

# THE PORT AUTHORITY OF NY & NJ

**PROCUREMENT DEPARTMENT  
2 MONTGOMERY STREET, 3<sup>RD</sup> FL.  
JERSEY CITY, NJ 07302**

## