the Project Manager. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the consequences provided in this numbered Article, notwithstanding any purported reservation of rights.

The Contractor agrees that it shall not be entitled to, and hereby waives any right it might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered Article or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as voluntary

acceptance of a Final Payment subject to all the terms of this Contract including this numbered Article, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of Contract) for an amount not included in said Final Payment. In any case in which interest is allowable on the amount of the Final Payment, such interest shall be at the rate of six percent (6%) per annum for the period, if any, in which such interest is due.

Article 305 Payments Related to Guarantee/Warranty Obligations

PATH may withhold from any payments to be made subsequent to the commencement of any applicable guarantee period such sums as may reasonably be necessary to ensure completion of guarantee/warranty obligations with respect to defective work, equipment, or materials, which have been identified by the Project Manager.

- A. PATH may deduct from any payment due the Contractor an amount equal to its costs incurred on account of the Contractor's failure to fully perform its guarantee/warranty obligations.
- B. The Project Manager, prior to withholding or deducting any monies hereunder, shall give the Contractor notice of the defective work, equipment or material, and the basis for the withholding or deduction.
- C. Upon the Project Manager's certification that the Contractor has fulfilled its guarantee/warranty obligations, PATH will pay the Contractor any sums of money so retained as provided in paragraph (A) of this Article, subject to Contractor's submission of, or compliance with, any remaining documentation or obligation, as the case may be, in accordance with this Contract.

Article 306 Withholding of Payments

If (1) the Contractor fails to perform any of its obligations under this Contract (including its obligation to PATH to pay any claim lawfully made against it by any material supplier, Supplier, Subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH) or (2) any claim which arises out of or in connection with this Contract or any other agreement between PATH and the Contractor is made against PATH or (3) any Supplier or Subcontractor under this Contract or any other agreement between PATH and the Contractor fails to pay any claims lawfully made against it by any material supplier, Supplier, Subcontractor, worker or other third person which arises out of or in connection with this Contract or if in the opinion of the Project Manager any of the aforesaid contingencies is likely to arise, then PATH will have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Project Manager may deem ample to protect PATH against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Project Manager may deem proper to secure such protection or satisfy such claims. All sums so applied will be deducted from the Contractor's compensation. Omission by PATH to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that PATH does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of PATH to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by PATH shall create any obligation of any kind to such material suppliers, Suppliers, Subcontractors, workers or other third persons.

Until actual payment to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of PATH under this numbered Article.

If, however, the payment of any amount due to the Contractor shall be improperly delayed by the fault of PATH, PATH will pay the Contractor interest thereon at the rate of six percent (6%) per annum for the period of delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

Article 307 Prevailing Rate of Wage

The Contractor shall pay or provide (and shall cause all Subcontractors to pay or provide) to his or their workmen, laborers and mechanics (who are employed by him or them to work on an hourly or daily basis at any trade or occupation at or about the Site) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Work is being performed as determined by the Project Manager.

For purposes of this Contract, the Project Manager has determined that the prevailing rates of wage and supplements are those established by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (40 U.S.C.A. 276a) for the locality in which the Work is to be performed. However, the applicable rates shall be those which are in effect on the date of opening of Proposals, or as may be modified by the Secretary of Labor.

The provisions of this clause are inserted in this Contract for the benefit of such workmen, laborers and mechanics as well as for the benefit of PATH; and if the Contractor or any Subcontractor shall pay or provide any such workman, laborer or mechanic less than the rates of wages and supplements above described, such workman, laborer or mechanic shall have a direct right of action against the Contractor or such Subcontractor for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this clause. If such workman, laborer or mechanic is employed by any Subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the Subcontractor's failure to pay or provide such wages and supplements) such workman, laborer or mechanic shall have a direct right of action against the Contractor. PATH shall not be a necessary party to any action brought by any workman, laborer or mechanic to obtain a money judgment against the Contractor or any Subcontractor pursuant to this numbered clause.

Nothing herein contained shall be construed to prevent the Contractor or any Subcontractor from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that the Contractor or any Subcontractor can obtain workmen, laborers and mechanics for the minimum herein before prescribed.

In an area of his office at the Site of the Work which is accessible to his employees, the Contractor shall display such printed material as may be provided by the Project Manager setting forth information for the employees of the Contractor and his Subcontractors concerning the wage and supplemental benefit requirements set forth in this numbered clause. The Contractor shall also cause each of his Subcontractors to display such material in a similarly accessible place in any office which the Subcontractor maintains at the Site of the Work.

The Project Manager may at any time request that the Contractor certify in writing that he has paid or provided (and has caused all Subcontractors to pay or provide) at least the prevailing rates of wage and supplements required by this numbered clause and the Contractor shall comply with any such request within ten (10) calendar days of his receipt thereof. The Contractor shall include in his certification such detail as the Project Manager may require with respect to hourly wages and supplements actually paid or provided by the Contractor or any Subcontractor to each of his or their laborers, workmen and mechanics employed as described in this numbered clause, records of which shall be prepared by the Contractor and maintained as required by the clause of the Form of Contract entitled "Access to Records" (and the Contractor shall cause such records to be prepared and maintained in the same manner by Subcontractors). The Contractor's certification shall be executed by a corporate officer, if the Contractor is a corporation; a partner, if the Contractor is a partnership; or the owner if the Contractor is a sole proprietorship.

The Contractor's failure to comply with any provision of this numbered clause shall be deemed a substantial breach of this Contract.

Chapter 4 CHANGES TO THE CONTRACT**Article 401 Extra Work**

The Contractor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Project Manager and is required to begin, perform, and acceptably complete such Extra Work within the time period(s) established by the Project Manager without adversely affecting the timely and accurate performance of any other Work. "Extra Work" as used herein shall be defined as work which differs from that expressly or impliedly required by the Contract in its present form, but which would not constitute a cardinal change. Total Extra Work performed by the Contractor shall not exceed eight percent (8%) of the Total Contract Price of this Contract unless otherwise approved in writing by the Project Manager.

The Project Manager shall have full authority to agree in writing with the Contractor on behalf of PATH upon extensions of time, when justified, and lump sum or other compensation for Extra Work in lieu of compensation for which provision is hereinafter made in this numbered Article. If such agreement is not made, and Extra Work is performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

1. For Extra Work labor performed by the Contractor, an amount equal to the actual hours worked times the hourly rates set forth on Price Form 3.1 for shop labor rates, engineering personnel rates and field labor rates. The rates shall be blended rates for all categories and classifications of either shop labor or engineering labor, but no part of the salary or expense of anyone above the grade of Foreman and having general supervision of the Extra Work shall be included in the labor rates. These hourly rates shall be deemed to include all fringe benefits (e.g., vacation, sick, holiday leaves, health and pension benefits, etc.), payroll taxes (e.g., social security, unemployment, disability, etc.), insurance, and the Contractor's overhead and profit. These fully burdened rates shall not include any allowances for overtime and premium time compensation. PATH reserves the right to audit the rates established herein.
2. For Extra Work labor performed by a Subcontractor, an amount equal to the actual hours worked times the sum of the following: actual hourly rates for the personnel (excluding the salary and expense of anyone above the grade of Foreman, which costs shall be included in overhead) plus fringe benefits (as described in item 1 above) plus payroll taxes (as described in item 1 above) plus insurance plus overhead and profit (which overhead and profit shall be limited as described in the following item).
3. With respect to Extra Work labor performed by Subcontractors, the Contractor agrees that in no event shall the combined profit and overhead of the Subcontractor and the Contractor with respect to such work exceed 26%. The Contractor agrees that it shall include a provision in each subcontract and contract with a Subcontractor that conforms to the provisions of the preceding sentence.
4. An amount equal to the costs of the materials used for the Extra Work plus mark-up as defined herein. All receipts, vouchers and all other supporting documentation required to substantiate the material costs shall be available for PATH's inspection and verification. The Contractor and Subcontractor will be permitted a combined single overhead and profit percentage ("mark-up") of ten percent (10%) for the net cost (inclusive of discounts, rebates, allowances, and credits) of all materials

- purchased directly by the Contractor or Subcontractor, allocated between the Contractor and Subcontractor as they determine between themselves.
5. No amount will be paid for proposed costs for equipment owned by the Contractor or Subcontractors. If equipment must be rented to perform the Extra Work, an amount equal to actual costs incurred, plus mark-up as defined herein will be paid. Receipts, vouchers and all other supporting documentation shall be available for PATH's inspection and verification. The Contractor and Subcontractor will be permitted a combined single overhead and profit percentage of ten percent (10%) for the net cost (inclusive of discounts, rebates, allowances, and credits) of all equipment rented to perform Extra Work, allocated between the Contractor and Subcontractor as they determine between themselves.
 6. For other costs as approved by the Project Manager, an amount equal to actual costs incurred upon submission of receipts, vouchers and all other supporting documentation, without mark-up.

The Project Manager shall have the authority to decide all questions in connection with the Extra Work. The exercise by the Project Manager of the powers and authorities vested in him/her by this section shall be binding and final upon PATH and the Contractor.

The Contractor shall submit all reports, records and receipts as are requested by the Project Manager so as to enable him/her to ascertain the time expended in the performance of the Extra Work, the quantity of labor and materials used therein and the cost of said labor and materials to the Contractor.

The provisions of this Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

No Extra Work shall be performed except pursuant to written orders from the Project Manager expressly and unmistakably indicating the Project Manager's intention to treat the Work described therein as Extra Work.

In the absence of such order signed by the Project Manager, if the Project Manager directs, orders or requires any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twelve (12) working days give written notice thereof to the Project Manager stating why the Contractor deems it to be Extra Work, which notice shall include time slips, memoranda and other records as required by this Article to document the materials, labor and other items required to perform such claimed Extra Work. Such complete documentation is for the purpose of affording the Project Manager an opportunity to verify the Contractor's assertion at the time and, if necessary or desirable, cancel promptly such order, direction, or requirement. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips, memoranda, or other records will be deemed to be a conclusive and binding determination on the Contractor's part that the direction, order or requirement of the Project Manager does not involve the performance of Extra Work, and will be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips, memoranda, and records being a condition precedent to such claims.

The Contractor shall invoice PATH separately for each item of Extra Work upon the approval of the Project Manager that such item of Extra Work has been completed. Each Extra Work invoice shall be submitted separately in accordance to procedures for format, quantity, etc. that will be established by the Project Manager.

Article 402 General Obligations

1. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Project Manager.
2. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
3. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Project Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Project Manager.
4. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.
5. The Contractor shall not do or permit to be done any act which:
 - A. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
 - B. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
 - C. in the opinion of PATH will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
 - D. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
 - E. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
 - F. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

6. If by reason of the Contractor's failure to comply with the provisions of this Section and provided PATH has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay PATH that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by PATH which shall have been charged because of such violations by the Contractor.
7. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of PATH and shall conduct operations hereunder in a courteous, efficient and safe manner.
8. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.
9. When applicable, Contractor will obtain, at its own costs, necessary export and shipment licenses for the purpose of this Agreement and use of the ATC System in New York and New Jersey. The Contractor has verified that there are no existing export laws and regulations that would hinder the exportation, importation, or use of the ATC System.

Article 403 Differing Site Conditions

1. The Contractor shall promptly, and before the conditions are disturbed, give PATH written notice of:
 - A. Subsurface or otherwise concealed physical conditions at the site that differ materially from those indicated in this Contract; or
 - B. Unknown physical conditions at the site, of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inherent in the Work.
 - C. Tunnel conditions that change subsequent to the Contractor's surveys and have an impact on the Work, based upon the reasonable determination of the Project Manager.
2. The Project Manager will review and respond to the situation promptly after receiving the Contractor's notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost or the time required for performing any work under this Contract, as a result of the differing site conditions, an equitable adjustment of the Contract Price and time for completion shall be made and the Contract shall be modified in writing accordingly.

Amounts paid under this provision shall be charged against the total amount of compensation authorized for Extra Work.

Article 404 Laws and Ordinances -- Changes in Law

In order to effectuate the policy of PATH, the Contractor shall comply with all provisions of federal, State, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect the Contract and the performance thereof and those engaged

therein if said Contract were being performed for a private corporation, except where stricter requirements are contained in the Technical Specifications, in which event the latter requirements shall apply. However, the Contractor shall not apply for any permits, licenses or variances in the name of or on behalf of PATH, but shall do so in its own name where required by law or by the immediately preceding sentence; nor shall the Contractor apply for any variance in its own name without first obtaining the approval of PATH.

If, after execution of this Contract, there is a Change-In-Law which causes the Contractor to perform the Work in a manner which materially differs from that set forth in the Contract and (a) such change in the performance of the Work cannot be avoided or mitigated by the exercise of reasonable measures by the Contractor; and (b) the Contractor actually incurs increased costs resulting from such Change-in-Law; then in such event the Contractor shall be compensated for such increased costs on a Net Cost basis. Net Cost shall be computed in the same manner as is compensation for Extra Work, including any percentage addition to cost, as set forth in the clause of the Contract providing compensation for Extra Work. Performance of such Net Cost Work shall be subject to all provisions of the Contract, including, but not limited to, the notice requirements, relating to performance of Extra Work. Compensation for said Net Cost Work shall not be charged against the total amount of compensation authorized for Extra Work. In connection with (a) above, as part of the Contractor's duty to mitigate, PATH shall have the right to direct the Contractor to perform the Work in a manner which will result in the lowest cost to PATH, provided, however, such direction does not adversely affect the Work.

Notwithstanding anything to the contrary, the obligation of the Contractor regarding the Rail Safety Improvements Act of 2008 is limited to providing support (as described in section 3.3.5. of the Technical Specification) to PATH to comply with the Procedural Requirements as identified under § 236.1009 of the Notice of Proposed Rule Making (NPRM: FR Doc. 2009-17184, published 07/21/2009). The modification of the FRA Rule resulting from the Rail Safety Improvement Act of 2008, presently in draft form for comment, when and if enacted, shall constitute a Change in Law.

Chapter 5 CONTRACTOR'S LIABILITY, INDEMNIFICATION, RISK OF LOSS**Article 501 Indemnification and Risks Assumed By The Contractor**

To the extent permitted by law, the Contractor shall indemnify and hold harmless PATH, its Commissioners, Directors, officers, representatives and employees (the "Indemnified Parties") from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of PATH) arising out of the negligence of the Contractor, its Subcontractors and Suppliers of any tier in the performance of the Contract, for all expenses incurred by it in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage.

The Contractor assumes the following risks, when such risks arise from negligent acts or omissions of the Contractor its Subcontractors and Suppliers of any tier and shall, to the extent permitted by law, indemnify the Indemnified Parties for all loss or damage incurred in connection with such risks:

- A. The risk of any and all loss or damage to PATH property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder, and the risk of any and all loss or damage to any material supplied under this Contract prior to PATH Conditional Acceptance of the installed material, equipment, and components, or ATC System Conditional Acceptance; provided, however, that the Contractor shall assume all risk of loss or damage after Conditional Acceptance to any material, equipment and components supplied under this Contract and PATH property arising out of any Open Items or Warranty work. The Contractor shall, if so directed by PATH, immediately repair, replace or rebuild to the reasonable satisfaction of PATH, any and all parts of material supplied under this Contract or PATH property which may be damaged or destroyed and if the Contractor shall fail so to immediately commence repair, replace, or rebuild with due diligence, PATH may, at its option, perform any of the foregoing work and the Contractor shall pay to PATH the cost thereof.
- B. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions on the Facility.
- C. The risk of claim, whether made against the Contractor or PATH, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees and others performing work hereunder.
- D. The risk of claims for injuries, damage or loss of any kind of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or PATH.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of PATH, raise any defense involving in any way the jurisdiction of the tribunal over the person of PATH, the immunity of PATH, its Commissioners, officers, agents or employees, the governmental nature of PATH or the provision of any statutes respecting suits against PATH.

Neither the requirements of PATH under this Contract, nor of PATH of the methods of performance hereunder nor the failure of PATH to call attention to improper or inadequate

methods or to require a change in the method of performance hereunder nor the failure of PATH to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property arising out of its operations.

Indemnified Parties may make claims for indemnification by giving written notice to the Contractor. If indemnification is sought for a claim or liability asserted by a third party, the written notice to the Contractor will be made promptly after receipt of written notice of the claim or liability being asserted, but the failure to do so, or any delay in doing so, shall not relieve the Contractor from any liability except to the extent that the rights and remedies of the Contractor are prejudiced as a result of the failure to give, or delay in giving, such notice. Such notice will summarize the bases for the claims for indemnification and any claim or liability being asserted by a third party.

The Contractor will have sole control of the defense of any claim or litigation subject to indemnification hereunder with counsel selected by it (subject to the consent of the Indemnified Parties, which consent will not be unreasonably withheld). Notwithstanding the foregoing, the obligations of the Contractor shall include taking all steps reasonably necessary in the defense, settlement, or compromise of such claim or litigation and holding the Indemnified Parties harmless from and against any and all losses caused by or arising out of any settlement or compromise approved by the Contractor or any judgment in connection with such claim or litigation. The Indemnified Parties will make available such information and assistance in connection with the defense as the Contractor may reasonably request and will cooperate with the Contractor in such defense.

Neither the Contractor nor the Indemnified Parties shall consent to entry of any judgment (other than a judgment of dismissal on the merits without costs) or enter into any settlement or compromise (except with the written consent of the other party, which consent shall not be unreasonably withheld) which does not include as an unconditional term the giving by the claimant or the plaintiff to the Indemnified Parties or the Contractor, as appropriate, a full release from all liability in respect of such claim or litigation. The Indemnified Parties will at all times have the right to fully participate in the defense of a third party claim or liability at their own expense directly or through counsel.

Article 502 Insurance Procured By PATH

In order to reduce the cost of this Contract, PATH will procure and will maintain in force and pay the premiums on:

1. A policy of public liability (Comprehensive - Commercial General Liability, including Contractual) insurance on which the Contractor and the subcontractors will be insureds issued by an insurance company satisfactory to PATH, with current coverage limits of \$50 million per occurrence for bodily injury and property damage liability. This insurance also includes coverage for any railroad owner for property damage and bodily injury for work within any railroad right-of-ways by the Contractor or subcontractor.
2. Not used.
3. A policy of workers' compensation and employer's liability insurance fulfilling the Contractor's and the subcontractor's obligations under the applicable State Workers' Compensation Law for those employees of the Contractor and the subcontractors employed pursuant to this Contract in operations conducted at the site of the Work

hereunder. Coverage under this policy may, as appropriate, include one or more of the following endorsements:

- A. Longshore and Harbor Workers' Compensation Act Coverage Endorsement. (Applies when performing work on or around navigable waters).
- B. Maritime Coverage Endorsement (Applies to masters or members of the crews of vessels, if vessels are used).
- C. Federal Employer's Liability Act Coverage Endorsement (May apply to railroad related Work).

Determination in any instance as to the appropriateness of the included coverage described in 3 A, B, and C above will be made based upon information to be provided by the Contractor relating to the mode of performance of Work to be done under the Contract.

The policy described in 3 above will NOT provide coverage for any workers' compensation for the Contractor and/or subcontractors who perform any asbestos Work. In such cases, the Contractor or subcontractors shall procure and maintain, at their own expense, the workers' compensation insurance in accordance with the requirements of law in the state(s) where the work will take place, along with employer's liability insurance (in limits of not less than \$1 million per occurrence)

Should the Contractor and/or subcontractors be required to procure the workers' compensation insurance, within ten days after the acceptance of his Proposal the Contractor shall deliver to the General Manager, Risk Management, The Port Authority of New York and New Jersey, Treasury Department, 225 Park Avenue South, 12th Floor, New York, New York 10003 (Attn: Contract Insurance Review), an original certificate, stating the Contract number, from the insurer. A duplicate certificate evidencing the above insurance shall also be delivered to the Project Manager. With regard to insurance required to be procured by a subcontractor, the Contractor shall deliver the certificate described above at least ten days before the subcontractor commences Work. Such policy shall be endorsed to include amendments to coverage B, Federal Employer's Liability Act, in limits of not less than \$250,000 per occurrence.

The requirements for insurance procured by the Contractor or subcontractors shall not in any way be construed as a limitation on the nature or extent of the obligations of the Contractor or subcontractors.

4. A policy of builder's risk insurance, covering the improvements or other Work to be effectuated by the Contractor and the subcontractors, with coverage limits of \$50 million per occurrence for all locations combined (subject to a \$50 million annual aggregate for flood and earthquake damage and a limit of \$10 million per occurrence for damage to off-site storage and property in transit). The deductible is \$10,000 per occurrence for all losses except those caused by flood and earthquake, where a \$50,000 deductible per occurrence with respect to flood, and a \$25,000 deductible per occurrence with respect to earthquake are in effect. The policy form contains various exclusions, including but not limited to the following property exclusions: automobiles; aircraft; and Contractors' and subcontractors' machinery, tools, and equipment and property of a similar nature, including forms, shoring, scaffolding, temporary structures, rental property/equipment and similar property, not intended to become a permanent part of a building or structure. The Contractor and the subcontractors must refer to the policy form to determine all properties and perils included and excluded and to determine their rights and responsibilities as insureds

under the policy form. The Contractor and the subcontractors are responsible for payment for all losses within the deductibles and losses not covered by the builder's risk policies.

The current policies described in (1), (2), (3), and (4) of this numbered clause are on file and available for examination, by appointment in the office of the General Manager, Risk Management, The Port Authority of NY and NJ, Treasury Department 225 Park Avenue South, 12th Floor New York, New York 10003. These policies under (1.) and (2.) are subject to certain liability coverage exclusions, which include, but are not limited to, exclusions from liability from claims arising from pollution and exposure to asbestos.

The Contractor and subcontractors shall comply with all obligations of the insured under or in connection with all of the policies described in clauses (1) through (4) above.

PATH shall have the right at any time and from time to time at its option to procure insurance substituting in whole or in part for any or all of the policies described in (1.) through (4.) above or to require that the Contractor and the subcontractors themselves obtain insurance substituting in whole or part for that above referred to, provided always, however, that the Contractor and the subcontractors shall be afforded coverage as stipulated by PATH and PATH shall either pay the premiums on such substitute insurance or reimburse the Contractor and the subcontractors therefore.

Neither the procurement of the above insurance or any substitute insurance nor the extent of the coverage or the limits of liability thereunder shall be construed to be a limitation on the nature or extent of the Contractor's obligations, or to relieve the Contractor of any such obligations, and the procurement of the above insurance is only for the purpose of reducing the cost of the Contract without constituting any representation by PATH as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law (except the applicable State Workers' Compensation Law) or by this or any other Contract.

Notwithstanding any provision of this clause, however, no subcontractor shall be or have the right to be covered under the policies of insurance above referred to until they have been expressly approved in writing by the Project Manager, as required under this Contract, and such approval may be withheld, among other reasons, until execution by the subcontractor of agreements affirming his obligations provided in this clause with respect to the above insurance.

The provisions of this numbered clause are not intended to create any rights in the Contractor other than rights which may be available to him under said policies themselves, whatever such rights may be. Moreover, PATH makes no representation or guarantee, either by the provisions of this numbered clause or otherwise, as to the effect of or the coverage under said policies, and no employee or agent of PATH is authorized to make any such representation or guarantee, either by the provisions of this numbered clause or otherwise, as to the effect of or the coverage under said policies, and no employee or agent of PATH is authorized to make any such representation or guarantee or to offer any interpretation of or information on said policies. The Contractor warrants and represents that it has examined and is familiar with the above stated coverages and that in submitting his Proposal he has relied solely on his own interpretation thereof and not on any representations or statements, oral or written, of PATH, its Directors, officers, agents, employees, consultants or contractors.

All negotiations and adjustments with any insurer concerning payment for any loss, the risk of which is borne by the Contractor under this Contract, shall be the responsibility of and shall be conducted by the Contractor unless the applicable policy provides otherwise. The Contractor shall, however, inform the Project Manager of the progress of all such negotiations and notify him sufficiently in advance of all meetings thereon so that he or his representatives may attend said negotiations if they so desire.

PATH shall be entitled to all returned premiums, dividends and credits which may become payable at any time for any reason whatsoever in connection with the aforementioned insurance. The Contractor hereby assigns to PATH all such returned premiums, dividends and credits and the subcontractors shall be deemed to have assigned to PATH all such returned premiums, dividends and credits by becoming subcontractors under this Contract. The Contractor shall execute and cause the subcontractors to execute any instrument necessary or convenient to evidence PATH's right to such returned premiums, dividends and credits.

Notwithstanding any payment by PATH of any insurance premiums, PATH shall not be deemed the employer of any employees hired by the Contractor or any subcontractor covered by such insurance nor shall it be liable for any of the obligations of such employer.

The Contractor and the subcontractors shall cooperate to the fullest extent with PATH in all matters relating to the aforementioned insurance and shall comply with all requirements of all insurance policies procured by PATH. They shall also at their own expense furnish the Project Manager or his duly authorized representative with copies of all payrolls, correspondence, papers, records and other things necessary or convenient for dealing with or defending against any claims and for procuring or administering the aforementioned insurance including furnishing the name of any of their employees, officers, or agents whose presence or testimony is necessary or convenient in any negotiations or proceedings involving such insurance. [CITS#54376—PATH SIGNAL PHASE II-4/10/07].

Article 503 Insurance To Be Procured By Contractor

In addition to the insurance procured by PATH pursuant to the numbered clause of this Contract entitled, "Insurance Procured by PATH," the Contractor, in its own name as assured, shall, where applicable, procure, maintain, and pay the premiums on a policy(ies) of insurance for coverage, as hereinafter described, which shall cover its operations hereunder, shall be effective through issuance of the Certificate of Final Completion, and shall afford coverage in not less than the amounts set forth below:

1. **Automobile Liability Insurance:** covering any auto (s) \$2 million combined single limit per accident for bodily injury and property damage liability.
2. **Protection and Indemnity Insurance:** covering Protection and Indemnity Insurance, and Chartered Legal Liability Insurance, where applicable. Prior to commencement of any Work involving the use of water craft, the Contractor shall furnish to the Resident Engineer/Contract Administrator, evidence of Marine Protection and Indemnity Insurance and Chartered Legal Liability Insurance, relating to the operation, maintenance, or use of any vessel (whether self-propelled or being towed) in connection with Work to be performed in this contract, in a limit of liability of not less than \$4 million for any one occurrence.
3. **Environmental (Pollution Legal Liability) Insurance:** covering bodily injury, including death, and property damage liability insurance, including environmental

damage, pollution legal liability, including any cleanup, on an occurrence basis, including completed operations, caused by any environmental condition, including but not limited to lead, asbestos, or mercury exposures, with a limit not less than \$5 million each occurrence and \$5 million aggregate. The policy shall provide coverage during transportation. The policy shall "pay on behalf of."

PATH/The Port Authority may, at any time during this contract, change or modify the limits and coverages to any of the insurance stated in this section. In the event the Contractor incurs increased costs as a result of such change or modification to the limits and coverages of any insurance, the Contractor shall be compensated for such increased costs in accordance with the provisions of Article 401. The insurance requirements shall be primary and any insurance carried by PATH/Port Authority shall be excess over the insurance requirements in this section.

The Contractor may not self-insure or carry any deductible without written permission from PATH/Port Authority.

PATH/Port Authority shall be named as an additional insured in the liability policies set forth above. The liability policy or policies stated above shall contain coverage for **cross-liability/severability** of interests, and both shall be stated on the certificate of insurance.

Certified copies of the policy or policies described above or a certificate or certificates evidencing the existence thereof, shall be delivered to the General Manager, Risk Management/Treasury, The Port Authority of New York and New Jersey, 225 Park Avenue South, 12th Floor, New York, NY 10003, within ten (10) days after the execution of this Contract by the Contractor. Such policy or policies, certificate or certificates shall state the number of this contract and shall contain a valid provision or endorsement that the policy or policies may not be canceled, terminated, changed or modified without giving thirty (30) days advance written notice to the Port Authority at the above address. Such liability policy or policies and the certificate of insurance shall contain an additional endorsement stating that, **"The insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of PATH/The Port Authority, the immunity of PATH/The Port Authority, its commissioners, officers, agents or employees, the governmental nature of PATH/The Port Authority, or the provisions of any statutes respecting suits against PATH/The Port Authority."** Renewal original certificates of insurance shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. If at any time any of the certificates or policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing any such certificate or policy shall be or become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy. The Port Authority may request at any time certified copies of the above policies, including premiums. **[CITS #54376-PATH SIGNAL PHASE II – 4/10/07]**

Article 504 Limitation of Liability

Neither party shall be liable to the other for any indirect, incidental or consequential damages of any kind including but not limited to loss of profit. Notwithstanding the preceding sentence, the waiver of consequential damages shall not create any impediment to the imposition of liquidated damages provided elsewhere in the Contract.

In no event shall the total liability of the Contractor to PATH under this Contract exceed a sum equivalent to 100% of the Total Contract Price, except to the extent such liability (a) is based upon a claim for indemnification under Articles 105 or 501, or otherwise arises out of, or is based upon claims of third parties, or (b) is covered by policies of insurance provided by PATH or required to be carried by the Contractor under this Contract.

Chapter 6 AUTHORITY OF THE PROJECT MANAGER, DISPUTES AND CLAIMS**Article 601 Authority of the Project Manager**

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in a manner which PATH, acting through the Project Manager, deems best, the Project Manager will have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in Article 103, "General Agreement" and the Technical Specification shall be deemed merely the Project Manager's present determination on this point. In the exercise of this authority, the Project Manager will have power to alter the Technical Specification; to require the performance of the Work not required by them in their present form, even though of a totally different character, quantity and quality; or to countermand any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Project Manager and shall perform the Contract to the satisfaction of the Project Manager at such times and places, by such methods and in such manner and sequence as the Project Manager may require, and the Contract shall at all stages be subject to the Project Manager's inspection. The Project Manager will determine the amount, quality, acceptability and fitness of all parts of the Work and will interpret the Technical Specification and any orders for Extra Work. Upon request, the Project Manager will confirm in writing any oral order, direction, requirements or determination.

All determinations under this Article will be reasonable.

If at any time it shall be, from the viewpoint of PATH, impracticable or undesirable in the sole and absolute discretion of the Project Manager to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of PATH, the Project Manager will have the authority to suspend performance of any part or all of the Contract until such time as the Project Manager may deem practicable or desirable to proceed.

Moreover, if at any time it shall be, from the viewpoint of PATH, impracticable or undesirable in the sole and absolute discretion of the Project Manager to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of PATH, the Project Manager will have the authority to cancel this Contract, upon thirty (30) days written notice to the Contractor, as to any portions of the Work not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed and the costs associated with demobilization, but no allowance shall be made for anticipated profits. If through no fault of the Contractor, this Contract is cancelled, an allowance shall be made for actual reasonable costs incurred by the Contractor for demobilization, but no allowance shall be made for anticipated profits for portions of the Work not performed.

The Contractor shall have a representative at the work site at all times during performance of the Work authorized to receive orders from the Project Manager.

Article 602 Disputes Resolution Procedure/Authority and Duties of Director/General Manager

To resolve all disputes and to prevent litigation, the parties to this Contract authorize PATH's Director/General Manager, acting fairly and impartially, to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) and PATH's Director/General Manager's decision will be consistent with the Contract and will be conclusive, final and binding on the parties. PATH's Director/General Manager shall at all times act in a neutral and impartial manner and any decision will not be unreasonable, arbitrary or capricious and may be based on such assistance as PATH's Director/General Manager may find desirable. The effect of PATH's Director/General Manager's decision will not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not PATH's Director/General Manager participated therein, or by any prior decision of others, which prior decisions, shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by the Contractor to PATH's Director/General Manager, acting personally, for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against PATH relating to any such question, the Contractor must allege in its complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to PATH's Director/General Manager personally. Neither the requirements of this paragraph nor the time necessary for compliance therewith, however, shall affect the time when the Contractor's cause of action will be deemed to have accrued for purposes of any statute controlling actions against PATH; and the time of such accrual will be determined without reference to this paragraph.

Nothing in this clause shall prevent the right of either party to appeal such decision in a court of relevant jurisdiction or to seek urgent relief from such court.

The enumeration herein or in the Technical Specification of particular instances in which the opinion judgment, discretion or determination of PATH's Director/General Manager will control or in which the Contract shall be performed to PATH's Director/General Manager's satisfaction or subject to PATH's Director/General Manager's inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and so performed.

This numbered Article 602 shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

Article 603 Notice Requirements

No claim against PATH shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements requiring the giving of written notice of the information with respect to such claim as provided in this numbered Article. The failure

of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein, "claim" shall include any claim arising out of, under, or in connection with, or in any way related to or on account of this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) for damages, payment or compensation of any nature or for extension of time for performance of any part of this Contract.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

1. In the case for any claims for Extra Work, extension of time for completion, or any other matter for which the requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.
2. In the case of all other types of claim, notice shall be given to the Project Manager, personally, as soon as practicable, and in any case, within fifteen (15) working days, after occurrence of the act, omission, or other circumstance upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made, which records shall be submitted to the Project Manager, personally.

The above requirements for notices and information are for the purpose of enabling PATH to avoid waste of public funds by affording it the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or to take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the requirements herein for such notice and information are essential to this Contract and are in addition to any notice required by statute with respect to suits against PATH.

The above-referenced notices and information are required whether or not PATH is aware of the existence of any circumstances which might constitute the basis for a claim or whether or not PATH has indicated it will consider a claim.

No act, omission, or statement of any kind shall be regarded as a waiver of any of the provisions of this numbered Article or may be relied upon as such waiver, except only either a written statement signed by the PATH's Director/General Manager or a resolution of the Commissioners of the Authority expressly stating that a waiver is intended as to any particular provision of this numbered Article, and more particularly no discussion, negotiations, consideration, correspondence or requests for information with respect to a claim by any Commissioner, officer, employee or agent of PATH shall be construed as a waiver of any provision of this numbered Article or as authority or apparent authority to effect such waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than PATH representatives above designated to receive it may not be sufficient to come to the attention of the representative

of PATH with the knowledge and responsibility of dealing with the situation, only notice and information complying with the express provisions of this numbered Article will be deemed to fulfill the Contractor's obligation under this Contract.

Chapter 7 INSPECTION, TESTING, GUARANTEES AND CHARACTER OF WORK**Article 701 Inspections, Performance Testing and Rejections**

All Work, processes of manufacture and methods of assembly involved in or related to the performance of the Work shall be at all times and places subject to the inspection and tests of the Project Manager or representative, acting personally or through their Inspectors, and the enumeration in the Technical Specification of particular portions of such work, processes of manufacture or methods of assembly which will or may be inspected or tested by the Project Manager or such Inspectors shall not be deemed to imply that only such Work, processes of manufacture and methods of assembly will or may be so inspected or tested.

Since PATH operations are subject to applicable FRA rules and regulations, PATH has secured the services of an Independent Safety Assessor (ISA) to perform independent reviews of the ATC System. The ISA will conduct independent reviews during the design, development, manufacture, integration, factory testing, installation, testing and commissioning of the Contractor's ATC System and as such shall have access to all Contractor documentation. The ISA shall also be granted the authority to attend any Contractor design reviews or walkthroughs that they deem necessary to complete and accomplish an independent assessment.

The Project Manager will be the judge of the quality and suitability of the Work, processes of manufacture and methods of assembly for conformance to the Contract. Should they fail to meet Project Manager's approval they shall be forthwith rebuilt, made good, replaced or corrected, as the case may be, by the Contractor at its own expense. The fact that the Inspectors have approved the materials and workmanship shall not relieve the Contractor from its obligation to supply other material and workmanship when so ordered by the Project Manager.

If the Contractor does not promptly replace (or cause Subcontractors to replace) rejected material or correct (or cause Subcontractors to correct) rejected workmanship to the satisfaction of the Project Manager, PATH: (1) may, by separate contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contract Price, or (2) may terminate Contractor's right to proceed in accordance with the default provisions of the Standard Contract Terms and Conditions Article entitled "Rights and Remedies of PATH".

If any Work for which the Project Manager has previously notified the Contractor that inspection will be performed is covered up without approval or consent of the Project Manager, it must be uncovered for inspection and properly restored at Contractor's expense. The examination of any Work or re-examination of any previously examined Work may be ordered by the Project Manager, and if so ordered, the Work must be uncovered or caused to be uncovered by the Contractor. If such Work is found to be in accordance with the Contract, PATH will pay all costs associated with the reinspection, including uncovering, covering, and damage to the Work related to the reinspection. If the Work is not in accordance with the Contract, such Work shall be re-performed by the Contractor at no cost or expense to PATH.

The Contractor, at its own expense, shall furnish such facilities and give such assistance for inspection as the Project Manager or representative may direct. In the case of materials required by the Technical Specification to be inspected or tested in the factory or plant, and

in the case of any other items which the Project Manager may designate, the Contractor shall secure for the Project Manager or representative and their Inspectors free access to all parts of such factories or plants, and shall furnish to the Project Manager three copies of purchase orders, two copies of mill shipping statements and four copies of shipping statements. Copies of such purchase orders and statements without price information will satisfy this requirement. Moreover, in the case of such materials to be factory or plant-inspected or tested, the Contractor shall give at least 15 days notice to the Project Manager of its intention to commence the manufacture or preparation of such materials.

Certain items may require PATH inspection prior to shipment to the Contractor, in accordance with the requirements of the Contract. For such items, the Contractor shall, at least 15 days prior to estimated shipping date, request, or ensure that the Subcontractor has so requested authorization to ship. The request shall state the date the items will be ready for inspection by the Project Manager and list exceptions or waivers for any Work not completed. The Project Manager may elect to conduct or waive inspection at the source prior to authorization of the shipment. The Project Manager will either authorize the shipment in writing or advise the Contractor that it will conduct further inspection. Authorization by the Project Manager prior to shipment, as specified in this Article, with or without Project Manager inspection, shall in no way constitute acceptance or relieve the Contractor from fulfilling the requirements of the Contract.

All shipments shall be packaged and packed in accordance with the standards accepted as customary and standard in the industry to insure the integrity of equipment during transportation, handling, and storage. Due regard shall be given to protection from loss and pilferage, physical damage, and the effect of the elements and environmental conditions. There shall be no on-deck shipments by cargo vessel without specific approval from the Project Manager. These requirements are in addition to any packaging requirements contained in the Technical Specification for specific items of equipment.

The Contractor shall furnish the necessary inspection and testing instruments and apparatus, and all labor and the facilities for the transportation of testing apparatus.

PATH will provide, at no cost to the Contractor, the operating crews (train engineer and Conductor) for the testing provisions of TS Section 17 that require cars and trains to be operated on PATH's tracks subject to the provisions of Article 202 and TS Section 16.

Article 702 Character of the Work

- A. The Contractor shall furnish work of the best character, including but not limited to all labor and materials, plant, tool supplies and other means necessary to furnish, test and deliver in complete working order an ATC System as required by the Technical Specification, Contract drawings (if any) and other provisions of this Contract, including all additional specifications, drawings and details issued or required as herein provided.
- B. Notwithstanding anything in the Contract to the contrary, it is understood by the Contractor that this Technical Specification and related documents are provided by PATH solely for the purpose of describing in general terms the performance required from the systems or equipment and do not in any way constitute a design by PATH of such systems or equipment. It is further understood that PATH makes no warranties whatsoever concerning such specifications. It is the ultimate

responsibility of the Contractor to meet the performance requirements and other requirements of the Contract.

Article 703 General Guarantee/Warranty

- A. For a period of two years from the date of Conditional Acceptance of the ATC System as specified herein (the "Warranty Period"), the Contractor warrants that the Work conforms to the Contract requirements and is free of any patent or latent defect of the design, material or workmanship and is fit for the intended purpose. Assemblies that must be potted or sealed by design shall have a minimum ten-year warranty. Nothing in the preceding intends or implies that this warranty shall apply to work which has been abused or neglected by PATH or caused by a PATH modification to the ATC System and components thereof without the knowledge and concurrence of the Contractor, or the overhaul/remanufacture thereof by a party other than the Contractor. Defects or failures due to foreign object damage are also excluded from this warranty unless the Technical Specification design requirement was to prevent such damage. The same applies to weather-related failures that occur during extreme conditions that exceed those identified in the Technical Specification. Any element of the original signaling system retained by PATH for integration with the Work is excluded from the Contractor's warranties under the Contract and any defect in the Work which is caused by any defect in or failure of same also shall be excluded to the extent such failure is not due to the negligence of the Contractor.
- B. The warranty provisions contained in Chapter 7 are in lieu of all other warranties, including warranties of merchantability, express or implied, statutory or otherwise, whether arising at law or in equity. The implied warranties of merchantability and fitness for particular purpose are excluded.
- C. In no case shall the warranty expire for any subsystem of the ATC System prior to the successful completion of the reliability demonstration for that subsystem, as described in the Technical Specification.
- D. These warranty requirements, other than a minimum useful life, do not apply to consumable or expendable items of material, as identified by part number and description by the Contractor and agreed to by PATH, such as light bulbs, filters, etc, unless it is determined by PATH that the failure was caused by defective manufacture or design rather than normal wear and tear expected for such consumable items.
- E. The Contractor's obligation under this Article shall include, but not be limited to, at its own cost and expense except with respect to certain work to be performed by PATH personnel as provided in Article 703.H, the prompt repair or replacement of that System, Subsystem, part or component which is defective or inoperable, or which has been damaged due to defects in such item or any other item or items of the Work guaranteed under this Contract, or which fails to comply with the Technical Specification or any other provision of this Contract (the "Warranty Work"). The Warranty Work shall be of a quality or class at least equal to that required by the Contract and shall result in all ATC System components fully meeting all provisions of the Technical Specification.
1. Warranty Work that may be performed by PATH personnel as provided in Article 703.H shall not include work designated as Open Items, which shall be fully performed by the Contractor at its own cost and expense.
 2. The provisions of this Article 703 of are in addition to and not in lieu of the rights afforded PATH under Article 706, "Excessive Defect Guarantee".

- F. The Contractor's obligation under this warranty shall be to provide for the prompt repair or replacement of that item (or part or component thereof) which proves defective or fails to comply with the Contract within the warranty period, such that the item complies with the Contract. Routine maintenance activities shall be performed by PATH at its expense with the guidance and support of the Contractor.
- G. In addition to any specific guarantee/warranty (the words guarantee and warranty are synonymous) specified in this Contract with respect to a particular component, the Contractor hereby unconditionally guarantees to PATH and warrants all designs, workmanship, material, devices, or apparatus inspected, furnished or installed in the ATC System under this Contract and the performance thereof for a period of two (2) years as set forth below.
- H. Upon Conditional Acceptance of the ATC System, all Open Item work and Warranty Work subsequently performed thereon shall be the responsibility of the Contractor to supervise PATH maintenance personnel performing the Work. The Contractor's supervisor shall cooperatively work with PATH's maintenance supervisor and the PATH employees under the PATH supervisor's direction, to perform the work such that no union rules are contravened. The cost of PATH's employees so engaged will be solely PATH's expense.
- I. If any part or parts thereof prove defective either in design, materials, or workmanship during the respective periods of warranty, PATH shall promptly notify the Contractor of the defect. The Contractor, within five (5) working days after such notification, shall meet with PATH in order to assist PATH to commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty including redesign, repair, or replacement, as mutually agreed by both parties, of such part or parts without expense to PATH.
- J. If it becomes necessary to transport major components or subassemblies to off-property locations in order to perform warranty work, the Contractor shall bear the cost of transportation from PATH property to the off-property locations where work is to be performed and the return thereto, and assume all risk of damage while the material and/or equipment are in its possession.
- K. In the event of any defect in design, material or workmanship of a unit or an assembly under warranty, the Contractor and PATH shall mutually consider whether the unit or assembly is to be changed in its entirety or permanently repaired and the defective parts replaced. The decision as to which alternative will be used will be based upon minimizing downtime and total repair costs, and considerations as to whether or not the failure of the unit might be detrimental to the life of the assembly. In case of disagreement, the Project Manager will have the absolute authority, which will be reasonably applied, to decide whether the unit or assembly is to be changed in its entirety or permanently repaired and the defective parts replaced. All modification work shall be completely documented.
- L. Throughout the Warranty Period, the Contractor may use fixtures, jigs, special tools, and diagnostic test equipment provided to PATH under the term of this Contract. Upon completion of the Warranty Period, all fixtures, jigs, special tools, and diagnostic test equipment shall be returned to PATH in good working order acceptable to PATH, or non-acceptable fixtures, jigs, special tools, and diagnostic test equipment shall be replaced, at no expense to PATH, with new fixtures, jigs, special tools and diagnostic test equipment.
- M. Time is of the essence during the Warranty Period and the Contractor shall use all necessary means to support PATH in the Warranty Work in order to secure the prompt return of the defective part into service.

- N. The Contractor shall follow PATH warranty administration procedures and use the report forms provided by PATH.
- O. The Warranty covering any defective work shall be either extended or reinstated for a period of two years effective as of the date when the defect is remedied. If the defect is found to have a significant effect on any other part, component or item, the reinstatement of the warranty shall then be extended to cover the part, component or item so affected as well, and shall start as of the date the interrelated parts, components and items function properly. The warranty extension or reinstatement provided for in this subparagraph shall apply only to the first replacement or repair of any such item, part and component and, in the case of a failure which has a significant effect on another part, component or item, to the first extension of the said warranty to such affected items, parts and components. The Contractor shall not be responsible for the correction of defects which result from changes and modifications undertaken by the Authority or PATH without the consent of the Contractor other than the intended purpose.
- P. In the event during the warranty period that repairs and/or modifications made necessary by defective design, material or workmanship are not permanent or completed due to lack of material or inability to provide repair by the Contractor, the warranty for all affected parts and materials will be extended by the amount of time the affected parts and materials are not in operation in regular service due to lack of Contractor material or inability to provide the proper repair, as determined by PATH.
- Q. In the event a system wide retrofit is required due to defects in design, material or workmanship of a component or an assembly under warranty, or a failure to achieve the reliability requirements of the TS Section 5, the warranty on such a unit or assembly after completion of retrofit shall be extended an additional one (1) year.
- R. The Contractor may request that PATH supply parts from PATH inventory to assist the Contractor to meet its obligations under this guarantee/warranty, which request will be reasonably accommodated. Contractor shall replenish at its own cost PATH's inventory with new items on an item-for-item basis within thirty (30) days of receiving such parts or such longer period as may be agreed to by the Project Manager. If Warranty Work is delayed because of the Contractor's failure to supply the required part(s), the provisions of Article 706.B shall apply in addition to any other remedies available to PATH.
- S. Any and all retrofit or modification work required due to defects in design, materials or workmanship shall be performed by the Contractor (or PATH, when required) at the Contractor's sole expense. Notwithstanding the date of expiration or commencement of any guarantee period, in the event of a design defect, the Contractor (or PATH, when required) shall do the required corrective Warranty Work on all affected items at the Contractor's sole expense.
- T. If the customary standard warranties for material and/or equipment, and installation thereof, exceed the period specified in this Contract, such warranties shall run to PATH. If separate or additional warranties covering the material and/or equipment are furnished by the manufacturer, supplier, or seller of component part or parts of any item of said material and/or equipment, PATH shall have the right, but not the duty, to benefit from these separate or additional warranties, along with the primary warranties set forth therein above. PATH shall look only to the Contractor for fulfillment of all warranty requirements expressed in the Contract, and shall not be required to look to any other party for fulfillment of warranty provisions. The existence of any separate or additional warranties which run to the Contractor from the manufacturer, supplier, or installer of a component part of an item of material and/or equipment shall not relieve the Contractor of its obligation to repair or replace

- any of the material and/or equipment on account of faulty design, manufacture or workmanship during the warranty period.
- U. If the Contractor becomes aware at any time before acceptance by PATH that a defect exists in any items of material and/or equipment or services, the Contractor shall promptly correct the defect. If PATH determines that a defect exists in any of the items of material and/or equipment or services accepted by PATH under the Contract, PATH shall promptly notify the Contractor of the defect, in writing. Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted material and/or equipment or services, the Contractor shall submit to PATH, in writing, within fifteen (15) days, a recommendation for corrective actions, together with supporting information in sufficient detail for PATH to determine what corrective action, if any, shall be undertaken.
- V. The Contractor shall promptly comply with any timely written direction from PATH to correct or partially correct a defect, at no increase in the Contract Price. The Contractor shall also prepare and furnish to PATH any data and reports applicable to any correction required under this Paragraph (including revision and updating of all other affected data called for under the Contract) at no increase in the Contract Price. The Contractor shall incorporate applicable safety defect fixes and other software and hardware updates implemented in other properties at no increase in the Contract Price.
- W. The Contractor shall not be responsible for the correction of defects in PATH-furnished property, except for defects in installation by Contractor under the Contract, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modification or other work.
- X. For Warranty Work to be performed as specified in this Article 703, Contractor personnel shall be entitled to use PATH facilities and special equipment to perform such work per the provisions of 703.H, provided that the work is conducted during normal hours, does not interfere with other PATH activities, and is performed in accordance with PATH policies, procedures and directives. Damages to PATH property caused by Contractor representatives shall be the sole responsibility of the Contractor, and shall be corrected at the Contractor's expense.
- Y. All guarantees and warranties under this Contract are fully enforceable by PATH acting in its own name.
- Z. The Contractor understands and agrees that the purpose of this Contract is to design, produce and deliver an ATC System so as to render it entirely suitable for its intended use and capable of performing with a Mean Time Between Failures (MTBF) and a Mean Time Between Functional Failures (MTBFF) for all ATC equipment as specified in TS Section 5, and hereby warrants that the system will perform for the intended purpose including MTBF requirements during the Warranty Period.
- AA. Prior to delivery of the first ATC equipment and at a time determined by the Project Manager, the Contractor shall supply a definitive plan acceptable to PATH for fulfilling its warranty obligations during the Warranty Period. The plan shall include staffing, planned parts inventory and procedures in order to provide the necessary warranty support.
- BB. Any guarantee or retrofit work shall be accomplished with minimum disruption to the PATH's operation and its maintenance and service facilities. The Project Manager at his sole discretion shall determine the availability of facilities for guarantee or retrofit work.
- CC. The Contractor shall assign senior service representatives with expertise in the areas of OCC, wayside, and carborne ATC equipment in numbers sufficient to meet all its

obligations under this Chapter. Until the level of warranty usage justifies reduction in personnel, service representatives shall be available on a full-time basis for at least the first six (6) months of the Warranty Period, and with the approval of the Project Manager service representatives shall be available within twenty-four (24) hours for the duration of the Warranty Period at PATH's premises, at the Contractor's field office described in TS Section 19.1.6, or other location to be designated by the Project Manager.

- DD. If defective units are claimed by the Contractor to be damaged by means other than their use for the intended purpose, the Contractor shall prove such causes at its own expense and PATH will comply with any reasonable request by the Contractor to provide operation, maintenance or other performance related data in connection therewith.
- EE. Each and every piece of equipment, unit, component, or part thereof that is replaced, repaired, adjusted or serviced in any manner under the terms of guarantee/warranty by the Contractor and its Subcontractors, Suppliers during the guarantee/ warranty period shall be accurately reported to the Project Manager on forms supplied by PATH within five (5) working day of the completion of the warranty work. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component unit or part thereof.
- FF. The Contractor acknowledges and agrees that by the furnishing of the guarantees/ warranties under this Article it is not intended that said guarantees/warranties shall in any way or manner decrease, modify, affect, relieve or excuse the Contractor, Subcontractors, Suppliers or any other person or persons from their responsibility or liability under this Contract or applicable law for the breach of which they would be responsible and liable in damages to the Contracting Party, PATH or any other person or persons.
- GG. The Project Manager or his representative shall have the right to inspect all work done under such specific guarantee/warranty subject to the same terms applicable to the Work under the Contract generally.
- HH. The Contractor shall provide parts as selected from the Initial Provisioning List by PATH. Ordered parts shall be delivered to PATH within 60 days of the order or such longer period as may be agreed between the parties in consideration of the circumstances at the time. The Contractor shall provide to PATH for approval the proposed lead-time for each part and component that the Contractor expects or has reason to believe will have a lead-time of greater than 60 days. The list shall include a description of why the Contractor has included each item and the list shall be submitted three (3) months before cutover of the first ATC System section into revenue service.
- II. The Contractor shall guarantee the availability of all ATC System software, spare parts, initial provisions, and ATC components, or, upon PATH approval, substitutes thereof of service-proven equivalent or better, for a period of fifteen (15) years from Conditional Acceptance of the ATC System equipment, and will supply the same at a fair and reasonable cost to PATH upon request. No single source of supply of components will be permitted by PATH except when justified and with the written approval of the Project Manager.
- JJ. PATH, prior to expiration of the warranty, may negotiate and enter into maintenance agreements including obsolescence monitoring and obsolescence management with the Contractor that shall cover both ATC System hardware and software provided by the Contractor.

Article 704 Manufacturer's Warranties and Guarantees

The Contractor shall use all commercially reasonable efforts to obtain all manufacturers' warranties and guarantees of all equipment and materials required by this Contract in the names of PATH and shall deliver same to PATH; provided that the delivery of such manufacturers' warranties and guarantees shall in no respect relieve the Contractor of its obligation under the preceding provisions of this Chapter. Unless expressly waived in writing by the Project Manager, no such manufacturer's warranty or guarantee shall expire prior to the date of expiration of the warranty/guarantee provided by the Contractor for such item under this Chapter nor shall it contain any terms substantially different than required under this Contract. PATH, by accepting the manufacturer's warranties and guarantees provided by the Contractor, in no respect waives any of its rights as against the Contractor, and should there be a failure of the applicable Manufacturer to honor any such guarantee or service obligation or a failure of the Contractor to secure any such rights from the manufacturer for PATH, PATH may, in its discretion, enforce any such rights against the Contractor.

Article 705 Payment for Services Required to be Provided by PATH

In case the Contractor shall fail to repair or replace timely, any item, part or component or otherwise perform necessary or required Warranty Work, not otherwise to be performed by PATH personnel, in accordance with the terms of this Article, or if immediate repair or replacement of Work required to be performed by Contractor is determined by the Project Manager to be necessary to maintain operation, upon notice to the Contractor, the Project Manager shall have the right to cause such repair or replacement to be made, as Contractor's agent, at the expense of the Contractor in accordance with PATH's "Schedule of Rates for Services Rendered to Outside Parties" in effect at the time the repair or replacement is made.

If such difference is in its favor, PATH may deduct from any monies due to the Contractor, and if such monies be sufficient, the balance thereof shall be payable to it on demand; if in the Contractor's favor, it shall constitute part of the Final Payment. Costs to PATH incurred under Article 703.H will not be deducted from monies due the Contractor.

The exercise by PATH of its right to take over the Work, as stated in the Article of the Standard Contract Terms and Conditions, entitled "Rights and Remedies of PATH", shall not release the Contractor from any of its obligations or liabilities under the Contract.

Article 706 Excessive Defect Guarantee

- A. Without limitation of PATH remedies, in the event that at any time prior to the expiration of the final Warranty Period of any ATC System component per Article 703, or in the case of unit or components, systems or subsystems carrying longer Warranty Periods, at any time prior to the expiration thereof, but excepting equipment which has been abused, modified without the Contractor's knowledge and concurrence, overhauled/remanufactured by a party other than the Contractor, or where PATH has failed to maintain or has neglected the equipment, PATH may declare an excessive defect if any of the following occur: (a) not used; or (b) all system components delivered or under warranty do not maintain an average aggregate Mean Time Between Failures (MTBF) or Mean Time Between Functional Failures (MTBFF) as required by TS Section 5, throughout the time period beginning

three hundred sixty-five (365) days after ATC System Conditional Acceptance or (c) failures of any kind of the same LLRUs on the same system, subsystem or component leading to failure rate exceeding four (4) units or fifteen (15) percent of the total amount, whichever is greater, of LLRUs existing in the same system, subsystem or component during any period of twelve (12) consecutive months beginning at ATC System Conditional Acceptance based on the average number of such, system, subsystems or components in service during such twelve month period.

For example, if failures of speed sensors, which can be an LRU of the carborne ATC equipment, meet the criteria of one of the three categories shown above, PATH will declare an excessive defect of the speed sensor, regardless of the failure type (i.e. sensor, broken speed sensor wiring, connector, or a software problem that can only be solved with changing speed sensor type currently utilized). The Contractor would then proceed with remedies as explained in the following paragraphs.

- B. Whenever an excessive defect is declared, without cost to PATH, the Contractor shall within sixty (60) days institute an approved retrofit program and make and implement any such design changes, and/or modifications, repairs, adjustments and replacements on all delivered and non-delivered equipment, regardless if the Warranty Period has expired for an individual equipment, as shall correct or prevent such failure and enable the equipment to achieve the aforesaid MTBF and MTBFF. With respect to delivered equipment, repairs, adjustments and replacements shall be performed by PATH personnel in accordance with Article 703.H.
- C. Whenever an excessive defect is declared, notwithstanding the date of expiration or commencement of any guarantee period as to any particular system, subsystem, or component, the Contractor shall retrofit all affected equipment then in service, and shall implement any necessary design or material modifications as to equipment not yet delivered, including re-testing of such redesigns or modifications in accordance with the provisions of TS Section 21, Quality Assurance and Control, that apply to the affected system. If any such retrofit work is required, the Warranty Period as to the affected system, subsystem or component shall be reset to the warranty terms shown in this Contract from the completion of such retrofit work or the expiration of the previously effective guarantee period, whichever is later.
- D. Whenever an excessive defect is declared, each Accepted item of affected equipment shall be deemed to have the defective condition as a warranty defect and each item of affected equipment not yet Accepted shall be deemed to have the defective condition as an Open Item.
- E. MTBF and MTBFF shall be calculated as specified in TS Section 5. "No Defect Found" (NDF) reports will be counted against the "Mean Time Between Failures" standards.
- F. PATH shall give the Contractor prompt notice of excessive defects or failures as they are identified. In the event that such defects or failures require the removal of components or assemblies for the purpose of repairs or modifications, and such removals render affected Cars or fixed ATC equipment inoperable or unfit for safe and efficient operation in regular service, the Contractor, at no expense to PATH, shall furnish within forty-eight (48) hours or such longer time period as may be approved by the Project Manager an adequate number of spare components or assemblies for the temporary use by PATH so as to minimize and better yet to eliminate the downtime of the affected Cars or fixed ATC equipment while repairs or modifications are being done.

- G. The rights and remedies of PATH provided in this Paragraph shall not be affected in any way by any terms or conditions of the Contract concerning the conclusiveness of inspection and acceptance; and are in addition to and do not limit any rights afforded to PATH by any other Paragraph of the Contract.
- H. Within thirty (30) days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, PATH, at its sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at either Contractor's facility or at PATH provided location, as determined by PATH.
- I. In no event shall PATH be responsible for any extension or delays in the scheduled deliveries or periods of performance under the Contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by an Extra Work authorization with adequate consideration to PATH. This clause shall not be construed as obligating PATH to increase the Contract Price. Any failure or refusal of the Contractor to take corrective action as required by this Paragraph shall be grounds for the Contractor default in accordance with the Standard Contract Terms and Conditions.

Article 707 Quality Assurance

- A. The Contractor shall be responsible for quality assurance and for assuring that the Work conforms to the Technical Specification. The Contractor shall maintain an effective quality control and quality assurance program ("QA Program") planned and developed in conjunction with other Contractor functions necessary to satisfy the Contract requirements. The QA Program shall establish and implement procedures to ensure that acceptable supplies only are presented to the Project Manager, and shall demonstrate both recognition of the quality requirements of the Contract and an organized approach to satisfy these requirements. The program shall ensure that quality requirements are determined and satisfied throughout all phases of Contract performance, including as applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage and systems check and shall provide for the early and prompt detection of actual or potential deficiencies, trends, or conditions which could result in unsatisfactory quality and the Contractor must be prepared to demonstrate to the Project Manager's satisfaction the program is effective and in operation. After approval of the QA Program by PATH, no changes shall be made without the express written consent of PATH, which shall not be unreasonably withheld or delayed.
- B. After approval of the QA Program by PATH, the Contractor shall maintain the staffing levels as noted in the approved QA Program. Project Manager may authorize a reduction in staffing level provided the Contractor submits reasonable explanation together with credit due to PATH as the result of staff reduction.
- C. Detailed requirements for the QA Program are set forth in the Technical Specification.
- D. PATH shall stop work if the QA Program is not approved within the specified time or the process advocated in the QA Program is not followed.

Article 708 PATH Field Inspection Offices

The Contractor shall, at no additional cost to PATH, provide PATH with a private office for the use of PATH staff (up to 2 persons) at the Contractor's engineering and design facility.

Article 709 Railcar/Signal System Interface

The Contractor shall comply with the requirements of the Railcar / Signal System Interface Control Document (ICD) provided in the appendices to the Technical Specification, which documents the mechanical, electrical and functional interfaces of the carborne ATC subsystem and the railcar. PATH will consider any updates recommended by the Contractor. Per Article 104, however, if the Contractor requires changes to the ICD which cause changes to the railcar and/or the wayside, Contractor will be responsible for the cost of such changes.

Article 710 No Release of Contractor

Any provision of this Contract for testing, inspection or approval, and any actual testing, inspection or approval, of any materials, workmanship, plant, equipment, drawings, project, methods of procedure, or of any other thing done or furnished or proposed by the Contractor to be done or furnished in connection with the Contract is not deemed as a waiver by PATH of its rights under this Contract. Any approval of such things shall be construed merely to mean that at that time the Project Manager knows of no good reason for objecting thereto. No such provision for testing or inspection, no omission of testing or inspection, and no such approval shall release the Contractor from its full responsibility for the accurate and complete performance of the Contract or from any duty, obligation or liability imposed upon it by the Contract or from responsibility for injuries to persons or damage to property.

Article 711 Errors and Discrepancies

If, in the performance of the Contract, the Contractor discovers any errors or omissions in the Contract, or in the documentation furnished by PATH in the construction undertaken and executed by the Contractor, the Contractor shall immediately notify the Project Manager. The Project Manager will verify the same and cause a correction to be made if necessary.

If, with the knowledge of such error or omission and prior to the correction thereof, the Contractor proceeds with any Work affected thereby, the Contractor shall do so at its own risk and the Work so done shall not be considered as Work done under and in performance of this Contract unless and until approved and accepted.

Chapter 8 MISCELLANEOUS PROVISIONS**Article 801 Correspondence Tracking and Document Management**

PATH has established a method of numbering all correspondence sequentially between the Contractor and PATH and is using a document management system. The method of numbering correspondence shall be used for the Contract after the NTP. The Contractor shall use an approved document management system that it has used successfully on previous projects. The Contractor shall be responsible for maintaining correspondence tracking reports through its document management system. The reports shall indicate the status of all correspondence and shall be in a form acceptable to PATH. The reports shall be transmitted to PATH monthly. The Contractor shall be responsible for maintaining the tracking reports for both PATH initiated correspondence and the correspondence initiated by the Contractor.

Article 802 Initial Provisions, Special Tools, Test Equipment, & Mock-Ups

- A. The Price Forms provide a list of initial provisions, special tools, and ATC test equipment for the ATC System. Initial provisions are defined in TS Section 18.6.
- B. PATH reserves the right, up to ATC System Conditional Acceptance, to modify the quantities and items for initial provisions, special tools, test equipment, and mock-ups provided in the Price Forms and Exhibit E, including adjusting the quantity of items or not purchasing a specified item, and the Total Contract Price shall be adjusted accordingly. After 40 months from NTP an adjustment due to currency exchange (applied to items, only, for which the source is exclusively European) shall apply using the Euro to US dollar value shown in the "Currencies" table that is further designated "U.S.-dollar foreign exchange rates in late New York trading" published by the Wall Street Journal at the date of the order to the prices thereafter. For the purposes of this Article, the initial currency exchange 1.5094 US\$ to 1.00 Euro shall apply.
- C. No later than 182 days prior to the scheduled delivery date for initial provisions, the Contractor shall provide PATH with the list of initial provisions that have a shelf life shorter than the anticipated usage day. The usage day shall be determined by the Contractor based on the reliability numbers for the applicable initial provisions applied to the Master Project Schedule. PATH will determine the delivery date for these initial provisions sixty (60) days after receiving the submitted list.
- D. Per Article 703, the Contractor guarantees that a supply of all initial provisions or interchangeable equivalents, excluding COTS items, will be available for fifteen (15) years from ATC System Conditional Acceptance. For five (5) years following the end of the general warranty period, the Contractor agrees to supply all initial provisions or interchangeable equivalents to PATH as PATH may request at the unit prices on the Price Forms, subject to a one-time 20% increase at the end of the warranty period with a minimum supply of four (4) pieces per item. For lower quantities, the unit prices shall be the same as those offered to other preferred customers. For parts (in individual quantities of four or more) that are manufactured in Europe, the adjusted unit prices from the Price Forms shall be further adjusted annually for inflation (using information from the French Bureau of Statistics – INSEE) using the following formula:
$$\text{Prev} = \text{Pwar} * (0.5 * \text{ICHT-IME1} / \text{ICHT-IME0} + 0.5 * \text{EBIQ1} / \text{EBIQ0})$$
where Prev is the inflation adjusted price for the part at date X; Pwar is the price at the end of the warranty period date that includes the 20% increase described above; ICHT-IME1 is

the index of mechanical and electrical wages at date X; ICHT-IME0 is the index of mechanical and electrical wages at the end of the warranty period date; EBIQ1 is the index of power utility semi-manufactured and investment goods at date X; and, EBIQ0 is the index of power utility semi-manufactured and investment goods at the end of the warranty period date. The ICHT-IME values reflect wage escalation; EBIQ values reflect escalation in services. In addition, an adjustment due to currency exchange (applied to items, only, for which the source is exclusively European) shall apply using the Euro to US dollar value shown in the "Currencies" table that is further designated "U.S.-dollar foreign exchange rates in late New York trading" published by the Wall Street Journal at the date of the order to the prices thereafter..For the purposes of this Article, the initial currency exchange 1.5094 US\$ to 1.00 Euro shall apply.

For parts (in individual quantities of four or more) that are manufactured in the US, annual adjustments for inflation using the US Department of Labor, Bureau of Labor Statistics, Producer Price Index commodity code 14420304 (all other railroad and streetcar equipment, parts and accessories, including truck assemblies) shall be applied.

For COTS items (or interchangeable equivalents), the Contractor guarantees the supply thereof for fifteen (15) years from ATC System Conditional Acceptance, and shall supply such items at cost plus 26%.

- E. The Contractor shall establish temporary office space at a location as directed by the Project Manager, no later than the date of the first cutover of the ATC System by PATH. The Contractor shall be responsible for the costs of supplying utility services to such temporary facilities, including the security of the offices. The temporary accommodations shall remain in place through the end of the Warranty Period. The facilities shall be removed promptly, at the Contractor's expense, at the end of that period.

Article 803 Contractual Relationship

The Contractor shall act as an independent contractor and not as an agent of PATH except as may be specifically provided in this agreement. The Contractor shall maintain complete control over its staff and its Subcontractors and Suppliers at every tier. Persons employed by the Contractor in connection with this Contract shall not be considered employees of PATH, and nothing contained in this Contract or any Subcontract shall create any contractual relationship between such Subcontractor or Supplier and PATH. The Contractor shall perform the Work in accordance with its own methods, subject to compliance with this Contract.

Article 804 Non-Publication

The Contractor, its Subcontractors, or its Materialmen shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority, PATH, or to the fact that goods have been, are being, or will be provided to it in connection with this Contract, unless the Contractor, its Subcontractors, and Materialmen first obtain the written approval of PATH. Such approval may be withheld if for any reason PATH believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

Article 805 Long-Term Technical Support and Services Contract

PATH intends to enter into an Agreement for Long Term Technical Support and Services (LTTSS) contract with the Contractor. Such an Agreement will be a separate contract and will be negotiated either prior to Notice to Proceed, or prior to Final Completion. The general approach and requirements are provided as follows, and shall be used as the basis of the pricing that is required on Price Form 2.3. The LTTSS would be a task order contract for five years after Final Completion, and then for an additional five year period. Price estimates for each of the task order contracts, and estimates for potential future work, are defined and shown on the Price Forms.

The Contractor shall provide engineering and implementation support on a Task Order basis as part of the LTTSS contract. This support would include Preliminary Evaluations, Detailed Evaluations and Implementation Services for requested modifications to the ATC System as directed by PATH.

The services provided through the LTTSS contract would include but not be limited to a project feasibility assessment, cost estimate, project completion schedule, hardware analysis (modification), software analysis (modification), safety assessment, performance expectation, operation testing, in-service safety certification, all drawing and documentation changes, configuration management entries, maintenance and engineering manual changes, training outline for the modification and a written guarantee of all work performed.

The requirements for each type of service; Preliminary Evaluation, Detailed Evaluation and Implementation for a proposed modification are detailed below.

805.1 Request for Preliminary Evaluation

Upon written request from PATH, the Contractor shall at no cost, provide a budget level cost estimate for the Implementation including the associated schedule as part of the Preliminary Evaluation of the proposed PATH ATC System modification. These cost estimates shall be based on an agreed upon price schedule for the hours required.

The Preliminary Evaluation shall be provided within fifteen (15) workdays of receiving the preliminary scope of work from PATH.

The Contractor may request clarification of the preliminary scope of work and PATH will provide reasonable clarification. However, the Contractor shall rely on its own expertise with the ATC System to determine if all items are understood and that the preliminary scope is complete.

When directed by PATH by issuance of the Task Order, the Contractor shall complete the Preliminary Evaluation of the proposed modification, which shall include at least the following:

- (a) Updated scope of work.
- (b) Outline of all systems and subsystems that will be affected.
- (c) Identify vital functions affected.

- (d) Identify non-vital functions affected.
- (e) Identify operational impacts.
- (f) Cost Estimate for performing a Detailed Evaluation.
- (g) Schedule for performing a Detailed Evaluation.
- (h) Budget level Estimate for the Implementation of the modification consisting of an order of magnitude or range of cost.
- (i) Tentative Schedule for the implementation of the modification including earliest starting date, duration and earliest completion.

The cost estimates shall be based on an agreed upon price schedule for hours required to complete the Detailed Evaluation and Implementation.

After reviewing the Preliminary Evaluation, PATH will determine whether or not to proceed further. If PATH decides to proceed, it shall issue a Task Order authorizing the Detailed Evaluation of the modification at the cost and schedule provided by the Contractor under the Preliminary Evaluation.

805.2 Request for Preliminary Evaluation

When directed in writing by PATH via issuance of a Task Order, the Contractor shall complete the Detailed Evaluation of the proposed modification, which shall include at least the following:

- (a) Sufficient design to positively identify every system and subsystem affected.
- (b) Feasibility analysis to include safety
- (c) Description of all hardware and software needs.
- (d) Detail the entire scope of work.
- (e) Identify each major task and quantity of hours necessary for completion.
- (f) Identify on-site testing requirements
- (g) Identify each task PATH is capable of performing, separating it from the work only the contractor can do.
- (h) Provide a detailed project cost estimate for implementing the proposed modification.
- (i) Provide a detailed schedule for the Implementation of the proposed modification.

After reviewing the Detailed Evaluation, PATH will determine whether or not to proceed further. If PATH decides to proceed, it shall issue a Task Order authorizing the Implementation of the modification at the cost and schedule provided by the Contractor under the Detailed Evaluation.

805.3 Request for Preliminary Evaluation

When directed by PATH via issuance of a Task Order, the Contractor shall complete the Implementation of the proposed modification, which shall include at least the following:

- (a) Engineer and provide a final design.
- (b) Provide design submissions for review and approval.
- (c) Document all changes to software.
- (d) Thoroughly test software, through simulations, prior to installation.
- (e) Certify all software changes prior to delivery
- (f) Install software and perform operational tests, as approved by PATH, under mutually agreed upon parameters prior to placing in service.
- (g) Perform all necessary modifications to hardware.
- (h) Thoroughly test all newly manufactured hardware prior to delivery.
- (i) Test all on the shelf hardware for defects prior to installation.
- (j) After Installing hardware or perform modifications to hardware, operational tests, as approved by PATH, shall be performed under real-world conditions, prior to placing in service.
- (k) Shall utilize accepted configuration management practices to monitor, develop and finalize all documents, detailed wiring, hardware, software code and any other item deemed necessary to complete the modification.
- (l) All Installation and testing shall be performed based on the approved Detailed Evaluation.
- (m) Assist PATH in obtaining all required FRA approval and acceptance, if applicable.
- (n) During the implementation, every reasonable effort must be made to reduce inconvenience to PATH and the riding public.

The Contractor shall be paid according to the reasonable, actual and necessary hours spent on the project, based on the Detailed Evaluation's estimate, not to exceed 105% or unless mutually agreed to in writing otherwise. If the final cost exceeds 105%, the contractor must provide documentation and analysis explaining what caused the excessive hours and why the hours could not be reasonably based on the estimation. It is PATH's sole discretion to accept the justification or hold the Contractor to the original estimate.

The Contractor shall guarantee all work performed for two years, provide a written warranty and certify all aspects of the project through a submittal letter of completion and certification of in-service safety. When appropriate, the Contractor shall provide training and upgrade instructional, maintenance and engineering manuals.

Article 806 Orthstar

PATH will contract with Orthstar and the Contractor shall work with PATH and Orthstar to update the Train Operator Simulator (TOS) (per Technical Specification Section 20.4.2) that

PATH acquired via the Kawasaki Railcar Contract and for which Orthstar was the supplier, in order to permit PATH's continued, productive use of the TOS for training and other purposes. The Contractor shall include key milestones for the progress of this effort within the Master Project Schedule, in accordance with the timing of the two stages of modifications per TS Section 20.4.2.

The Contractor has submitted a budget provided in Exhibit F, for performing the work, including hours and costs of Contractor staff that are required for providing data, addressing issues, and ensuring an acceptable, fully functional product. PATH may audit Contractors work and activities related to the budget and request adjustments to the price.

For the Price Summary Form 14, line item 5 the Contractor will only include its own support cost for this upgrade. Contractor will coordinate through PATH the information to be provided to Orthstar.

The Contractor shall use its best efforts to ensure the successful completion of this effort within the scope and established budget, but PATH agrees that should actions, lack of action or response, or other unforeseen elements arise or occur such that Contractor exceeds the established budget, PATH will reimburse Contractor for such extra costs as Net Cost Work, provided that such extra costs arise through no fault of the Contractor. Contractor will advise PATH periodically of the status of the program and notify PATH of potential cost overruns as early as possible. Any amounts left over from this effort will be credited to PATH.

Exhibit A: Escrow Agreement

Master Escrow Agreement

This master escrow agreement ("Agreement") made and entered into by and among Iron Mountain Intellectual Property Management, Inc., having a principal place of business at 2100 Norcross Parkway, Suite 150, Norcross, GA 30071 ("Agent"), _____, having a place of business at _____ ("Contractor"), PATH, having a principal place of business at 225 Park Avenue South, New York, NY 1003, and any additional party signing a Subcontractor Acceptance Form attached to this Agreement ("Subcontractor").

This Agreement is made pursuant to Contract _____ ("Contract") calling for the establishment of an Escrow Agreement between PATH and the Contractor and pursuant to the Subcontract between _____ and the Subcontractor ("Subcontract") calling for the establishment of an Escrow Agreement between PATH, _____ and the Subcontractor.

Recitals

Whereas the Contractor and PATH have entered into a License Agreement ("License Agreement") dated **** being part of the Contract pursuant to which the Contractor has agreed to have granted to PATH a license to use:

- 1) computer software programs and related documentation, and
- 2) electronic microprocessor boards or components (whether digital, analog, or a combination thereof) or any hardware item delivered as part of the Contract upon specified terms and conditions; and

Whereas, pursuant to the Contract, the Contractor has acknowledged that PATH's ability to adequately utilize products received under the Contract would be seriously jeopardized in the event of the Contractor's failure to maintain and support such products; and

Whereas, the Contractor has agreed with PATH to establish and maintain in escrow the "source code and documentation" relating to the software programs and "electronic design and manufacturing drawings, a list of licenses necessary but not the licenses themselves documents and information" relating to the hardware; and

Whereas the Subcontractor and _____ have entered into a License and Agreement ("Subcontractor License Agreement") pursuant to which the Subcontractor has agreed to grant _____ and PATH a license to use certain computer software programs and related documentation and electronic design and manufacturing drawings, documents, a list of licenses necessary but not the licenses themselves and information upon specified terms and conditions; and

Whereas, pursuant to the Subcontractor License Agreement, the Subcontractor acknowledges that _____ and PATH's ability to adequately utilize products received under the License Agreement would be seriously jeopardized in the event of the Subcontractor's failure to maintain and support such products; and

Whereas, the Subcontractor has agreed with _____ to establish and maintain in escrow the source code and documentation and electronic design and manufacturing drawings, documents and information relating to the products, a list of licenses necessary but not the licenses themselves; and

Whereas, the Contractor and PATH wish to preserve maximum flexibility in the scope and performance of services rendered for the purpose of verifying the accuracy, usability, functionality, currency, and completeness of the materials held, or anticipated to be held in the escrow deposit account ("Verification Services"), the Subcontractor Acceptance Form and, if applicable, Exhibit S-5, shall provide a detailed description of the specific Verification Services agreed to by the Subcontractor, PATH, the Contractor, and, if applicable, the Agent.;

Now, therefore, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

105.7.1 Deposit in Escrow

105.7.1.1 Definitions

The following definitions apply to terms used within this Agreement:

- a. "Licensed Product(s)" shall mean the identified computer programs and hardware furnished to the Contractor or by the Subcontractor pursuant to the terms and conditions of the Subcontract and subsequently furnished to PATH by the Contractor pursuant to the terms and conditions of the Contract. Licensed Products shall include all Proprietary Software, Third Party Software, Custom Software, Third Party Hardware and Proprietary Hardware that are required for the proper and complete functioning of the ATC System and all of its components as stipulated in the Subcontract and in the Contract.
- b. "Licensed Material(s)" shall mean the supportive documentation and materials required to be furnished to the Contractor under the Subcontract and required to be furnished by Contractor to PATH under the Contract with respect to the Licensed Products. The Licensed Material to be delivered by the Subcontractor to Contractor under the terms of the Subcontract and delivered by Contractor and utilized by PATH under the terms of the Contract shall include but not be limited to complete installation, maintenance, operation and trouble-shooting documentation for the Licensed Products.
- c. "Purchased Hardware Products" shall mean all computer hardware delivered pursuant to the Contract or compatible replacement hardware being intended for use in connection with any Licensed Products.
- d. "Updates" shall mean any periodic releases of a Licensed Product encompassing any improvements, updates and other changes, which are logical improvements of said Licensed Product, and which have been implemented in PATH's ATC System. Updates shall include releases, which are generally made available at no additional cost to the Subcontractor's licensees or the Contractor's licensees who have a current maintenance agreement with the Contractor in effect. Once delivered to the Contractor or PATH, Updates shall become part of the Licensed Products and documentation concerning Updates shall become part of the Licensed Materials.

- e. "Proprietary Software" shall mean any software shell, firmware and programs that are Subcontractor or Contractor owned or licensed or are integral to Subcontractor or Contractor products. Custom programs, data files or routines, which operate within but are not part of Proprietary Software, are defined separately under subparagraph h. "Custom Software".
- f. "Proprietary Hardware" shall mean any hardware provided as part of the Licensed Products by the Contractor or Subcontractor(s) which are not available off-the-shelf and / or available from multiple vendors.
- g. "Third Party Software" shall mean computer programs, including all operating systems, compilers, database management systems, development tools, utilities and other programs owned by persons or entities other than the Contractor as set forth under the License Agreement and which form any part of Licensed Products hereunder. Third Party Software shall also mean computer programs, including all operating systems, compilers, database management systems, development tools, utilities and other programs owned by persons or entities other than the Subcontractor as set forth under the Subcontractor License Agreement and which form any part of Licensed Products hereunder.
- h. "Third Party Hardware" shall mean all hardware available from persons or entities other than the Contractor as set forth under the License Agreement and which form any part of Licensed Products hereunder. Third Party Hardware shall also mean computer assemblies, peripherals and accessories provided by persons or entities other than the Subcontractor as set forth under the Subcontractor License Agreement and which form any part of Licensed Products hereunder.
- i. "Source Code Programs" shall mean the Licensed Products as written by programmers or otherwise created so that they are intelligible to humans and which can also be compiled, assembled, interpreted or otherwise converted by standard utilities directly into executable form for processing on a computer system.
- j. "Custom Software" shall mean any programs written by the Contractor or Subcontractor which are not Third Party Software including all software, firmware or programs developed during the term of the Contract which result in direct enhancements to the Contractor owned products based upon PATH's specification and utilizing PATH's design and/or proprietary information such as attributes, objects, algorithms or programs, and configurations that are specific to PATH's System.

105.7.1.2 Initial Deposit

The Subcontractor Acceptance Form shall provide a description of the verification process (see also Exhibit S-5 (1)). Within thirty (30) days subsequent to the execution of a Subcontractor Acceptance Form or as otherwise specified in the Subcontractor Acceptance Form, the Subcontractor shall submit to Agent for deposit into escrow the following Source Material included in its scope of supply for the then-current version of the software and hardware design and manufacturing documents("Source Material"):

- a. All Licensed Products, including
 - (i) The Source Code for all Standard Software, Third Party Software (excluding COTS), and Custom Software and all Confidential Materials. Notwithstanding delivery of the Custom Software to the Escrow Agent, PATH retains

ownership rights of such Custom Software as provided for in this Article and may obtain possession thereof at any time from the Escrow Agent. In the event the Contractor, after using commercially reasonable efforts, is unable to deliver the Source Code for any Third Party Software, or Confidential Materials from a Subcontractor, the Contractor shall cause such Source Code for Third Party Software or Subcontractor Confidential Materials to be deposited in escrow by the Third Party or Subcontractor pursuant to a separate escrow agreement between the Third Party or Subcontractor, PATH, and an Escrow Agent.

- (ii) Electronic design and manufacturing drawings, documents, a list of licenses necessary but not the licenses themselves and information for all hardware for the Licensed Products, with the exception only of COTS. .

b. All Licensed Materials

- c. All additional software programs such as editors, compilers, assemblers, etc., which are required in order to convert the Source Code Programs into machine-readable, executable form suitable for installation in the purchased hardware.

The Source Material shall be submitted in accordance with the requirements of Exhibit S-1, Material To Be Deposited By The Subcontractor.

The human-readable Source Material shall be submitted on industry-standard electronic media. The Subcontractor shall, using Exhibit S-2, identify each item being delivered and certify the completeness and accuracy of the Source Material in an accompanying letter to the designated Agent and will transmit a copy to the Contractor and PATH. Within ten (10) days, after receipt of the Source Material, Agent will conduct a visual deposit inspection. At completion of the deposit inspection, if Agent determines that the labeling of the media matches the item descriptions and quantity on Exhibit S-2, Agent will date and sign Exhibit S-2 and send a copy thereof to Subcontractor, Contractor, and PATH. If Agent determines that the labeling does not match the item descriptions or quantity on Exhibit S-2, Agent will (a) note the discrepancies in writing on Exhibit S-2; (b) date and sign Exhibit S-2 with the exceptions noted; and (c) send a copy of Exhibit S-2 to Subcontractor, Contractor, and PATH. In the event the Subcontractor, after using its best efforts, is unable to deliver Third Party Software and Third Party Hardware design information for deposit in escrow as provided in this Section, the Subcontractor shall cause such materials to be deposited in escrow by the third party pursuant to a separate escrow agreement between the third party and the Contractor and/or PATH, as required. The form of the escrow agreement shall be substantially similar to that included herein. All correspondence regarding Exhibit S-2 will be pursuant to the terms of Section 105.7.13, Notices and Correspondence.

105.7.1.3 Acceptance of Deposit

Agent's acceptance of the Source Material occurs upon Agent's delivery of Exhibit S-2, signed by Agent, to Contractor as described above. Unless and until Subcontractor makes the initial deposit with Agent, Agent shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account.

105.7.1.4 Revision Deposits

The Subcontractor shall deliver revisions of the Source Material to Agent, along with a revised Exhibit S-2, as and when corresponding revisions of Licensed Products become available to the Contractor and to PATH under the License Agreement. At such time as any

revisions to the Source Material are deposited, Agent shall give written notice of such deposits to the Contractor and PATH, which shall include a copy of the Subcontractor's revised Exhibit S-2.

105.7.1.5 Deposit Verification Procedure

- a. Exhibit S-5 defines the procedures for verification of the Source Material. The Subcontractor Acceptance Form, Section.3, shall describe the specific verification process to be followed for a specific Subcontractor. PATH, Contractor and Subcontractor shall each have the option to request a third party agent to perform the Verification Services, as described and consented to on the Subcontractor Acceptance Form, on their behalf. The Subcontractor Acceptance Form shall not limit this option. All such Verification Services provided, by a third party agent, shall be paid for by the requestor(s).
- b. Verification Services performed by the designated agent of PATH or Contractor may include the Agent and Agent's subcontractor, the Subcontractor, or an external agent designated by PATH or Contractor, subject to approval of Subcontractor.
- c. PATH or Contractor shall only request Verification Services that have been expressly consented to in the Subcontractor's Acceptance Form or otherwise consented to in writing by the Subcontractor.
- d. Upon receipt of request for Verification Services or pursuant to the terms of a Subcontractor Acceptance Form and completed Escrow Deposit Questionnaire (attached to Subcontractor Acceptance Form), Agent (or alternate agent) shall submit to the requesting party, a Verification Services statement of work ("SOW") detailing the work to be performed and the associated fees.

105.7.1.6 Warranties

The Contractor and the Subcontractor represent and warrant that:

- 1) the machine readable Source Material among the escrow materials are accurate, current, fully commented and contain:
 - i. complete compilable copies of all licensed software,
 - ii. complete design and manufacturing documentation of all Licensed Proprietary hardware
- 2) all software are free of so-called computer viruses that would damage or render inoperable or unreadable any of the escrowed materials. The Contractor further warrants that all documentation and other material necessary to maintain and modify each software and hardware component are included in the escrow package.
- 3) they lawfully possessed all of the Source Material deposited with Agent,
- 4) the Source Material deposited with Agent is the most current version of the Licensed Products available as of the date of the deposit,
- 5) with respect to the Source Material deposited with Agent, including third party materials, the Subcontractor has the right and authority to grant to Agent, the Contractor and PATH the rights provided in this Agreement and to perform all of its obligations under this Agreement, and

- 6) as of the date of this Agreement, the Source Material deposited with Agent are not the subject of a lien or encumbrance, and, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of Agent under this Agreement.

105.7.1.7 Storage Conditions

Agent shall hold the Source Material in a climate-controlled facility and shall release the same upon the terms and conditions hereinafter provided. Agent shall, upon request by any party, identify, in a written report, the escrow location to PATH, the Contractor and the Subcontractor. A Subcontractor may only inquire as to location of Source Material registered to that Subcontractor.

105.7.1.8 Deposit of Contractor's Source Material

Contractor shall fulfill its obligations under the Contract to deposit its own Source Material by executing a Subcontractor Acceptance Form. Contractor's rights and obligations with respect to its own Source Material shall be identical to those of all other Subcontractors who have executed a Subcontractor Acceptance Form and Contractor shall be defined as a Subcontractor in this Agreement with respect to its own Source Material.

105.7.1.9 Removal of Source Material

The Source Material may be removed and returned to the Subcontractor only on written instructions signed by Subcontractor, the Contractor, and PATH, or as otherwise provided in this Agreement. It will be the responsibility of the requesting Party to secure the necessary signatures and forward the completed request to the Agent.

105.7.2 Release from Escrow

105.7.2.1 Delivery by Agent to Contractor or PATH

Agent agrees that the Source Material shall be held by it for release and delivery to the Contractor and/or PATH, under the terms and conditions hereinafter set forth, but only in the event that:

- a. The Subcontractor notifies Agent in writing to effect delivery to the Contractor and to PATH at a specific address, the notification being accompanied by payment of any amounts outstanding to Agent under this Agreement; or
- b. Agent has received from Contractor or PATH all of the following:
 - (i) written notification that the Subcontractor has materially breached the Subcontractor License Agreement or has otherwise defaulted under the Subcontractor License Agreement or any other agreement wherein the Subcontractor has agreed to maintain the products for the Contractor and for PATH ("Subcontractor default") (Subcontractor default shall also include the bankruptcy or insolvency of the Subcontractor, Subcontractor's cessation of business operations or the transfer of all or substantially all of its assets or obligations set forth in the Subcontractor License Agreement to a third party which has not assumed all of the Subcontractor's obligations under the Subcontractor License Agreement and any companion maintenance agreement or the Subcontractor has decided to stop supporting the products);
 - (ii) written notice that the Contractor or PATH has previously notified the Subcontractor of such Subcontractor default in writing and that more than 60-days have elapsed since said notice with no cure by the Subcontractor;

- (iii) written demand that the material be released and delivered to the Contractor and/or PATH;
 - (iv) a written undertaking from the Contractor and/or PATH that the material being supplied to the Contractor and/or PATH will be used only as permitted under the terms of the Software License Agreement;
 - (v) specific instructions from the Contractor and/or PATH for this delivery; and
 - (vi) payment of any copying charges plus any amounts outstanding to Agent under this Agreement; or
- c. Agent has received from PATH all of the following:
- (i) written notification that the Contractor has materially breached the License Agreement or has otherwise defaulted under the License Agreement or any other agreement wherein the Contractor has agreed to maintain the products for PATH ("Contractor default") Contractor default shall also include the bankruptcy or insolvency of the Contractor, Contractor's cessation of business operations or the transfer of all or substantially all of its assets or obligations set forth in the License Agreement to a third party which has not assumed all of the Contractor's obligations under the License Agreement and any companion maintenance agreement or the Contractor has decided to stop supporting the products.
 - (ii) written notice that PATH has previously notified the Contractor of such Contractor default in writing and that more than sixty (60) days have elapsed since said notice with no cure by the Contractor;
 - (iii) written notice that PATH has previously notified the Subcontractor in writing to assume the obligations of the Contractor and that more than sixty (60) days have elapsed since said notice with no assumption of the obligations of the Contractor by the Subcontractor;
 - (iv) written demand that the material be released and delivered to PATH;
 - (v) a written undertaking from PATH that the material being supplied to PATH will be used only as permitted under the terms of the License Agreement;
 - (vi) specific instructions from PATH for this delivery; and
 - (vii) payment of any copying charges plus any amounts outstanding to Agent under this Agreement; or
- d. In the event that the provisions of paragraph b above are met, Agent shall, within five (5) days of receipt of all of the items specified above, send by commercial express mail, a copy of all such documents received by it to the appropriate Subcontractor. The Subcontractor shall have ten (10) days from the date Agent shall have sent the documents to the Subcontractor to send to Agent written notice of its objection to the release of a copy of the Source Material. Upon receipt of written notice of objection from Subcontractor, Agent shall promptly send a copy of such objection to Contractor and to PATH by commercial express mail. Additionally, Agent shall notify Subcontractor, Contractor, and PATH that there is a dispute to be resolved and subject to provisions for termination for nonpayment, Agent will continue to store the Source Material without release pending (a) joint instructions from Subcontractor, Contractor, and PATH; or (b) an order from a court of competent jurisdiction. If, within ten (10) days after mailing the items specified in paragraph b above to the Subcontractor, Agent has not received

written notice of the Subcontractor's objection to the release of the Source Material, then Agent shall release the Source Material to the Contractor and/or PATH in accord with the instructions specified in paragraph b (v) above.

- e. In the event that the provisions of paragraph c above are met, Agent shall, within five (5) days of receipt of all of the items specified above, send by commercial express mail, a copy of all such documents received by it to the Contractor and Subcontractor. The Contractor and Subcontractor shall have ten (10) days from the date Agent shall have sent the documents to the Contractor to send to Agent written notice of its objection to the release of a copy of the Source Material. Upon receipt of written notice of objection from Contractor or Subcontractor, Agent shall promptly send a copy of such objection to PATH by commercial express mail. Additionally, Agent shall notify Subcontractor, Contractor, and PATH that there is a dispute to be resolved and subject to provisions for termination for nonpayment, Agent will continue to store the Source Material without release pending (a) joint instructions from Subcontractor, Contractor, and PATH; or, (b) an order from a court of competent jurisdiction. If, within ten (10) days after mailing the items specified in paragraph c above to the Contractor and Subcontractor, Agent has not received written notice of the Contractor's or Subcontractor's objection to the release of the Source Material, then Agent shall release the Source Material to PATH in accord with the instructions specified in paragraph c (vi) above.

105.7.2.2 Delivery by Agent to the Subcontractor or Replacement Escrow Agent

Agent shall release and deliver the Source Material to the relevant Subcontractor or deliver to a replacement escrow agent as provided in the following:

- a. **Mutual Termination.** The presentation to Agent of a written notice of termination, executed by authorized representatives of the relevant Subcontractor, the Contractor, and PATH stating that this Agreement has been terminated only as to relevant Subcontractor by the mutual agreement of the relevant Subcontractor, the Contractor, and PATH and directing Agent to release and deliver the Source Material together with title thereto to the relevant Subcontractor, or deliver the Source Material to a replacement escrow agent designated in such notice, by a specified method within ten (10) days of a specified date. If there are no Subcontractors remaining, this Agreement shall be terminated upon Agent's receipt of joint written instructions from PATH and Contractor. However, for the avoidance of doubt, all Parties understand and agree that if this Agreement terminates prior to the completion of the first year of service, under the Mutual Termination provisions of this Section 105.7.2.2, that Agent shall be deemed to have earned and shall be paid the first year fees; or
- b. **Non-Payment.** Upon non-payment of any fees or charges invoiced by Agent, Agent shall give notice of non-payment of any fee due and payable hereunder to PATH, the Contractor and the Subcontractor and, in such event, PATH, the Contractor and the Subcontractor shall have the right to pay the unpaid fee within sixty (60) days from the date of receipt of notice from Agent and upon timely payment of the unpaid fee by PATH, the Contractor or the Subcontractor, this Agreement shall continue in force and effect. Agent shall have no obligation to take any action under this Agreement so long as any payment due to Agent remains unpaid.
- c. **Termination by Resignation.** Agent reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing Subcontractor, Contractor, and PATH ninety (90) days' prior written notice of its intent to terminate this Agreement. If

Agent so terminates it will refund, upon written request all pre-paid, but unearned fees and provide reasonable assistance to PATH, Contractor, and Subcontractor who shall negotiate in good faith to identify a successor escrow agent and enter into a successor escrow agreement on terms as nearly similar to the terms of this Agreement as is practicable. If, within ninety (90) days of Agent's providing its written notice of intent to terminate, Agent receives a request, jointly executed by Contractor, PATH, and Subcontractor: Agent shall deliver the Source Material to the replacement escrow agent designated in such request. If no such notice is provided within the ninety (90) day period, Agent shall disposition the Source Materials pursuant to Section 105.7.2.3.

105.7.2.3 Disposition of Source Material Upon Termination

Subject to the foregoing termination provisions, and upon termination of this Agreement, Agent shall destroy, return, or otherwise deliver the Source Material in accordance with Subcontractor's instructions. If there are no instructions, Agent may, after reasonable attempts to return the Source Material to the Subcontractor, destroy the Source Material. Agent shall have no obligation to destroy or return the Source Material if the Source Material is subject to another escrow agreement with Agent, or has been released to the Contractor or PATH in accordance with Section 105.7.2.1 above, or has been delivered to a designated successor escrow agent pursuant to Section 105.7.2.2.

105.7.2.4 Retention of Source Material for Release and Delivery to PATH

In the event of a release of [Subcontractor] Source Material solely to Contractor, Agent shall make a copy of the deposited Source Material, release the copy to the Contractor, and retain the deposited Source Material, which will be available for release and delivery to PATH [only] under the terms and conditions set forth above.

105.7.3 Ownership of Source Material

105.7.3.1 Tangible Media

The tangible medium comprising the Source Material, but not the source code nor documentation and other information embodied in such tangible medium, shall be in the possession of the Agent at all times until the Source Material is returned to the Subcontractor or turned over to the Contractor or to PATH and the Subcontractor shall transfer to Agent upon deposit of the Source Material with Agent the title to such tangible medium upon which the proprietary information and materials are written or stored.

105.7.3.2 Intellectual Property

Agent, the Subcontractor, the Contractor, and PATH recognize and acknowledge that ownership of the Source Material itself and any documentation (together with all copyrights, patent, trade secret, trademark and any other proprietary rights therein) shall remain with the Subcontractor or the Contractor at all times. Agent shall have license to possess material deposited with it and license shall be for use solely in compliance with this Agreement.

105.7.3.3 Confidentiality

The Subcontractor, Contractor, PATH, and Agent acknowledge that information that is Subcontract specific and stored and maintained under this Agreement, including but not limited to the Source Material, is "Confidential and Proprietary Information" and they agree that they will not, during or after the term of this and successor agreements permit the duplication, use, or disclosure of any Confidential and Proprietary Information to any person

or entity (other than their own employees, Agents, or representatives who have a need to know such information) unless such duplication, use, or disclosure is specifically authorized under the provisions of this Agreement or otherwise consented to by both the Contractor and the Subcontractor.

105.7.3.4 Subpoenas

If Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Source Material, Agent will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Subcontractor and/or Contractor to challenge any such order; provided, however, that Agent does not waive its rights to present its position with respect to any such order. Agent will not be required to disobey any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 105.7.9, below.

105.7.3.5 Right to Make Copies of Source Material

Agent shall have the right to make copies of the Source Material as reasonably necessary to perform this Agreement. Agent shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Source Material onto any copies made by Agent. Any copying expenses incurred by Agent as a result of a request to copy will be borne by the party requesting the copies.

105.7.4 Fees, Term, Renewal and Termination

105.7.4.1 Agent Compensation

Agent shall be entitled to compensation described in Exhibit S-4 for performance of its duties hereunder, such Exhibit to be completed upon Contractor's approval of the Escrow Agent and the Escrow Agent fees to be paid. The Subcontractor shall pay agent's fee, unless otherwise mutually agreed by the Contractor and the Subcontractor, until issuance of the Certificate of Final Completion, as defined in the Contract and PATH shall pay the fee subsequent thereto. The Contractor will confirm the date of issuance of Certificate of Final Completion, under the Contract, in writing.

Agent shall notify the party responsible for payment of Agent's fees at least sixty (60) days prior to any increase in fees. For any service not listed on Agent's standard fee schedule, Agent will provide a quote prior to rendering the service, if requested. In no event shall Agent's fees be increased by more than ten percent (10%) per annum.

105.7.4.2 Term of Agreement

The initial term of this Agreement shall extend until twenty years following completion of the applicable contract calling for the establishment of escrow material with Agent.

105.7.4.3 Renewal of Agreement

This Agreement shall be automatically renewed for successive one (1) year terms unless otherwise terminated.

105.7.4.4 Termination of Agreement

This Agreement shall terminate upon (i) mutual termination as provided herein, or (ii) non-payment as provided herein, or (iii) termination of the License Agreement, or (iv) with respect to the relevant Subcontractor, upon release and delivery of Source Material of such Subcontractor to PATH as provided herein, or (v) Agent's ninety (90) day notice to the Subcontractor, Contractor, and PATH as provided herein.

105.7.4.5 Survival of Provisions

Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Subcontractor's representations and warranties in the section entitled "Warranties";
- b. The obligations of confidentiality with respect to the Source Materials;
- c. The rights granted in the sections entitled "License of Source Material" and "Title to Source Material", if a release of the Source Material to Contractor or PATH has occurred prior to termination.
- d. The obligation to pay Agent any fees and expenses due;
- e. The obligations set forth in the sections entitled "Limitation of Liability" and "Indemnity";
- f. The provisions in this Agreement, which specifically state they survive the termination or expiration of this Agreement.

105.7.5 Source Material Accuracy – Agent's Right to Rely on Instruction

105.7.5.1 Agent shall have no responsibility with respect to the accuracy or completeness of the Source Material or any revisions thereto.

105.7.5.2 Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Agent to be genuine. Agent may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Agent will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Agent.

105.7.6 Bankruptcy

105.7.6.1 In the event bankruptcy proceedings are commenced in the United States of America, Subcontractor, Contractor, and PATH acknowledge that this Agreement is an "agreement supplementary to" the License Agreement as provided in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). The Subcontractor acknowledges that if the Subcontractor as a debtor in possession or a trustee in Bankruptcy in a case under the Bankruptcy Code rejects the License Agreement or this Agreement, Contractor or PATH may elect to retain its rights under the license and this Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of Contractor or PATH to the Subcontractor or the Bankruptcy Trustee, the Subcontractor or such Bankruptcy Trustee shall not interfere with the rights of Contractor or PATH as provided in the License Agreement and this Agreement, including the right to obtain the Source Material from Agent.

105.7.6.2 In the event bankruptcy proceedings with respect to a Subcontractor are commenced in a jurisdiction other than the United States of America, the parties hereto will comply with that jurisdiction's bankruptcy laws and the remedies provided therein, and unless otherwise ordered by the court, Subcontractor shall not interfere with the rights of the Contractor or PATH as provided in the License Agreement and this Agreement, including the right to obtain the Source Material from Agent.

105.7.7 Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO

THIS AGREEMENT SHALL BE LIMITED TO THE MAXIMUM AGGREGATE AMOUNT OF FEES PAID OR OWED TO AGENT UNDER THIS AGREEMENT FOR A ONE YEAR PERIOD. THIS LIMIT SHALL NOT APPLY, EXCEPT IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT, (II) LIABILITY FOR DEATH OR BODILY INJURY, (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT ITEMS), (IV) THEFT, OR (V) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

105.7.8 Indemnity

Each party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. The indemnification procedures of Article 501 of the Contract shall be applicable to this section.

105.7.9 Disputes and Interpleader

105.7.9.1 In the event of any dispute between the Subcontractor and the Contractor or PATH or any third party claiming beneficiary status under this Agreement, Agent may submit this matter to any court in NY in an interpleader or similar action. Any and all reasonable costs incurred by Agent in connection therewith shall be borne by the third party seeking a copy of the Source Material. Without limiting the generality of the foregoing, if Agent shall be uncertain as to its duties or rights hereunder or shall receive any notice, advice, schedule, report, certificate, direction or other document from any person or entity with respect to the Source Material, that, in the opinion of the management of Agent is in conflict with any of the provisions of this Agreement, or shall be advised that a dispute has arisen with respect to the ownership or right of possession of the Source Material or any part thereof, Agent shall be entitled, without liability to anyone, to refrain from taking any action other than to exercise best efforts to keep safely the Source Material until Agent shall be directed otherwise in writing by an order, decree, or judgment of a court in NY that is then finally affirmed on appeal or that by the lapse of time or otherwise is no longer subject to appeal; but Agent shall be under no duty to institute or defend any such proceeding.

105.7.9.2 If any party intends to obtain an order from an arbitrator or any court of competent jurisdiction, which may direct Agent to take, or refrain from taking any action, that party shall:

- a. Give Agent at least five (5) business days, prior notice, of the hearing;
- b. Include in any such order that, as a precondition to Agent's obligation, Agent be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and

- c. Ensure that Agent not be required to deliver the original (as opposed to a copy) of the Source Material if Agent may need to retain the original in its possession to fulfill any of its other duties.

105.7.10 License of Source Material

In the event the Source Materials are released to the PATH in accordance with this Article, PATH shall have a perpetual, royalty-free right to Use, modify, maintain, copy and Update the Source Materials in furtherance of and consistent with its license to use the Licensed Software and Hardware as set forth under Articles 105.6 and 105.7 of the Contract and

In addition, if the Source Materials are released to PATH, PATH may allow a third party to have access to the Source Materials, but PATH will be responsible for the third party's compliance with the Allowable Uses and confidentiality of the Source Materials.

If PATH modifies the Source Materials, PATH is fully liable for those modifications including the indemnification of the Contractor for property damage and personal injury claims and intellectual property infringement, and the performance of the ATC System.

The release and use of Source Materials does not grant PATH greater rights than what were granted under the Contract.

105.7.11 Title to Source Material

Title to the Source Material shall remain with the original owner, Contractor or the Subcontractor, but title to the copy thereof shall be deposited in the escrow hereunder. Notwithstanding its ownership of a copy of the Source Material in such event, the Contractor's or PATH's rights to use the Source Material shall not exceed its rights described in the terms of the license granted pursuant to Section 105.7.10 above entitled "License of Source Code" and the License Agreement.

105.7.12 Governing Law

This Agreement shall be construed and enforced in accord with the laws of the State of New York.

105.7.13 Notices and Correspondence

All notices regarding release of Source Material, Termination, and any Source Material, shall be sent by commercial express or certified mail, return receipt requested. All other correspondence including invoices, payments and other documents and communications shall be sent First Class Mail (or via E-mail, if an E-mail address is provided) and given to the parties at the addresses specified in the attached Exhibit S-3 and Subcontractor Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of physical and e-mail addresses.

105.7.14 Binding Nature and Assignment

This Agreement shall be binding on the parties hereto and their respective successors and assigns, but no party may, or shall have the power to, assign this Agreement without the prior written consent, which shall not be unreasonably withheld, of the other parties, except as provided herein. The Contractor and the Subcontractor, respectively, shall have the right, without consent of any other party, to assign to a successor entity that portion of the Contractor's or Subcontractor's business which is the subject of this Agreement. The Agent shall have the right, without consent of any other party, to assign its rights and obligations

hereunder to any affiliated corporation, including a wholly owned subsidiary or parent company. The Agent however, shall have no obligation in performing this Agreement to recognize any successor or assign of Subcontractor, Contractor, or PATH unless Agent receives clear, authoritative and conclusive written evidence of the change of parties.

105.7.15 Entire Agreement

This Agreement including any Exhibits or documents referred to in this Agreement, each of which is incorporated herein, constitutes the entire and exclusive statement of the Agreement between and among the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed herein.

105.7.16 Miscellaneous

105.7.16.1 Section Headings. The Section headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

105.7.16.2 Separability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then obligations arising under such provision shall be null and void and each provision not so affected shall be enforced to the full extent permitted by law.

105.7.16.3 Waivers and Discharges. No delay or omission by any party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

105.7.16.4 Responsibilities, Liabilities, Obligations upon Termination. Termination or expiration of this Agreement for any reason shall not release any party from any liabilities or obligations set forth in this Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

105.7.16.5 Personal Liability of Individuals. No commissioner, Agent, officer, or employee of any of the parties shall be personally liable hereunder.

105.7.16.6 Restrictions on PATH's or Contractor's Use of Source Material. During any period of time in which the Source Material is in the possession of the Contractor or PATH, it is agreed that the Source Material shall be used only by the Contractor or PATH at the locations set forth in the License Agreement and shall not be duplicated, sold, or licensed to others or marketed in any manner. In addition, during this time the Contractor and Subcontractor shall have unrestricted use and title to the Source Material and any associated object code for its own internal use or for marketing and licensing to third parties.

105.7.16.7 No Third Party Rights. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

105.7.16.8 Regulations. Subcontractor, Contractor, and PATH are responsible for and warrant their respective compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government

regulations of any country from or to which the Source Material may be delivered in accordance with the provisions of this Agreement.

105.7.16.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

105.7.16.10 Order of Precedence. In the event of any conflict between this Agreement and the Subcontract entered into between the Subcontractor and the Contractor, this Agreement shall govern and take precedence over the Subcontract.

EXHIBIT S-1: MATERIAL TO BE DEPOSITED BY THE SUBCONTRACTOR

1. Human-readable Source Material for all Subcontractor Proprietary Software, Custom Software, Proprietary Hardware design and manufacturing documents (as used by the Subcontractor) in an industry-standard electronic medium (e.g., diskette or CD-ROM).
2. Human-readable design, system, and user documentation either in printed form or in an industry-standard electronic medium (e.g., diskette or CD-ROM).
3. List of necessary Tools (compilers, assemblers, linkers, editors, etc.). The list shall contain the complete identification of each software product, including manufacturer / publisher, version, release and all information required for acquisition and use.
4. A backup copy of the installation material for all necessary Tools identified in the list provided above. PATH understands that prior to the use of such material by PATH, a license to use must be obtained from the manufacturer / publisher.
5. Procedures and makefiles.
6. Documentation listing program and module input and sources, output and destinations, and other relevant product, program and module documentation.
7. List of necessary Operating system, communications, databases, and environment software. The list shall contain the complete identification of each software product, including manufacturer / publisher, version, release and all information required for acquisition and use.
8. A backup copy of the installation material for all necessary Operating system, *communications, databases, and environment software identified in the list provided above*. PATH understands that prior to the use of such material by PATH, a license to use must be obtained from the manufacturer / publisher.
9. All other material as agreed to by the Subcontractor and PATH and the Contractor.

EXHIBIT S-2: MATERIAL DEPOSITED BY THE SUBCONTRACTOR

A complete escrow inventory with manufacturer, item, version numbers, etc.

DESCRIPTION OF SOURCE MATERIAL

Subcontractor Company Name _____
Deposit Account Number _____
Product Name _____ Version _____
(Product Name will appear as the Exhibit S-2 Name on Account History report)

SOURCE MATERIAL DESCRIPTION:

Quantity Media Type & Size Label Description of Each Separate Item
_____ Disk 3.5" or _____
_____ DAT tape _____ mm
_____ CD-ROM
_____ Data cartridge tape _____
_____ TK 70 or _____ tape
_____ Magnetic tape _____
_____ Documentation
_____ Other _____

PRODUCT DESCRIPTION:

Environment _____

SOURCE MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.
Encryption tool name _____
Version _____
Hardware required _____
Software required _____
Other required information _____

I certify for Subcontractor that the above described Source Materials have been transmitted to IMIPM:
Signature: _____
Print Name: _____
Date: _____
E-mail address: _____
IMIPM has visually inspected and accepted the above materials (any exceptions are noted above):
Signature: _____
Print Name: _____
Date: _____
Date: _____
Accepted: _____
Exhibit S-2 _____

EXHIBIT S-3: DESIGNATED CONTACT

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee of Contractor or PATH.

PATH - Notices, invoices, Source Material returns, and communications should be addressed to:

Company Name: _____
Address: _____

Designated Contact: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Pursuant to Section 105.7.13, Notices and Correspondence, unless otherwise provided, if an E-mail address is listed here, notices may be sent via E-mail.

Contractor - Notices, invoices, and communications should be addressed to:

Company Name: _____
Address: _____

Designated Contact: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Pursuant to Section 105.7.13, Notices and Correspondence, unless otherwise provided, if an E-mail address is listed here, notices may be sent via E-mail.

<p>Agreements, Source Material and notices to IMIPM should be addressed to: Iron Mountain Intellectual Property Management, Inc. Attn: Client Services 2100 Norcross Parkway, Suite 150 Norcross, GA 30071 Telephone: 770-239-9200 Facsimile: 770-239-9201 E-mail: ipm-clientservices@ironmountain.com</p>	<p>All invoice fee remittances to IMIPM should be addressed to: Iron Mountain Intellectual Property Management, Inc. PO Box 27131 New York, NY 10087-7131 Date: _____</p>
---	--

EXHIBIT S-4: FEES TO BE PAID

Annual Fees for each Subcontractor Deposit Account

Initialization fee (one time only)	\$
Annual fee (fee for first year is due with Initialization fee)	\$
Additional updates	Included in annual fees
Due upon request for release material	Included in annual fees
Verification Services Option (at PATH/Contractor/Subcontractor request)	Custom Fee
Additional work at PATH/Contractor (at Subcontractor request)	Custom Fee

After expiration of the initial term of this Agreement, this Agreement shall be automatically renewed for successive years unless otherwise terminated.

Fees are subject to increases as set forth in Section 105.7.4.0 Agent Compensation.

IN WITNESS WHEREOF, Agent, Contractor, and PATH each has caused this Escrow Agreement to be signed and delivered by its duly authorized officer, effective as of the date that the last party to execute this Escrow Agreement signs this signature page.

CONTRACTOR:

By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

PATH:

By: _____
Print Name: _____
Title: _____
Date: _____

AGENT:
Iron Mountain Intellectual Property Management, Inc.

By: _____
Print Name: _____
Title: _____
Date: _____
Effective Date: _____

SUBCONTRACTOR ACCEPTANCE FORM FOR MASTER AGREEMENT

Contractor Company Number _____

Subcontractor, Contractor, PATH, and Iron Mountain Intellectual Property Management, Inc. ("IMIPM"), hereby acknowledge that _____ is the Subcontractor referred to in the Master Escrow Agreement ("Agreement") effective _____, 20__ with IMIPM as the Agent, and _____ as the Contractor. All capitalized terms shall have the same meaning as given in the Agreement. Subcontractor hereby agrees to be bound by all provisions of such Agreement.

1. The Source Material to be deposited by Subcontractor is set forth in the document attached to this Subcontractor Acceptance Form and entitled "Subcontractor for _____ Escrow Deposit."

2. Subcontractor further consents to the performance of Verification Services as follows:

(a) Subcontractor consents to Agent's performance of any level(s) of Verification Services described in Verification Services Options attached hereto. If Verification Services are specified below or if Agent notifies Subcontractor that either Contractor or PATH has submitted a request for Verification Services, Subcontractor agrees to promptly complete and return the Escrow Deposit Questionnaire attached hereto. Subcontractor further consents to use of a subcontractor (who shall be bound by the same confidentiality obligations as Agent and who shall not be a direct competitor to Subcontractor) to provide such Verification Services as needed; and

(b) Subcontractor represents that it lawfully possesses all Source Material provided to Agent under this Agreement and that any Source Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Agent under this Agreement; and

(c) Subcontractor represents that all Source Material is readable and useable in its then current form; if any portion of such Source Material is encrypted the necessary decryption tools and keys to read such material are deposited contemporaneously; and

(d) Subcontractor represents that all Source Material is provided with all rights necessary for Agent to verify such proprietary technology and materials upon receipt of a request for such services; and

(e) Subcontractor warrants that Agent's use of the Source Material or other materials supplied by Subcontractor to perform the Verification Services described in Verification Services Options attached hereto is lawful and does not violate the rights of any third parties. Subcontractor agrees to use commercially reasonable efforts to provide Agent with any necessary use rights or permissions to use materials necessary to perform verification of the Source Material. Subcontractor agrees to reasonably cooperate with Agent by providing its facilities, computer software systems, and technical personnel for Verification Services whenever reasonably necessary; and

(f) If requested by Contractor or PATH, Subcontractor agrees to permit one employee of Contractor and up to two representatives of PATH to be present during verification of Source Material; and

(g) PATH and Contractor may appoint an alternative agent to perform Verification Services consented to above. The alternative agent shall be appointed subject to the approval of Subcontractor and such approval shall not be unreasonably delayed or withheld.

Deposit Account Number _____

Notices and communications to Subcontractor should be addressed to:

Invoices should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Contact: _____

Pursuant to Section 13, Notices and Correspondence, unless otherwise provided, if an E-mail address is listed here, notices may be sent via E-mail.

P.O.#, if required: _____

Verification _____

Contact:

(Space to the end of page is intentionally left blank – signature page follows.)

This Subcontractor Acceptance Form may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

Subcontractor _____
By: _____
Name: _____
Title: _____
Date: _____

PATH _____
By: _____
Name: _____
Title: _____
Date: _____

Iron Mountain Intellectual Property
Management, Inc.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit B: Not used

Exhibit C: Full-Time Assigned Employees

Full-Time Assigned Employees at the Contractor's Project Office, Dedicated Software Engineers not Located at the Project Office in 2009.

Entity	Description	Daily Rate
Safetran	Senior Engineer	\$1,000.00
Safetran	Engineer	\$840.00
Safetran	Technician	\$624.00
Safetran	Field Engineer	\$1,000.00
Safetran	Field PM	\$1,000.00
Safetran	Commercial PM (Asst. PM)	\$1,000.00
Safetran	Scheduler	\$824.00
Safetran	QA Engineer	\$840.00
Safetran/Siemens	Safety / PTC Sr. Engineer	\$1,000.00
Siemens	SII QA/QC Support for Installation of Carborne ATC Equipment	\$1,000.00
Siemens	SII Engineering Labor, including software engineers at Siemens home office	\$1,000.00
Siemens	SII Drafting / Technician	\$1,000.00
Siemens	SII Field Labor	\$1,000.00
Siemens	SII Project Director	\$1,000.00
Siemens	SII Quality Control / Scheduler	\$1,000.00
D/A	Senior Project Manager	\$1,000.00
D/A	Superintendent	\$1,000.00
D/A	Project Manager	\$1,000.00
D/A	Project Engineer Class 2	\$1,000.00
D/A	Project Engineer Class 1	\$1,000.00
D/A	Warehouse Manager	\$640.00
D/A	Warehouse Man	\$520.00

Exhibit D: Signals that are deleted from the layout

As approved by PATH (Option P), the following signals are deleted from the Nominal Track layout:

- Existing ABS: 101, 114, 147, 156, 158, 163, 163R, 160R, 172, 175, 182, 383, 724, 755R, 762R
- New ABS: 147R, 156R, 172R, 175R, L24XR (EXP), L6XR (GRO), 786R, 787R
- Existing HS: R4X (WTC), L4X (WTC)

Exhibit E: Staging Material as Spares

As approved by PATH (Option W), these staging material used in installation and cutovers will be provided in lieu of spares (Approximate quantities are listed, actual quantities will be based on PATH approved design):

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
VITAL RELAYS				
RELAY, ST-1 BIASED 6FB 500 OHM	400500	SAFETRAN	273	\$619.50
RELAY, ST-1 4NR 500 OHM MAGNETIC STICK	400900	SAFETRAN	14	\$1,631.70
RELAY, ST-2 BIASED 12FB	450500	SAFETRAN	642	\$1,107.40
BASE, ST-1 RELAY	420000-40X	SAFETRAN	287	\$40.60
BASE, ST-2 RELAY	452000-40X	SAFETRAN	642	\$66.50
KIT, VOLTAGE TEST POST	420000-46X	SAFETRAN	929	\$9.10
VPI EQUIPMENT				
RELAY, B1 BIASED NEUTRAL (VRD) (ALSTOM P/N: 56001-787-05)		ALSTOM	39	\$622.95
IVPI EQUIPMENT				
DIRECT INPUT BOARD Min. 1 (#31166-429-01)		ALSTOM	72	\$1,138.52
DOUBLE-BREAK OUTPUT BOARD Min. 1 output/system. (#31166-433-01)		ALSTOM	73	\$2,656.54
AC OUTPUT BOARD Min. 1 output/system. (#31166-432-XX) Note 1		ALSTOM	45	\$2,134.73
VSP (# 31166-427-01)		ALSTOM	33	\$3,795.07
VSP Interface Board P2 - Site ID & Rev. (#31166-472- 01)		ALSTOM	33	\$379.51
VSP Interface Board P3 - RJ45, MAC, VRD (#31166-473-01)		ALSTOM	33	\$379.51
NVSP (#31166-428-01)		ALSTOM	49	\$2,656.54

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
NVSP Interface Board P1 - 2-RJ45 (#31166-474-01)		ALSTOM	49	\$379.51
NVSP Interface Board P3 - Serial Comm & MAC (#31166-475-01)		ALSTOM	49	\$379.51
NVI 32 Input 9-18VDC (#31166-457-02)		ALSTOM	82	\$1,897.53
NVO 32 SSR Outputs 0V-35VDC (#31166-458-02)		ALSTOM	57	\$1,897.53
DIRECT WIRED CHASSIS (MAIN) - 21 SLOT (#31038-823-02)		ALSTOM	30	\$4,624.29
DIRECT WIRED CHASSIS (MAIN) - 7 SLOT (#YYYYY-XXX-XX)		ALSTOM	16	\$4,102.47
DIRECT WIRED CHASSIS (MAIN) - 11 SLOT (#YYYYY-XXX-XX)		ALSTOM	3	\$4,244.78
FRONT PANEL COVER 9U x 4H (1 SLOT WIDE) (#01294-422-ON)		ALSTOM	3	\$60.72
FRONT PANEL COVER 9U x 8H (2 SLOTS WIDE) (#01294-423-ON)		ALSTOM	49	\$60.72
FRONT PANEL COVER 9U x 12H (3 SLOTS WIDE) (#01294-424-ON)		ALSTOM	4	\$79.69
FRONT PANEL COVER 9U x 40H (10 SLOTS WIDE) (#01294-425-ON)		ALSTOM	26	\$142.32
EEPROM - System SW (PLCC 29F010). 2 per VSP. (#01169-691-ON)		ALSTOM	40	\$3.46
EEPROM - ADS (PLCC 29F040). 2 per VSP, 2 per NVSP. (#01169-767-ON)		ALSTOM	240	\$3.46

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
HIGHWAY CROSSING EQUIPMENT & AUDIO OVERLAY TRACK CIRCUITS				
SSCC-III A, 40A, 19-RACK MOUNT	9000-91160-1101	SAFETRAN	1	\$2,637.60
PANEL, LIGHTING SURGE, FOR SSCC III, IIIA, III+, IV, W/ BATTERY ARRESTORS & EQUALIZERS	9000-91170-0001	SAFETRAN	1	\$449.40
PANEL, LIGHTING SURGE, SSCC III, IIIA, III+, IV	9000-91170-0002	SAFETRAN	1	\$417.20
RESISTORS				
RESISTOR, 10 OHM CURRENT LIMITING (13 WATT W/ BAKELITE BASE)	190242-T00477	SAFETRAN	75	\$42.70
RESISTOR, 100 OHM CURRENT LIMITING W/ BAKELITE BASE	029245-100X	SAFETRAN	20	\$37.10
SURGE PROTECTION				
ARRESTER, HEAVY DUTY W/ BASE (3 POST PORCELAIN BASE)	4000-44615-004X	SAFETRAN	40	\$21.00
PROTECTOR, AC LINE SURGE SP20-2A (115VAC) W/ LINE PROTECTOR	4000-44807-06AX	SAFETRAN	10	\$112.70
PROTECTOR, BATTERY LINE SURGE SP24-2A (18VDC) W/ EQUALIZER	4000-44811-05AX	SAFETRAN	10	\$161.00
WIRING MATERIALS				
BLOCK, TERMINAL 14-WAY	051883-18X3	SAFETRAN	200	\$119.00
BLOCK, TERMINAL 12 - SINGLE POST	023390-11X	SAFETRAN	500	\$16.10
LINK, 1" CENTER COPPER SLIDE	23837	SAFETRAN	2200	\$0.70
CONNECTOR, 1" BUSS	023839-2	SAFETRAN	2200	\$0.70
LINK, 1" TEST W/ GOLD NUT	024620-1X	SAFETRAN	500	\$1.40
NUT, INSULATED	023408-1X	SAFETRAN	600	\$3.62
LINK, 1-3/16" TERMINAL CONNECTOR	023839-75	SAFETRAN	700	\$0.70

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
NUT, INSULATED TRANSIT TYPE	023408-23X	SAFETRAN	9050	\$2.72
COMMUNICATION BLOCK, 25 PR 66 TERMINALS	093033-T11701	RELIABLE	2	\$282.11
WIRE, #20 AWG, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2, CROSS-LINKED-POLYETHYLENE INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1000	\$0.49
WIRE, #16 AWG, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2, CROSS-LINKED-POLYETHYLENE INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1000	\$0.49
WIRE, #6 AWG GREEN, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2, CROSS-LINKED-POLYETHYLENE INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1000	\$1.42

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
WIRE, #10 AWG BLACK, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2, CROSS-LINKED-POLYETHYLENE INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1000	\$0.67
WIRE, #10 AWG GREEN, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2, CROSS-LINKED-POLYETHYLENE INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1000	\$0.89
RELAY TOOLS				
WRENCH TEST NUT FOR RELAYS	032619-22X	SAFETRAN	1	\$32.90
EXTRACTOR, TERMINAL CLIP FOR RELAYS	032619-25	SAFETRAN	1	\$4.76
WRENCH, TERMINAL	032619-3X	SAFETRAN	1	\$16.80
ADDED ITEMS				
DETECTOR, DC GROUND (GFD-1A, 10-32VDC)		ZYTRON	51	\$388.24
DETECTOR, AC GROUND (GFD-120VAC-1, 85-135VAC, 50-400HZ)		ZYTRON	4	\$308.24
TRANSFORMER, 15.0 KVA, 480V-120/240V, DRY TYPE, 1 PHASE, DONGAN P/N: 85-1470SH		Consolidated Elec. Dist.	1	\$1,075.29
AC TRACK CIRCUITS				
RELAY, ST-1 TRACK RELAY	450994-4	SAFETRAN	15	\$1,821.40
BASE, ST-2 RELAY	452000-40X	SAFETRAN	13	\$66.50

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
KIT, VOLTAGE TEST POST	420000-46X	SAFETRAN	13	\$9.10
TRANSFORMER, ST-400-1 (FEED END) SINGLE PRIMARY/SECONDARY	010560-21X	SAFETRAN	13	\$467.60
TRANSFORMER,ST-200-1	010560-1X	SAFETRAN	13	\$404.60
RESISTOR, 5.0 OHM RELAY END	4000-44258-8011X	SAFETRAN	26	\$158.90
FUSE, 10 AMP 600V (TRACK/RELAY)	310033-T00717	BUSSMAN	26	\$12.95
BLOCK, FUSE	027614-16X	SAFETRAN	26	\$33.83
BRACKET, FUSE HOLDER	005314-T07971	FAB	26	\$9.47
FUSE, 1 AMP, 250V INDICATING	457222-T02462	BUSSMAN	13	\$10.79
FUSE,10 AMP, 250V	T13212	BUSSMAN	13	\$6.44
PLATE, FILLER	050979-6	SAFETRAN	16	\$3.50
MONITOR, 18" LCD (2 PER RACK)	PORTRAIT-18	CYBERCHRON CORP	8	\$5,588.24
RUGGEDIZED KEYBOARDS, #CRX-000 (IBM PC/AT) MIL CONNECTIONS, WITH TRACKBALL, WITH SIDING RACK-MOUNT TRAY		CYBERCHRON CORP	4	\$234.12
COMPUTER	CVC-130	CYBERCHRON CORP	4	\$11,176.47
MANAGED 32 PORT INDUSTRIAL MANAGE SWITCH(2 PER RACK) #SK32TRC ,4+4 MODULE #6KP8-4SMT	6K32TRC	GARRETTCOM	8	\$2,117.65
ROUTER, MAGNUM #DX900 (DIN RAIL MOUNTING)	DX900	GARRETTCOM	4	\$3,235.29
CONVERTER, DIN-RAIL MOUNT (3-PER RACK) LWR 1601-6E	T17865	POWER-ONE	12	\$170.59

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
DIGITAL TRACK CIRCUITS				
TX/RX/CODED MODULE DOUBLE FREQ.(PN EUROPEAN VERSION DOCUMENTATION)	N897 164 62XY	ALSTOM	56	\$1,444.96
MODEM CODED MODULE (PN EUROPEAN VERSION DOCUMENTATION)	N897 163 51Q0	ALSTOM	56	\$585.02
CHASSIS (PN EUROPEAN VERSION DOCUMENTATION)		ALSTOM	28	\$1,102.91
TUNING BOX (PN EUROPEAN VERSION DOCUMENTATION)	P699 044 BXXY	ALSTOM	19	\$1,270.74
WEIDMULLER EQUIPMENT FOR VPI & MISC RACKS				
CIRCUIT BREAKER 15 AMP DIN RAIL	T13206	ABB CONTROLS	70	\$38.71
TERMINAL WEIDMULLER W/O DIODE	T16058	WEIDMULLER	6000	\$8.32
STOP, END (WAGO P/N: #249-117)	T14049	WAGO	400	\$0.82
END BRACKET, EWK (8.5) P/N: 2061.6	450118- T02748	WEIDMULLER	75	\$1.07
CIRCUIT BREAKER 10AMP DIN RAIL	311986- T12345	ABB CONTROLS	49	\$29.14
POR EQUIPMENT				
RESISTOR, 4 OHM ADJUSTABLE SIGNAL LIGHTING	029603-1X	SAFETRAN	4	\$30.80
FUSE, 10A 250V, MODEL KTN	450152- T02964	BUSSMAN	4	\$26.44
BLOCK, FUSE (2" SINGLE)	4000-44614- 001X	SAFETRAN	4	\$22.51
BASE, ST-2 RELAY	452000-40X	SAFETRAN	4	\$66.50
KIT, VOLTAGE TEST POST	420000-46X	SAFETRAN	4	\$9.10
RELAY, ST-2 TRACK RELAY	450994-4	SAFETRAN	4	\$1,821.40

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
TRANSFORMER, ST-400-1 (FEED END) SINGLE PRIMARY/SECONDARY	010560-21X	SAFETRAN	4	\$467.60
PLATE, FILLER	050979-6	SAFETRAN	8	\$3.50
BENCH TEST EQUIPMENT				
POWER SUPPLY, 15VDC OUTPUT #LK1501-7R		POWER-ONE	67	\$816.47
19" RACK FRAME FOR POWER-ONE POWER SUPPLY #MBQ02002		POWER-ONE	51	\$152.94
FRONT PANEL, POWER-ONE POWER SUPPLY RACK FRAME #G16-K		POWER-ONE	51	\$18.82
MATING CONNECTOR, FOR POWER-ONE POWER SUPPLY #STV-H15 S4-FSF/CO	T18103	POWER-ONE	67	\$31.76
BUNGALOW, HP/AC UNIT - Size - Small		FAB	2	\$9,705.88
BUNGALOW, HP/AC UNIT - Size - Large		FAB	2	\$10,352.94
ROUTE REQUEST PUSHBUTTON				
ASSEMBLY, ROUTE REQUEST PUSHBUTTON - 2 Request PB, 1 Cancel PB, 1 - Indicator	092307-X704	COMMERCIAL	1	\$712.59
WAYSIDE SIGNALS				
COLORLIGHT CLS-1000 LED 7 ASPECT,A-HEAD(GY/R),B-HEAD(G/Y/R),C-HEAD(LUNAR) COMPLETE WITH MAST AND BASE, ALL HARDWARE TO MAKE A COMPLETE SIGNAL FOR PATH		SAFETRAN	1	\$6,359.40

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
LOW CLEARANCE SIGNAL - 7 ASPECT, A-HEAD(G/Y/R), B-HEAD(G/Y/R), C-HEAD(LUNAR) COMPLETE WITH MAST AND BASE, ALL HARDWARE TO MAKE A COMPLETE SIGNAL FOR PATH			1	\$13,671.04
EMPLOYEE PICK-UP PUSHBUTTON		SAFETLAN	1	\$756.98
CROSSING GATES				
ASSEMBLY, GATE & FLASHING LIGHT WITH GELcord 12" LED (MODEL RG6-RTFB or B-V1), W/ S-40 GATE MECHANISM(SHALL INCLUDE PIVOT CLAMPS W/HARDWARE TO ALLOW GATE TO BE TURN), INCLUDE POWER DOWN 60 TO 45-DEGREE, INCLUDE DEFROSTERS, 5" ALUMINUM MAST W/SPLIT BASE JB, 33'-40' FIBERGLASS ARM W/3-LED LIGHTS, GATE SHALL BE BREAK-AWAY W/ SHEER PINS, HIGH WIND SUPPORT, ELECTRONIC BELL, STAINLESS STEEL HARDWARE, POLYETHYLENT VISORS(24") & HOODS, COUNTERWEIGHTS, INCLUDE THE FOLLOWING SIGNS "RAILROAD CROSSING" CROSSBUCK, "DONOT STOP ON TRACKS", "STOP ON RED SIGNAL"(SIGNS WILL BE MOUNTED ON EXTENSION BRACKETS)		SAFETLAN	1	\$8,729.60

DESCRIPTION	PART NO.	SOURCE	Approximate Quantities	Unit Price
ASSEMBLY, FLASHING LIGHT WITH GELcord 12" LED (MODEL RG6-RTFB or B-V1), 5" ALUMINUM MAST W/SPLIT BASE JB, ELECTRONIC BELL, STAINLESS STEEL HARDWARE, POLYETHYLENT VISORS(24") & HOODS, INCLUDE THE FOLLOWING SIGNS "RAILROAD CROSSING" CROSSBUCK, "DONOT STOP ON TRACKS", "STOP ON RED SIGNAL"(SIGNS WILL BE MOUNTED ON EXTENSION BRACKETS)		SAFETRAN	1	\$2,450.65

Exhibit F: Train Engineer Training Simulator Upgrade (Orthstar)

Details of budget identified for the Train Engineer Training Simulator Upgrade by Contractor, PATH, Kawasaki and Orthstar.

Price form 14, item 4, Train Engineer Simulator Upgrade includes \$162,000 for 650 hours of SII Engineer, covering the time, travel and related costs for required Contractor personnel to interface with PATH, Kawasaki and Orthstar. Contractor will provide all the information required by Orthstar to make the changes to the training simulator. Contractor shall provide a schedule for deliveries of the data required for Orthstar in the Master Program Schedule.

Exhibit G: Detail of complete Carborne ATC Equipment Set pricing

The price in section 3.2 Option C may be adjusted based on when the options are exercised and based on the quantity of carborne equipment sets ordered by PATH as follows:

Order placed no later than:	Quantity of additional equipment set		
	15-49	50-89	90 +
6 months after NTP	\$152,633	\$152,297	\$151,982
12 months after NTP	\$195,069	\$173,558	\$163,381
24 months after NTP	\$200,523	\$178,346	\$167,884
33 months after NTP	\$206,139	\$183,298	\$172,521

Exhibit H: Hastus Crew Schedule

This option has been offered in 3 parts:

- Option F1: Modules "Crew" and "CrewOpt" to produce engineer workdays (crew schedules).
- Option F2: Same as Option F1 + Module "Roster" to build weekly engineer assignments.
- Option F3: Same as Option F2 + Modules "DailyCrew" and "DailyVehicle" to manage engineer assignments on a day to day basis.

Note that the base module of HASTUS – "Vehicle" to build timetables and perform optimal vehicle assignment – is included in our base price.

OPTION	F1	F2	F3
HASTUS modules included in the option	Crew, CrewOpt	Crew, CrewOpt, Roster	Crew, CrewOpt, Roster, DailyCrew, DailyVehicle
Price of the option	\$362,369	\$499,950	\$1,572,533
Days included for standard configuration by Giro	81 days	101 days	436 days
Days added for specific adaptations by Giro	15 days	30 days	180 days
Days included for follow up by Siemens	20 days	30 days	50 days

Giro rates:

- Project Manager / Configuration Expert: \$1,928 per day
- Software development Manager: \$1,544 per day
- Software developer: \$1,243 per day

Siemens rate:

- SII Engineer: \$1,760 per day

Exhibit I: Extended Warranty

The price of Option E shall be as follows for Extended warranty for additional years in the form of annual cost per year:

- Price of Extended Warranty for Year 1: \$3,707,227
- Price of Extended Warranty for Year 2: \$4,025,781
- Price of Extended Warranty for Year 3: \$4,420,434

Exhibit J: Not used

Exhibit K: Details for PSF 5.8 - Location Signs for Field Installed equipment

The Siemens Team will provide the required signs to PATH. The following list is representative of the types and quantities of signs:

- (38) Pedestal Mounted Sign
- (13) Direct Fixation Mounted Sign
- (52) Wall Mounted Signs
- (38) Pedestals
- (204) Berthing Marker
- (130) Wall Mounted Power Section Sign
- (232) Pole Mounted Power Section Sign
- (232) Pedestal for Mounted Power Section Sign

Exhibit L: Details for PSF 8.3 - Trackside Equipment Removals

The Siemens Team will be responsible for local cable removals and the removal of any signal that will require a new signal in its location. Additionally The Siemens Team will bag any existing signal that is to be retired. All other removals are excluded from our scope of work.

List of items that PATH will now take responsibility for (note that PATH may or may not remove the items detailed in the list):

- Remove Retired Berthing Marker,
- Remove Retired Stop and Valve,
- Remove Retired Signal,
- Remove Retired Pushbutton,
- Remove Retired Sign,
- Remove Impedance Bond,
- Remove Retired Case,
- Remove Retired Junction Box,
- Remove Retired AC Track Circuit,
- Remove Retired Bungalow,
- Remove Retired Track Indicator,
- Remove Retired Smash Signal,
- Remove Retired Pickup Indicator,
- Return 50 Devices,
- Mount 20 Devices.

STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

Refer to Article 102 of the Specific Contract Terms and Conditions.

PART II GENERAL PROVISIONS**1. Facility Rules and Regulations of PATH**

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the Rules and Regulations of PATH now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by PATH for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. PATH agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the Rules and Regulations of PATH shall be available for review by the Contractor at the Office of the Director/General Manager of PATH.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor the agent or representative of PATH for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of PATH.

3. Contractor's Warranties

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Director, officer, agent or employee of PATH is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, PATH, their Directors, Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference

to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, except as otherwise provided herein, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by PATH as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by PATH to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to PATH's consent to enter into this Contract and that without such provisions, PATH would not have entered into this Contract.

4. Personal Non Liability

Neither the Directors of PATH nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Equal Employment Opportunity, Affirmative Action, Non Discrimination

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non compliance with the equal opportunity and non discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, and provided the Contractor has failed to remedy any such

non compliance within a reasonable period following notice thereof, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of PATH

PATH shall have the following rights in the event the Contractor breaches a material term of this Contract; provided, however, PATH will allow the Contractor, after written notice of such breach, at least thirty (30) days to cure the breach:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, a material breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a written statement by the Contractor to any representative of PATH indicating that the Contractor, without cause for which the Contractor may be excused under the Contract, cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of PATH shall not be deemed to limit any other rights or remedies which PATH would have in the absence of such enumeration; and no exercise by PATH of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to stop it from exercising such other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by PATH, the Contractor expressly agrees that no default, act or omission of PATH shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. Submission To Jurisdiction

The Parties hereby irrevocably submit themselves to the jurisdiction of the Courts of the State of New York, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of PATH, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if

the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of PATH or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to PATH (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of PATH, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of PATH, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, PATH shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and PATH shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as PATH deems necessary and without cost to PATH. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by PATH, it shall give the Contractor notice thereof, which notice may be oral. No exercise by PATH of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to PATH under this Contract or otherwise.

- b. During the time that the Contractor is performing the contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other contractors performing at the worksite, all of which shall remain uninterrupted, except as otherwise provided in the Specifications or as previously agreed by PATH to facilitate the progress of the Work.
- c. The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation

of others (whether or not specifically mentioned above), all to the best interests of PATH and the public as may be directed by PATH.

- d. Notwithstanding the foregoing, the Contractor shall not be responsible for delays caused by persons or labor employed by PATH.

10. Claims of Third Persons

The Contractor undertakes to pay all rightful claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from PATH, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall PATH be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall PATH be liable to the Contractor for the same, except as specifically set forth in this Agreement.

14. Default, Revocation or Suspension of Contract

- a. If one or more of the following events shall occur:
- 1) If fire or other cause shall destroy all or a substantial part of the Facility.
 - 2) If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of PATH's interest herein; then upon the occurrence of such event or at any time thereafter during the continuance thereof, PATH shall have the right on twenty four (24) hours written notice to the Contractor to terminate this Contract for convenience, such termination for convenience to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor or PATH of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

- b. If one or more of the following events shall occur:
- 1) The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
 - 2) By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
 - 3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
 - 4) Except in the case of internal reorganizations within the same group of companies, the interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
 - 5) Except in the case of internal reorganizations within the same group of companies, the Contractor, if a corporation, shall, without the prior written approval of PATH, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
 - 6) If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
 - 7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the PATH shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

- c. If any of the following shall occur:
- 1) The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
 - 2) The Contractor shall fail to keep, perform and observe each and every other material promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within thirty (30) days after receipt of written notice of default thereunder from PATH or the Port Authority on behalf of PATH (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of written notice and continues such performance without interruption except for causes beyond its control); then upon the occurrence of any such event or during the continuance thereof, PATH shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.
- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract PATH upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by PATH of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by PATH shall be deemed to be a waiver of the right of PATH to terminate this Contract or of any other right or remedies to which PATH may be entitled because of any breach thereof. No waiver by PATH of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by PATH of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract PATH may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from PATH shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that PATH shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by PATH of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by PATH of an

election of remedies so as to preclude PATH from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between PATH or the Port Authority and the Contractor (including its obligation to PATH or the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH or the Port Authority) or (2) any claim which arises out of or in connection with this Contract is made against the Port Authority / PATH or (3) any subcontractor under this Contract or any other agreement between PATH or the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor or if in the opinion of PATH any of the aforesaid contingencies is likely to arise, then PATH shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as PATH may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as PATH may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by PATH to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that PATH does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of PATH to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by PATH shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, PATH shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.
- i. If PATH has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse PATH, or if PATH is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to PATH the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of PATH's statement therefore. PATH may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If PATH pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to PATH any such amount promptly upon receipt of PATH's statement therefore.
- k. PATH shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Sales to PATH are currently exempt from New York and New Jersey State and local sales and compensating use taxes and generally from federal taxation. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and PATH will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

PATH shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and PATH shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which PATH may be entitled because of such breach. Moreover, no waiver by PATH of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as PATH may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of PATH of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period PATH has notified the Contractor in writing of a pending claim by PATH

under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the Project Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of PATH of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to PATH from time to time such written reports in connection with its operations hereunder as PATH may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to PATH shall be subject to the continuing approval of PATH.
- b. No provision in this Contract giving PATH a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. Not Used

19. Approval of Methods

Neither the approval of PATH of the methods of furnishing services hereunder nor the failure of PATH to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of PATH to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

20. Safety and Cleanliness

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Project Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by PATH for the Contractor's operations,

and all fixtures, sink closets, equipment, and other personal property of PATH which are located in said facilities.

21. Accident Reports

The Contractor shall promptly report in writing to the Project Manager and to the Deputy Chief, Litigation Management of PATH all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as PATH may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of PATH.

22. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Project Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of PATH. No equipment or facilities of PATH shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

23. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to PATH and a receipt will be issued therefor.

24. Property of the Contractor

- a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract PATH may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to PATH; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by PATH as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to PATH upon demand.

25. Modification of Contract

This Contract may not be changed except in writing signed by the Parties. The Contractor agrees that no representation or warranties shall be binding upon PATH unless expressed in writing in this Contract.

26. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

27. Approval of Materials, Supplies and Equipment

Only PATH approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the PATH Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by PATH and it shall be incumbent upon the Contractor to obtain the most current list from the Project Manager.

At anytime during the Solicitation, pre performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by PATH. Any alternate product so approved by PATH may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

28. Contract Records and Documents – Passwords and Codes

Subject to Article 105 of the Specific Contract Terms and Conditions, when the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of PATH, and PATH shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by PATH, the Contractor shall make available to the designated PATH representative all such passwords and codes.

31. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non affected areas as required by the standards hereunder.

32. Permit Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from PATH a description of all spaces at the Facility which are permit required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit required confined space at a PATH facility requiring issuance of an OSHA permit, the Contractor shall contact the Project Manager to obtain a PATH Contractor Permit Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish PATH with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

33. Signs, Posters or Advertising

Except with the prior written approval of PATH, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

34. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other PATH property, any vending machines without the prior written approval of PATH. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by PATH for such purpose.

35. Non-Publication

The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to PATH or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of PATH. Such approval may be withheld if for any reason PATH believes that the publication of such information would be harmful to the public interest of is in any way undesirable.

36. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

37. Holidays

The following holidays will be observed at the Site:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Columbus Day
Presidents' Day	Election Day
Memorial Day	Veterans Day
Independence Day	Thanksgiving Day
	Christmas Day

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the Project Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

38. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Project Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Project Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Project Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

39. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Project Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Project Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

40. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

PATH by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which PATH may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

41. Contractor's Vehicles – Parking - Licenses

At the discretion of the Project Manager, PATH may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Project Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by PATH for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Project Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

42. Project Manager's Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Project Manager and shall perform the Work hereunder to the satisfaction of the Project Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Project Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Project Manager objects. Upon request, the Project Manager shall confirm in writing any oral order, direction, requirement or determination.

The exercise by the Project Manager of the powers and authorities vested in him/her by this section shall be binding and final upon PATH and the Contractor. This Article 42 is subject to the provisions of Articles 601 and 602 of the Specific Contract Terms and Conditions.

43. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding \$1,000,000, for:

- a. Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
- b. Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

44. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained by contacting the Port Authority's Office of Business and Job Opportunity at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business and Job Opportunity, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the

Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business and Job Opportunity, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business and Job Opportunity. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at http://www.panynj.gov/DoingBusinessWith/contractors/html/other_info.html. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III CONTRACTOR'S INTEGRITY PROVISIONS**1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information**

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a

- d. bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority or PATH employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority or PATH employee or former Authority or PATH employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority or PATH determination with respect to (i) the solicitation, evaluation or award of this Contract; or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications shall be deemed to be made by the Bidder as follows:

- * if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
- * if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement that sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in

paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Contract, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, PATH shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify PATH in writing during the period of irrevocability of bids on this Contract of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of PATH and that PATH will rely on their truth and accuracy in awarding this Contract. In the event that PATH should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, PATH may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on PATH contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance PATH will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by PATH, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with PATH.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

Bidders are advised that PATH has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the

State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of PATH's Board of Commissioners meeting of September 9, 1993.

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority or PATH employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority or PATH of duties involving transactions with the Contractor on behalf of the Port Authority or PATH, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority or PATH contract), etc. which might tend to obligate the Port Authority or PATH employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority or PATH contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

5. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services

to PATH) to which it is contemplated PATH may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of PATH or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of PATH, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director/General Manager in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director/General Manager, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director/General Manager shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Director/General Manager to be no longer appropriate because of such preclusion, then the Director/General Manager shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that PATH may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract which results, directly or indirectly, from the Services provided by the Contractor hereunder.

6. Definitions

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting agency and any inquiries concerning civil anti-trust investigations made by any

federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;
Bidder - shall mean Bidder;
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean executing this Contract.

PRICE FORMS

1. PRICE SUMMARY OVERVIEW FORM (PSOF)

Line Item	Description of Item	Total Price
1	Total Project Management	\$43,358,957
2	Total Operations Control Center Equipment	\$9,500,447
3	Total ATC Wayside Equipment	\$6,633,377
4	Total Interlocking Equipment	\$25,976,003
5	Total Trackside Equipment	\$94,095,590
6	Total Bungalows/Equipment Room Modifications	\$25,801,431
7	Total Signal Power Equipment	\$8,115,807
8	Total Existing Equipment Removals	\$1,901,800
9	Total ATC Carborne Equipment	\$34,734,474
10	Total Data Communications Equipment	\$18,136,134
11	Total PTC System Solution per the Rail Safety Improvement Act of 2008 (HR 2095)	\$1,508,338
12	Total System Safety/Safety Certification	\$4,972,238
13	Total Inspection & Testing	\$34,610,677
14	Total Training	\$5,126,462
15	Total Support Services	\$6,302,309
	Total Contract Price	\$320,774,044

1.1 Price Summary Form 1 (PSF-1): Project Management

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Contract/Schedule Management	Lump Sum	\$24,998,074
2.	1	Systems Integration Management	Lump Sum	\$3,661,974
3.	1	Configuration Management	Lump Sum	\$2,567,771
4.	1	Design/Design Review Management	Lump Sum	\$8,582,025
5.	1	Reliability, Availability, Maintainability Program	Lump Sum	\$620,592
6.	1	EMC Program	Lump Sum	\$1,007,621
7.	1	Project and Field Offices	Lump Sum	\$1,920,900
Total (also enter on line 1, PSOF)				\$43,358,957

1.2 Price Summary Form 2 (PSF-2): Operations Control Center Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Hoban OCC Equipment (design, supply, install)	Lump Sum	\$2,023,804
2.	1	New Train Control Center Equipment (design, supply, install)	Lump Sum	\$2,072,959
3.	5	Tower Operator Equipment (design, supply, install)	\$233,004	\$1,115,519
4.	1	Control Center (ATS) Software, including documentation	Lump Sum	\$4,288,165
Total (also enter on line 2, PSOF)				\$9,500,447

1.3 Price Summary Form 3 (PSF-3): ATC Wayside Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	7	ATC Wayside Controllers (design, supply, install)	\$853,905	\$5,977,337
2.	1	ATC Wayside Controller Software, including documentation	Lump Sum	\$656,040
Total (also enter on line 3, PSOF)				\$6,633,377

1.4 Price Summary Form 4 (PSF-4): Interlocking Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	24	Solid State Interlockings (design, supply install)	\$624,475	\$14,987,407
2.	24	Local Control Panels (design, supply, install)	\$130,011	\$3,120,273
3.	1	FRA Test Mode Controls (design, supply, install)	Lump Sum	\$132,000
4.	1	Interfaces to Trackside Equipment	Lump Sum	\$4,033,074
5.	1	Interlocking Software, including documentation	Lump Sum	\$3,703,249
Total (also enter on line 4, PSOF)				\$25,976,003

1.5 Price Summary Form 5 (PSF-5): Trackside Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Track circuits (design, supply, install)	Lump Sum	\$16,281,555
2.	826	Transponders (design, supply, install)	\$1,715	\$1,416,945
3.	1	Cable Trays, Messenger Wire, Concrete Troughs (design, supply, install)	Lump Sum	\$33,196,100
4.	1	Wire and Cables (design, supply, install)	Lump Sum	\$30,674,902
5.	2	Private Grade Crossing Equipment (design, supply, install)	\$119,638	\$239,276
6.	13	Employee Pickup Pushbuttons	\$39,743	\$516,653
7.	1	Interfaces to Existing PATH Signal and Systems Equipment	Lump Sum	\$3,051,585
8.	1	Location Signs for Field Installed Equipment (see Exhibit K)	Lump Sum	\$346,200
9	298	New Signals (design, supply, install) equipped with GELcore TR3 series 110V AC/DC LED lamps or equivalent, at locations other than home signals and at home signals that are relocated	\$28,095	\$8,372,374
Total (also enter on line 5, PSOF)				\$94,095,590

1.6 Price Summary Form 6 (PSF-6): Bungalows / Equipment Room Modifications

Item	Quantity	Description of Item	Unit Price	Total Price
1.	12	Existing Equipment Room Modifications	\$359,884	\$4,318,607
2.	12	Additional new Bungalows, complete with HVAC, security, fire detection (design, supply, install)	\$706,185	\$8,474,215
3.	1	Set of Complete Temporary Facilities Required (design, supply, install, remove)	Lump Sum	\$13,008,609
Total (also enter on line 6, PSOF)				\$25,801,431

1.7 Price Summary Form 7 (PSF-7): Signal Power Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Signal Power Equipment (design, supply, install)	Lump Sum	\$1,920,607
2.	1	Batteries/UPS (design, supply, install)	Lump Sum	\$1,969,600
3.	1	Signal Power Cabling/Conduit (design, supply, install)	Lump Sum	\$4,225,600
Total (also enter on line 7, PSOF)				\$8,115,807

1.8 Price Summary Form 8 (PSF-8): Existing Equipment Removals

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	NTCC Equipment Removal, including cables within the space	Lump Sum	\$212,000
2.	1	Relay Room Equipment Removal, including cables within the space	Lump Sum	\$367,800
3.	1	Trackside Equipment Removal (See Exhibit L)	Lump Sum	\$851,700
4.	1	Signal Power Equipment Removal, including cables within the space	Lump Sum	\$470,300
Total (also enter on line 8, PSOF)				\$1,901,800

1.9 Price Summary Form 9 (PSF-9): ATC Carborne Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	130	ATC Carborne Equipment, including Carborne Data Communications Equipment (design, supply, install), per equipped A-car	\$239,023	\$31,072,991
2.	1	ATC Carborne Equipment Software, including documentation	Lump Sum	\$3,661,483
Total (also enter on line 9, PSOF)				\$34,734,474

1.10 Price Summary Form 10 (PSF-10): Data Communications Equipment

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Fiber Optic Network Equipment (design, supply, install)	Lump Sum	\$2,279,202
2.	1	Wayside Radio Network Equipment (design, supply, install)	Lump Sum	\$7,392,132
3.	1	Fiber Optic and Other Communications Cable (design, supply, install)	Lump Sum	\$8,464,800
Total (also enter on line 10, PSOF)				\$18,136,134

1.11 Price Summary Form 11 (PSF-11): PTC System Solution to Comply with the RSIA of 2008*

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	PTC System Solution (design, supply, install)	Lump Sum	\$1,508,338
2.	1	PTC System Solution (Software) , including documentation	Included above	Included above
Total (also enter on line 11, PSOF)				\$1,508,338

* Rail Safety Improvement Act of 2008

1.12 Price Summary Form 12 (PSF-12): System Safety / Safety Certification

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	System Safety Program	Lump Sum	\$1,371,753
2.	1	Product Safety Plan	Lump Sum	\$1,297,439
3.	1	Safety Certification	Lump Sum	\$1,112,639
4.	1	FRA Coordination	Lump Sum	\$1,190,407
Total (also enter on line 12, PSOF)				\$4,972,238

1.13 Price Summary Form 13 (PSF-13): Inspection and Testing

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Inspections	Lump Sum	\$138,620
2.	1	Test Planning and Reporting	Lump Sum	\$4,409,494
3.	1	Factory Tests	Lump Sum	\$4,906,982
4.	1	Test Track	Lump Sum	\$8,178,917
5.	1	Field Tests	Lump Sum	\$14,533,342
6.	1	Pre-Revenue Service Tests	Lump Sum	\$2,067,469
7.	1	Authority-Directed Tests	Lump Sum	\$305,157
8.	1	Availability and Reliability Demonstrations	Lump Sum	\$70,696
Total (also enter on line 13, PSOF)				\$34,610,677

1.14 Price Summary Form 14 (PSF-14): Training

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Training Program	Lump Sum	\$3,345,370
2.	1	Training Aids and Materials	Lump Sum	\$847,425
3.	1	ATC System Simulator (including Manuals, Hardware and Software)	Lump Sum	\$771,667
4.	1	Train Engineer Training Simulator Upgrade (including Manuals and Software) See Exhibit F	Lump Sum	\$162,000
Total (also enter on line 14, PSOF)				\$5,126,462

1.15 Price Summary Form 15 (PSF-15): Support Services

Item	Quantity	Description of Item	Unit Price	Total Price
1.	1	Operations and Maintenance Manuals	Lump Sum	\$1,406,792
2.	1	Initial Provisions (see 1.16 herein)	Lump Sum	\$1,722,776
3.	1	Tools (see 1.18 herein)	Lump Sum	\$207,991
4.	1	Diagnostic Test Equipment (see 1.19 herein)	Lump Sum	\$2,964,749
Total (also enter on line 15, PSOF)				\$6,302,309

1.16 Price for Initial Provisions

For any line item that includes multiple types of equipment (identified by Lump Sum under quantity in the following table), each type, quantity and unit price must be listed in a separate sheet, with only the line item total listed on this form. The total price for Initial Provisions shall not exceed \$ 3,000,000 (\$ 3 million).

Quantity (LRU or LLRU)	Unit	Item (per TS 18.6)	Unit Price	Line Item Total
Lump Sum		Parts for Zone Controller	\$186,633	\$186,633
Lump Sum		Carborne ATC Equipment package	\$697,121	\$697,121
	each	Signals	\$26,209	\$26,209
Lump Sum		Track Circuit Equipment – Safetran	\$24,149	\$24,149
Lump Sum		Track Circuit Equipment – D/A	\$30,800	\$30,800
Lump Sum		ATC System Data Communications Equipment	\$491,163	\$491,163
Lump Sum		Batteries	\$68,000	\$68,000
Lump Sum		Displays and monitors – Siemens	\$42,406	\$42,406
10	each	Transponders	\$600	\$6,000
		Transponder programming device	Included in tools	Included in tools
Lump Sum		Parts for Grade Crossing Equipment	\$14,684	\$14,684
Lump Sum		Bungalow HP/AC Equipment	\$40,118	\$40,118
Lump Sum		Wayside Indicators and Pushbutton – Employee Pick Up	\$1470	\$1470
Lump Sum		Signal Power Transfer Switch	\$87,500	\$87,500
Lump Sum		Signal Multi-conductor Cable	\$6,527	\$6,527
		TOTAL not to exceed \$ 3,000,000 (also enter on line 2, PSF-15)		\$1,722,776

The following lists contain the detailed breakdown of the pricing in Price Form 1.16 (this pricing is not included in the total contract price):

Description of Item	Qty LRU	Qty Addit. LLRUs	Unit Price	Line Item Total
CARBORNE SET – OBCU				
Equipped OBCU rack equipped with	4		\$70,138	\$280,553
OBCU Rack (empty)	4	2	\$19,161	\$38,322
CAL3V3-EQ1	4	2	\$1,200	\$2,400
OBCU Fan Unit	4	7	\$5,132	\$35,921
SPS (Secondary Power Supply)	8	4	\$1,537	\$6,149
PPS (Primary Power Supply)	8	3	\$1,565	\$4,695
CREM	4	4	\$1,016	\$4,065
CCPU	8	4	\$3,304	\$13,215
CVDP	8	9	\$6,909	\$62,179
TRB	8	5	\$1,392	\$6,962
CDNVI	8	5	\$1,354	\$6,772
CVOPS	8	3	\$947	\$2,842
CDVIO	8	4	\$2,579	\$10,315
CRI	8	2	\$2,227	\$4,454
CCPB	10		\$160	\$1,600
MIU	4		\$4,564	\$18,257
CIU	4		\$9,162	\$36,648
TIA	6		\$1,981	\$11,888
MMA Box (accelerometers)	6		\$11,323	\$67,936

Description of Item	Qty LRU	Qty Addit. LLRUs	Unit Price	Line Item Total
OPG Speed Sensor	8		\$787	\$6,296
Cross Beam (As per compliance matrices settled during August 26, 2009)	4		\$1,169	\$4,676
ZONE CONTROLLER SET – WCU				
ASLT Ventilation	3		\$426	\$1,277
WCCP	3		\$1,067	\$3,202
CPUR RACK PCS_P02 equipped with	3		\$30,442	\$91,327
Cabled CPUR Rack (empty)	3	2	\$5,318	\$10,636
PCS_P02 Fan Unit	3	2	\$871	\$1,742
CALIM	3	2	\$1,128	\$2,256
CUCP	3	2	\$3,075	\$6,150
CCVLRD	3	2	\$2,066	\$4,131
CKDA_48	3	2	\$988	\$1,976
CTN_P	3	2	\$6,877	\$13,753
CAL48	3	2	\$1,511	\$3,021
CESA	6	2	\$2,279	\$4,557
CSSA	3	2	\$4,053	\$8,105
WCPB	5		\$135	\$673
On board radio equipment				
CMR Rack	11		\$19,111	\$210,217
PLAB	9		\$4,060	\$36,543
CAP (Carborne Access Point)	7		\$1,315	\$9,205
On Board Radio Antenna	7		\$622	\$4,356

Description of Item	Qty LRU	Qty Addit. LLRUs	Unit Price	Line Item Total
Wayside radio equipment				
WMS (Wayside Master Module)	2		\$11,866	\$23,733
WAP (Wayside Access Point)	6		\$1,315	\$7,890
WAM (Wayside Access Module)	6		\$6,756	\$40,538
WMS Gateway	1		\$11,866	\$11,866
WRS – Switch FO	2		\$2,707	\$5,414
WRA, Outdoor	4		\$622	\$2,488
WRA, Tunnel	4		\$622	\$2,488
Transponder	10		\$600	\$5,996
Miscellaneous Onboard and Wayside sets				
Onboard cables	4		\$15,705	\$62,821
Wayside cables	4		\$8,457	\$33,827
Onboard consumables	2		\$4,077	\$8,155
ATS EQUIPMENT				
ATS server	1		\$8,155	\$8,155
Archive server	1		\$8,155	\$8,155
Equipped workstation (without screen)	4		\$4,077	\$16,310
Flat screen	6		\$1,631	\$9,786
Network Equipment				
CISCO Catalyst 3750 48 10/100 + 4 SFP	9		\$7,482	\$67,338
GE SFP, LC connector LX/LH transceiver	20		\$828	\$16,560
LMS server	1		\$15,131	\$15,131

DESCRIPTION	PART NO.	SOURCE	QTY	Sell	Ext. Sell
Signals					
COLORLIGHT CLS-1000 LED 7 ASPECT		SAFETRAN	1	\$9,449.46	\$9,449.46
LOW CLEARANCE SIGNAL - 7 ASPECT			1	\$16,759.54	\$16,759.54
Track Circuit Equipment					
TUNING BOX	P699 044 BXXY	ALSTOM	19	\$1,271.00	\$24,149.00
Parts for Grade Crossing Equipment					
SSCC-III A, 40A, 19-RACK MOUNT	9000-91160-1101	SAFETRAN	1	\$2,637.60	\$2,637.60
PANEL, LIGHTING SURGE, FOR SSCC III, IIIA, III+, IV, W/ BATTERY ARRESTORS & EQUALIZERS	9000-91170-0001	SAFETRAN	1	\$449.40	\$449.40
PANEL, LIGHTING SURGE, SSCC III, IIIA, III+, IV	9000-91170-0002	SAFETRAN	1	\$417.20	\$417.20
ASSEMBLY, GATE & FLASHING LIGHT WITH GELcord 12" LED (MODEL RG6-RTFB or B-V1), W/ S-40 GATE MECHANISM(SHALL INCLUDE PIVOT CLAMPS W/HARDWARE TO ALLOW GATE TO BE TURN), INCLUDE POWER DOWN 60 TO 45-DEGREE,INCLUDE DEFROSTERS, 5" ALUMINUM MAST W/SPLIT BASE JB,33'-40' FIBERGLASS ARM W/3-LED LIGHTS, GATE SHALL BE BREAK-AWAY W/ SHEER PINS, HIGH WIND SUPPORT, ELECTRONIC BELL, STAINLESS STEEL HARDWARE, POLYETHYLENT VISORS(24") & HOODS, COUNTERWEIGHTS, INCLUDE THE FOLLOWING SIGNS "RAILROAD CROSSING" CROSSBUCK, "DONOT STOP ON TRACKS", "STOP ON RED SIGNAL"(SIGNS WILL BE MOUNTED ON EXTENSION BRACKETS)		SAFETRAN	1	\$8,729.60	\$8,729.60

DESCRIPTION	PART NO.	SOURCE	QTY	Sell	Ext. Sell
ASSEMBLY, FLASHING LIGHT WITH GELcord 12" LED (MODEL RG6-RTFB or B-V1), 5" ALUMINUM MAST W/SPLIT BASE JB, ELECTRONIC BELL, STAINLESS STEEL HARDWARE, POLYETHYLENT VISORS(24") & HOODS, INCLUDE THE FOLLOWING SIGNS "RAILROAD CROSSING" CROSSBUCK, "DONOT STOP ON TRACKS", "STOP ON RED SIGNAL"(SIGNS WILL BE MOUNTED ON EXTENSION BRACKETS)		SAFETRAN	1	\$2,450.65	\$2,450.65
Bungalow HP/AC Equipment					
BUNGALOW, HP/AC UNIT - Size - Small		FAB	2	\$9,705.88	\$19,411.76
BUNGALOW, HP/AC UNIT - Size - Large		FAB	2	\$10,352.94	\$20,705.88
Wayside Indicators and Pushbuttons - Employee Pick UP and Route Request Pushbutton					
ASSEMBLY, ROUTE REQUEST PUSHBUTTON - 2 Request PB, 1 Cancel PB, 1 - Indicator	092307-X704	COMMERCIAL	1	\$712.59	\$712.59
EMPLOYEE PICK-UP PUSHBUTTON		SAFETRAN	1	\$756.98	\$756.98
Signal Multi-Conductor Cable - Safetran					
WIRE, #20 AWG, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2,CROSS-LINKED-POLFOLIFIN INSULATION,FLAME RETARDENT,LOW SMOKE,LOW TOXICITY,ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1,648	\$0.49	\$807.52
WIRE, #16 AWG, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW OR XHHW-2,CROSS-LINKED-POLFOLIFIN INSULATION,FLAME RETARDENT,LOW SMOKE,LOW TOXICITY,ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1,649	\$0.49	\$808.01

DESCRIPTION	PART NO.	SOURCE	QTY	Sell	Ext. Sell
WIRE, #6 AWG GREEN, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW 0R XHHW-2, CROSS-LINKED-POLYOLIFIN INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1,648	\$1.42	\$2,340.16
WIRE, #10 AWG BLACK, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW 0R XHHW-2, CROSS-LINKED-POLYOLIFIN INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1,648	\$0.67	\$1,104.16
WIRE, #10 AWG GREEN, SINGLE CONDUCTOR WIRES SHALL BE ASTM B 8 XHHW 0R XHHW-2, CROSS-LINKED-POLYOLIFIN INSULATION, FLAME RETARDENT, LOW SMOKE, LOW TOXICITY, ZERO HALOGEN, CONFORM TO UL44 AND ICEA S-66-524	SEE SPEC SECTION 1620 (USED TEFZEL)	CABLE USA	1,649	\$0.89	\$1,467.61

DESCRIPTION	QTY	Unit Price	Line Item Total
Digital Track Circuit Equipment (wayside)	14	\$1,100	\$15,400
AC Track Circuit Equipment (Wayside)	5	\$140	\$700
Digital Track Circuit Junction Boxes	14	\$1,050	\$14,700
Pole Mounted Antenna Assy Complete	2	\$2,500	\$5,000
Wall Mounted Antenna Assy Complete	12	\$2,200	\$26,400
Signal Power Equipment (UPS, Batteries, ATS, Transformers,...)	2	\$77,750	\$155,500

1.17 Not Used

1.18 Price for Tools

TOOLS FOR ATC SYSTEM				
Item	Quantity	Description of Item	Unit Price	Total Price
1.	3	Vital Relay Adjustment Tools	\$2,327	\$6,981
2.	10	Special Tools	\$721	\$7,210
3.	4	Fiber Optic Tool Kit	\$28,725	\$114,900
4.	4	LAN Network Tool Kit	\$4,725	\$18,900
5.	1	Siemens Allowance for Tools	\$60,000	\$60,000
TOTAL (also enter on line 4, PSF-15)				\$207,991

1.19 Price for Diagnostic Test Equipment

Diagnostic Test Equipment			
Qty.	Description of Item	Unit Price	Total Price
20	Diagnostic Computer, if not combined with local control panel (Section 18.4.1 of the Technical Specification)	\$9,927	\$198,542
10	Portable Test Equipment (Section 18.4.3 of the Technical Specification)	\$39,523	\$395,231
1	ATC Test Software for PA-5 Railcar Portable Test Equipment (Section 18.4.3.1 of the Technical Specification)	Lump Sum	\$343,531
1	Carborne ATC Bench Test Equipment (Section 18.4.4 of the Technical Specification)	Lump Sum	\$795,911
1	ATC Test Rack Systems (Section 18.4.4 of the Technical Specification)	Lump Sum	\$1,146,800
1	Set of Special Test Equipment (Section 18.4.5 of the Technical Specification)	Lump Sum	\$20,685
1	Set of Spare Printed Circuit Boards of each type for every PTE, BTE and workstations except laptops	Lump Sum	\$64,049
TOTAL (also enter on line 5, PSF-15)			\$2,964,749

2. ALTERNATE PRICING [NOT USED]

3. OPTION PRICING

3.1 Price for Extra Work Hourly Rates (Article 401)

Item	Description	Units	Hourly Rate
1.	Engineering Labor – Safetran	Hours	\$183.00
2.	Shop Labor - Safetran	Hours	\$170.00
3	Field Labor – Safetran	Hours	\$183.00
4	QA/QC Support for Installation of Carborne ATC Equipment	Hours	\$199.00
5	SII Engineering Labor	Hours	\$199.00
6	SII Drafting / Technician	Hours	\$141.00
7	SII Field Labor	Hours	\$199.00
8	SII Quality Control / Scheduler	Hours	\$199.00
9	Field Labor – Daidone / Aldridge (Straight Time)	Hours	\$148.15

3.2 Price for ATC System Options

Option	Quantity	Description of Item	Unit Price	Total Price	
A.	each	New Signals to be provided (complete with LED array, signal head, foundations, interfaces, etc.) for all home locations proposed by the Contractor	Low clearance	\$41,850	\$41,850
			Standard	\$38,710	\$38,710
B	Each	New trip machines, valves, complete with all mounting equipment and interfaces, at all of those locations where new trip stops are required in the Contractor's approved design.	\$45,000	\$45,000	
C.	1	Complete Carborne ATC Equipment Set (complete with rack, underfloor equipment, cables, etc.);	see Exhibit G	see Exhibit G	
D	1	Contractor to install all signs.	Lump Sum	\$590,000	
E	1	Extended warranty for additional years in the form of annual cost per year.	See Exhibit I	see Exhibit I	
F	1	PATH Crew Schedule (Section 6.3.11 of the Technical Specification)	see Exhibit H	See Exhibit H	
G	1	Additional price if the Contractor removes all retired materials except for the express cables. Express cables may be removed by PATH at its convenience.	Lump Sum	\$1,325,000	
H	1	Not used			
I	1	Not used			
J	1	Additional price if the Contractor provides new consoles, furniture, work stations, and overview display equipment at the NTCC, instead of using the existing equipment at the NTCC.	Lump Sum	\$991,476	
K	1	Not used			

Option	Quantity	Description of Item	Unit Price	Total Price
L	1	Additional Price if the Road Car Inspector training is provided separately.	Lump Sum	\$144,396
M	1	Additional price if the number of Signal Supervisor and Maintainer Road Car Inspector training classes is increased from 7 to 14.	Lump Sum	\$97,876
N	1	Additional price if the training for Tower Operator and Trainmaster, Train Dispatcher and Transportation Supervisor's and OCC Personnel is provided separately.	Lump Sum	\$34,935
O	1	Additional price if the training for Transportation Inspector is provided separately.	Lump Sum	\$11,645
P	1	Additional price if the selected 25 signals, trip stops are required. (See Exhibit D for the list of 25 locations)	Lump Sum	\$681,470
Q	1	Additional price if 25 weekend shutdowns of either tunnel A or B for 53 continuous hours for installation, test, and cutover activities is not provided by PATH.	Lump Sum	\$2,100,000
R	130	Installation of ATC carborne equipment per railcar	\$10,029	\$1,303,719
S	1	The use of acceleration rate adjustment for schedule regulation (catch up provision)	Lump Sum	\$222,880
T	1	Additional price if Tefzel wire is not allowed for use in wiring within bungalows.	Lump Sum	\$173,202
U	1	Additional price if stainless steel wire tray is not allowed for use in the tunnels.	Lump Sum	\$1,839,000
V	1	New Employee Pickup Pushbutton and corresponding wayside indicators.	\$13,886	\$13,886
W	1	Additional price if the staging material used in the cutovers is not accepted as spare parts.	Lump Sum	\$482,258

3.3 Price for Long Term Technical Support and Services

Option	Quantity	Description of Item	Unit Price			Total Price
A.	1	Long Term Technical Support and Services for a period of 5 years from Final Acceptance for a maximum of 1000 hours per year in 2009 dollars	Lump Sum			\$1,367,145
		Long Term Technical Support and Services for Each Additional Hour in 2009 dollars	Description	Units	Hourly Rate	
			Engineering Hourly Rate	Hours	\$220	
			Shop Labor	Hours	\$170	
Field Labor	Hours	\$183				
B.	1	Long Term Technical Support and Services for a period from 6 to 10 years from Final Acceptance for a maximum of 1000 hours per year in 2009 dollars	Lump Sum			\$1,367,145
		Long Term Technical Support and Services for Each Additional Hour in 2009 dollars	Description	Units	Hourly Rate	
			Engineering Hourly Rate	Hours	\$220	
			Shop Labor	Hours	\$170	
Field Labor	Hours	\$183				

3.4 Price for Net Cost Items

Option	Description of Item	Unit Price
A	Construction of a new bungalow complete with HVAC, security, fire detection (design, supply, install) per square feet	\$1,800

CONTRACT GUARANTEE AGREEMENT

REVISED LANGUAGE FOR FORM A.1 - CONTRACT GUARANTY AGREEMENT OF ATTACHMENT D

In order to induce THE PORT AUTHORITY TRANS-HUDSON CORPORATION ("PATH") to accept the proposal submitted by Siemens Industry, Inc., a corporation organized under the laws of Delaware, Safetran Systems Corporation, a corporation organized under the laws of the State of Delaware, D/A Builders, LLC, a limited liability company organized and existing under the laws of the State of New Jersey, which entities acting jointly and severally constitute the Siemens Team (hereinafter called "the Contractor") on the PATH Signal Project - Automatic Train Control (ATC) System (Collective No. 17528) ("the Contract"), the undersigned Siemens Corporation ("Guarantor"), which has a material financial interest in the Contractor submitting said Proposal, warrants, undertakes and guarantees that the Contractor shall well and faithfully do and perform the things agreed by it to be done and performed according to the true terms and true intent and meaning of said Contract, including the payment of all lawful claims of subcontractors and suppliers arising out of the performance of said Contract.

This undertaking is for the benefit of THE PORT AUTHORITY TRANS-HUDSON CORPORATION.

This undertaking and guarantee shall be in no way impaired or affected by any extensions of time, modification, amendment, omission, addition, or change in or to the said Contract or the construction, operation and maintenance, or other services to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent) or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any construction, operation and maintenance, or other services to be performed, or any moneys due or to become due thereunder; and Guarantor does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and does hereby expressly stipulate and agree 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 Guarantor, as though done by or in relation to the Contractor. Notwithstanding anything contained herein to the contrary, however, with respect to any claim, action or proceeding against the Guarantor in connection with this guaranty, Guarantor shall be entitled to assert those defenses which the Contractor would be able to assert if such claim, action or proceeding were to be asserted or instituted against the Contractor based upon the Contract.

This guaranty shall terminate and cease of further effect upon the date of PATH's issuance of the Certificate of Final Completion and Guarantor shall, as of that date (the "Expiration Date"), have no further obligations or liability under this guaranty, whether or not the guaranty is returned to the Guarantor. Notwithstanding anything contained in this Guaranty to the contrary, Guarantor's liability hereunder up until the date of ATC System Conditional Acceptance (the "Construction Phase") shall not exceed one hundred percent (100%) of the maximum liability of the Contractor under Section 504 of the Contract. For the time period from the date of ATC System Conditional Acceptance to the Expiration Date (the "Warranty Phase"), the Guarantor's liability hereunder shall not exceed five percent (5%) of the maximum liability of the Contractor under the Contract.

Guarantor, hereby irrevocably submits, and by its acceptance hereof PATH hereby submits, itself to the jurisdiction of the Courts of the State of New York in regard to any controversy arising out of, connected with, or in any way concerning this guaranty. Guarantor, agrees that service of process on Guarantor in relation to such jurisdiction may be made, at the option of PATH, either by registered or certified mail addressed to (Name and Address of Local Agent of Entity executing Contract Guaranty Agreement), by registered or certified mail addressed to any office actually maintained by Guarantor, or by actual personal delivery to an officer, director or managing or general agent of Guarantor.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

This guaranty shall be governed by and construed in accordance with the laws of the State of New York.

All terms and conditions of the above guaranty are contained in this instrument, and this instrument may be changed only by express provisions of a writing signed by the party to be charged therewith. Neither Siemens Corporation nor Port Authority Trans-Hudson Corporation may assign its rights or delegate its duties without the written consent of the other party.

IN WITNESS HEREOF, the aforementioned guaranteeing entity Guarantor has caused its seal to be affixed hereto and this instrument to be executed by its duly authorized officers.

By: [Signature]
Name: E. Robert Lupone
Title: Senior Vice President, General Counsel

By: [Signature]
Name: Michael Panigel
Title: Senior Vice President, Corporate Human Resources

Dated: December 21, 2009

Dated: December 22, 2009

STATE OF: New York
COUNTY OF: New York

On the 21st day of December, 2009, before me personally came E. Robert Lupone. To me known, who, being by me duly sworn, did dispose and say that he resides at _____ Exemption (1) that he is the Senior Vice President, General Counsel of Guarantor, the entity described in and which executed the foregoing instrument; and that he signed his name thereto.

[Signature]

Notary Public

[SEAL]

GEORGE A. ABREU
Notary Public in and for the State of New York
Qualified in Westchester County
Cert. No. 0200067154
Commission Expires February 10, 2011

STATE OF:
COUNTY OF:

On the 22 day of December, 2009, before me personally came Michael Panigel. To me known, who, being by me duly sworn, did dispose and say that he resides at _____ that he is the Senior Vice President, Corporate Human Resources of Guarantor, the entity described in and which executed the foregoing instrument; and that he signed his name thereto.

[Signature]
Notary Public

GEORGE A. ABREU
ID # 2048501
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/4/2014

[SEAL]

SIEMENS CORPORATION

CERTIFICATE

The undersigned, Kevin M. Royer, DOES HEREBY CERTIFY that he is the duly elected and qualified Assistant Secretary of SIEMENS CORPORATION, a corporation organized and existing under the laws of the State of Delaware (the "Corporation").

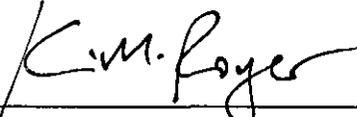
The undersigned, DOES HEREBY FURTHER CERTIFY that attached hereto marked SCHEDULE A is a true and correct copy of a resolution duly adopted by the Board of Directors of the Corporation on December 15, 2009, and that said resolution has not been in anywise amended, annulled, rescinded or revoked and is in full force and effect.

The undersigned DOES HEREBY FURTHER CERTIFY that each of the persons named in the list of Officers of the Corporation, attached hereto marked SCHEDULE B, has been duly elected or appointed to the office set forth opposite his or her name, is duly qualified and is now acting as such Officer.

IN WITNESS WHEREOF, the undersigned has affixed his signature as Secretary and has caused the Corporation seal of the Corporation to be hereunto affixed on the date shown.

December 21, 2009

Date



Kevin M. Royer
Assistant Secretary

SCHEDULE A

SIEMENS CORPORATION

RESOLVED, that any two of the following officers of the Corporation --

The President & Chief Executive Officer
The Executive Vice President & Chief Financial Officer
The Senior Vice President, General Counsel & Secretary
The Senior Vice President, Corporate Human Resources
The Senior Vice President, Government Affairs
The Senior Vice President, Taxes
The Vice President, Mergers & Acquisitions
The Vice President, Corporate Communications
The Vice President, Treasurer and Controller
The Vice President, Chief Intellectual Property Counsel
The President, GSS NA
The CFO, GSS NA
The President, Corporate Research
The CFO, Corporate Research
The Audit Partner, CF A Americas
The Vice President, U.S. Corporate Accounts
The Vice President, Real Estate
The Vice President, Supply Chain Management for Indirect Material

acting together, and subject to the limits of authority accorded to such respective officers in the LoA, as the LoA may be amended by the Board, from time-to-time,

be, and they hereby are, authorized to represent the Corporation and to execute, deliver and/or file contracts, instruments, agreements, guarantees, leases, and other documents of every description, with binding effect upon the Corporation; the foregoing authority to be deemed to include, without limitation, the authority to transfer stocks, bonds and other securities registered in the name of the Corporation; and be it further

RESOLVED, that (A) the Senior Vice President, Taxes, acting alone, upon approval of one Tax Manager and one Tax Director acting together, or (B) any two Assistant Secretaries, Tax Purposes acting together, be and hereby are, authorized to represent the Corporation and to execute, deliver and/or file tax returns, tax contracts, tax documents, tax agreements and all other documents relating to taxes of every description, (including without limitation, franchise, sales, use, property, payroll, transfer or other taxes) with binding effect upon the Corporation.

SCHEDULE B

List of Officers

Peter Y. Solmssen*	Chairman
Joe Kaeser*	Vice Chairman
Peter Y. Solmssen*	President & Chief Executive Officer (Acting)
Klaus P. Stegemann*	Executive Vice President and Chief Financial Officer
E. Robert Lupone*	Senior Vice President, General Counsel and Secretary
Beverly Pacansky*	Senior Vice President, Taxes
Michael Panigel*	Senior Vice President, Corporate Human Resources
Kathleen A. Ambrose*	Senior Vice President, Government Affairs
David Aiken	CFO, GSS NA
Greg Au	President, GSS NA
Paul Camuti	President, Corporate Research
Keith Cheatham	Audit Partner, CF A Americas
Kenneth C. Cornelius	Vice President, U.S. Corporate Accounts
Silvano Dall'Asta	CFO, Corporate Research
Sherri Farinaro	Vice President, Real Estate
Alan Gotliffe	Assistant Secretary, Tax Purposes
Joel Kirsch	Vice President and Chief Compliance Officer (until January 31, 2010)
Kevin Rogan	Vice President and Chief Compliance Officer (effective as of February 1, 2010)
Kenneth R. Meyers	Vice President, Mergers & Acquisitions
Patric Stadtfeld	Vice President, Supply Chain Management for Indirect Material
Daniel Navatta	Assistant Controller
Caroline Ochital	Assistant Secretary, Tax Purposes
Kevin M. Royer	Assistant Secretary
Daniel Staudt	Vice President, Chief Intellectual Property Counsel
Lawrence Steenvoorden	Vice President, Treasurer and Controller
James Whaley	Vice President, Corporate Communications
Heidi A. Zoetzi	Vice President, Export Control and Customs

* Elected officers

SIEMENS CORPORATION - LIMITS OF AUTHORITY TO APPROVE PAYMENTS & CONTRACTS

ANNEX I

Revised Effective November 22, 2009

Department (1)	Name (2)	LOA (3)	Exceptions
Accounting & Reporting	Klaus Stegemann Larry Steenvoorden	\$ 100,000.00	1. For external audit fees \$2,000,000 and for tax payments to taxing authority and/or recurring facility cost \$1,000,000. 2. For recurring insurance payments ONLY - \$500,000. 3. For recurring employee benefit insurance premium ONLY - \$500,000. 4. For recurring employee benefit insurance premiums, benefit taxes and financial statement data reporting calculations ONLY - \$500,000. 5. For benefit plan funding and payments ONLY - up to \$10,000,000 as specified in Annex I-A.
Corporate Finance Audit	Keith Cheatham	\$ 100,000.00	
Corporate Communications	Jim Whaley	\$ 100,000.00	
Corporate M&A	Kenneth Meyers	\$ 100,000.00	
Executive Management	Klaus Stegemann	\$ 100,000.00	1. For external audit fees \$2,000,000 and for tax payments to taxing authority and/or recurring facility cost \$1,000,000.
Export Compliance Customs	Heidi Zoetzi	\$ 100,000.00	
Government Affairs	Kathleen Ambrose	\$ 100,000.00	
Corporate Human Resources	Mike Panigel	\$ 100,000.00	1. In conjunction with Departmental Director, Senior Vice-President & CHRO or Siemens Corporation President/CEO must approve all payroll related increases (regular & assignee) over \$10,000; Senior Vice-President & CHRO or Vice-President Compensation & Benefits must approve all executive payroll increases; Home Loan Disbursements, unlimited amount provided a signed contract with the employee is in place. 2. For invoices related to an established contracted vendor ONLY - \$500,000.
IPD	Daniel Staudt	\$ 100,000.00	For invoices related to external law firms/legal vendors ONLY - \$500,000.
Legal	E. Robert Lupone	\$ 100,000.00	For invoices related to external law firms/legal vendors ONLY - \$500,000.
Siemens One	Ken Cornelius	\$ 100,000.00	
Strategic Planning	Michael Krukliniski	\$ 100,000.00	
Tax	Beverly Pacansky	\$ 100,000.00	For tax payments to taxing authorities ONLY - \$1,000,000 alone and up to \$3,000,000 with one of the following co-signing: the Executive Vice President/CFO, the Senior Vice President & General Counsel, the Senior Vice President Corporate Human Resources, or the Vice President, Treasurer & Controller.
Corporate Research	Paul Camuti	\$ 5,000,000.00	
Corporate Research	Silvano Dall'Asta	\$ 5,000,000.00	
Real Estate	Sherri Farinaro	\$ 5,000,000.00	
Real Estate	[Vice President, Finance]	\$ 5,000,000.00	
GSS NA	Greg Au	\$ 5,000,000.00	For payment of state sales and use tax liabilities ONLY up to \$10,000,000.
GSS NA	David Aiken	\$ 5,000,000.00	For payment of state sales and use tax liabilities ONLY up to \$10,000,000.

(1) Payments must relate to (a) ordinary course of business activity of the department or functional area or (b) approved and/or signed ordinary course contracts.

(2) Each named officer/employee may delegate his/her authority to approve payments in an amount not to exceed \$100,000 to one or more individuals in his/her department or functional area, provided that such delegation is made and documented in compliance with the delegation authorization procedures of the Accounting and Reporting Department.

(3) Any proposed payment amounts to be approved above the LOA limits require the approval of the President/CEO of Siemens Corporation. During any absence of the President/CEO, any of two of the following officers, signing together, may approve payments above the LOA limits: the Executive Vice President/CFO, the Senior Vice President and General Counsel and/or the Senior Vice President Corporate Human Resources. In each case, copies of all approved invoices above the LOA limits shall be sent to the Chairman.

**THE PORT AUTHORITY OF NY & NJ
CONTRACTOR CERTIFICATION**

WHEREAS, The Port Authority of New York and New Jersey (“**Port Authority**”) is a municipal corporate entity and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and, between the two States, and thereafter, consented to by the Congress of the United States, to develop transportation, terminals, and other facilities of commerce within the statutorily defined Port District, which has its Executive Offices at 225 Park Avenue South, New York, N.Y. 10003; and,

WHEREAS, at the present time, pursuant to the 1921 Compact and subsequent bi-state amendatory and supplementary legislation, the Port Authority owns and/or operates forty (40) such facilities; and,

WHEREAS, the Port Authority is committed to protecting the public interest against fraud, waste, and abuse in any of their projects or operations, and in any of their contracts and subcontracts (including sub-subcontracts and other contracts thereunder) entered into in order to effectuate such projects or operations (hereinafter referred to collectively as “**Port Authority contracts or subcontracts**”); and,

WHEREAS, Siemens Industry Inc., (“**Siemens Industry**” or “**The Company**”) is a corporation organized and existing under the laws of the State of Delaware, having an office and principal place of business at 7464 French Road, Sacramento, California, 95828; and Siemens Corporation, a corporation organized and existing under the laws of the State of Delaware, having an office and principal place of business at 527 Madison Avenue, New York, New York, 10022¹ and,

WHEREAS, the Port Authority and a consortium made up of Siemens Industry, Safetran Systems Corporation, and D/A Builders, LLC, a limited liability company organized and existing under the laws of the State of New Jersey, which entities acting jointly and severally, intend to enter into a contract for the provisioning of the PATH Signal Project - Automatic Train Control (ATC) System (Purchase Order Number 45000060939);

WHEREAS, the Port Authority and Siemens Industry may enter into new Port Authority contracts or the Port Authority may enter into new Port Authority contracts wherein Siemens is a subcontractor;

WHEREAS, certain information has come to the attention of the Port Authority to cause the Port Authority to review Siemens’ background in order to determine whether the public interest is served by allowing Siemens to perform as a contractor or

¹ Except as otherwise stated, the term “Siemens,” as used in this Certification, shall reference Siemens Corporation, its direct subsidiaries, including Siemens Industry.

subcontractor, in particular as a consortium member on Purchase Order No. 45000060939, PATH Signal Project – Automatic Train Control (ATC) System (hereinafter referred to as the “**Contract**”); specifically that Siemens Aktiengesellschaft (“Siemens AG”), the ultimate parent company of Siemens Industry, and other Siemens AG affiliate companies, pleaded guilty to violations of, or conspiracy to violate (as to the affiliates), the internal controls and books and records provisions of the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5) and 78ff(a); and that one of the conditions for pleading guilty is for Siemens AG to cooperate fully with law enforcement authorities and enforcement agencies, and that as part of its “continuing cooperation obligations and to ensure that Siemens AG implements an effective system of corporate governance and compliance with applicable laws and regulations going forward”, Siemens AG agreed to engage the services of an independent compliance monitor (hereinafter referred to as the “**Monitor**”); and,

WHEREAS, this Certification, is made for the express purpose of inducing the Port Authority to award the PATH Contract referenced above, and any new Port Authority contracts or to approve the award of additional Port Authority subcontracts to Siemens; and,

NOW THEREFORE, the following representations and covenants are hereby made by the undersigned on behalf of Siemens:

A. Siemens agrees, once the legal and compliance department, the officers or directors of Siemens have actual knowledge, that it shall notify the Port Authority, through its Office of Inspector General (“OIG”), within five (5) business days, in the event Siemens, any of Siemens’ current directors, officers or employees reporting directly to officers, are:

1. Arrested, indicted, or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument; or,
2. Convicted, after trial or by plea, of any felony under state, federal or international law or of any misdemeanor involving business-related, tax-related, or other financial crimes; or,
3. Party to a non-prosecution agreement, deferred prosecution agreement, or a consent decree, or are otherwise granted immunity from prosecution; or,
4. Notified by a prosecutorial authority that they are the subject or target of a criminal investigation.

B. Siemens further agrees, once the legal and compliance department, the officers or directors of Siemens have actual knowledge, that it shall notify the Port Authority, through its OIG, within fifteen (15) business days in the event Siemens Industry any of its current directors, officers or employees reporting directly to officers, or employees that

are working on, or have worked on (where the below listed events pertain to a Port Authority contract/transaction), any Port Authority contract/transaction, are:

1. Arrested, indicted, or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument; or,
2. Convicted, after trial or by plea, of any felony under state, federal or international law or of any misdemeanor involving business-related, tax-related, or other financial crimes; or,
3. Party to a non-prosecution agreement, deferred prosecution agreement, or a consent decree, or are otherwise granted immunity from prosecution; or,
4. Subpoenaed, interviewed, questioned, or otherwise contacted by any government agency, official, and/or employee in connection with any criminal investigation, specifically involving or relating to allegations of a lack of honesty or business integrity, and whether or not the employee or agent is notified, is in-fact, or otherwise believed to be, the subject or target of any such investigation;
5. Related to any commercial transaction with the Port Authority:
 - a. discovered to have offered or agreed to give any money, gratuity, or any other benefit to a contractor or subcontractor, public official or servant, or labor official for a purpose that is corrupt, or suspected of being corrupt; or,
 - b. solicited by any contractor or subcontractor, public official or servant, or labor official to give any money, gratuity, or any other benefit for a purpose that is corrupt, or suspected of being corrupt; or,
 - c. made, or attempted to make, any agreement, or participate in, or attempt to participate in, any scheme, to rig bids, restrain trade by collusion or unfair trade or labor practices, or otherwise prevent the lowest responsible bidder from obtaining a contract; or,
 - d. become aware that any person associated, or suspected of being associated, with organized crime has asserted, or attempted to assert, any influence over or established or maintained any relationship with Siemens; or any entity or person with any role in the ownership or operation of Siemens.

C. Siemens further agrees that it shall notify the Port Authority, through its OIG, within fifteen (15) business days, the following occurrences that are brought to the attention of any officer, director or employee reporting directly to officers, involving a

lack of honesty or business integrity or unethical business activity arising out of or in direct connection with Siemens Industry's operations:

1. Any suspected or actual criminal activity on the part of employees, agents, subcontractors, suppliers or vendors;
2. Any suspected or actual criminal activity on the part of any Port Authority or other governmental agency employees, officers, or agents; and,
3. Any suspected or actual criminal activity on the part of any labor officials.

However, Siemens shall be relieved of the disclosure obligations set forth in Paragraph A thru and including Paragraph D in the event a government agency with prosecutorial authority or authority to investigate alleged criminal activity requests that the investigation or subpoena be maintained in confidence, or pursuant to Grand Jury secrecy laws, so long as it is understood that once the request for said confidence need no longer apply the disclosure obligations of Siemens be fully restored.

D. Siemens authorizes, and where their authorization has no standing, agrees to seek from the Monitor, an annual letter from the Monitor for the OIG reporting on Siemens' compliance with the terms of the monitorship, the progress and status of the effectiveness of its control environment and compliance program, and whether any significant wrongdoing or violations to the programs were uncovered.

E. Siemens understands and acknowledges that this Certification, subject to its expiration in accordance with Paragraph H below, shall be incorporated into and be deemed a part of the Contract and all existing contracts and contracts hereafter awarded to Siemens or any of its affiliate companies by the Port Authority and shall be applicable to all existing subcontracts and subcontracts hereafter approved by the Port Authority, and that notwithstanding any conflicting provisions contained in any such contracts or subcontracts, this Certification takes precedence over such provisions. Siemens further understands and acknowledges that any false representation contained herein or a violation of any of the representations or covenants set forth herein may be deemed by the Port Authority to constitute a material breach of, and default under, all Siemens contracts with the Port Authority and all subcontracts approved by the Port Authority, and that the Port Authority may, at its election, immediately terminate any or all of such contracts and rescind its approval of such subcontracts with the effect that Siemens shall not be permitted to continue as a contractor or subcontractor.

F. Siemens Industry hereby authorizes and grants the Port Authority, including its OIG, the right to audit and/or investigate, as may be reasonable or appropriate, to ensure compliance by Siemens, its officers and directors with the terms and conditions of this Certification as it relates to Port Authority Contracts or Subcontracts. Siemens further agrees that it will cooperate fully and completely with the Port Authority, including its OIG, during and in connection with any such audits and/or investigations. Whereby such cooperation shall include, but is not limited to, granting the Port Authority, including its

OIG, the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of Siemens Industry, except for records protected by attorney-client privilege or the work product doctrine. Pursuant to this Paragraph F, Siemens shall also use its best efforts to assist the Port Authority, including its OIG, in obtaining access to, interviews with, and information from, current, and future persons employed or retained by Siemens.

G. Siemens understands and acknowledges that in the event of an audit and/or investigation, pursuant to Section F of this Certification, the costs of such audit and/or investigation incurred by the Port Authority, including its OIG, will be borne by Siemens in the event that evidence of such violations is established. In such an event, Siemens will be responsible for any related civil or criminal penalties upon a final determination by a court or administrative body of competent jurisdiction.

H. The undersigned declares and certifies that the foregoing information, is true and complete to the best of his/her knowledge and that the representations and covenants made herein will be strictly adhered to for the duration of the Contract and any contracts or subcontracts that may hereafter be awarded to Siemens Corp. and any of its affiliate companies by the Port Authority, provided, however, that the above-referenced covenants shall expire upon the close-out of the Contract, or three (3) years after the date of execution of this Certification, whichever event occurs later.

SIEMENS CORP.

Dated: December 21, 2009

BY: Joel Kirsch
Joel Kirsch, Vice President, and Chief
Compliance Officer

STATE OF New York
COUNTY OF New York) SS:

, being duly sworn, deposes and says that he/she is a Principal of Siemens Corp. and that, to the best of his/her knowledge, the information provided herein is true and sufficiently complete so as not to be misleading; and that he/she has been properly authorized by Siemens Corp. to sign this Certification, on its behalf.

Subscribed and sworn to before
me this 21st day of December 2009,

Mark A. Siemens
Notary Public

MARK A. SIEMENS
Notary Public, State of New York
No. 02518087154
Qualified in Westchester County
Cert. Filed in Westchester & New York Counties
Commission Expires February 10, 2011

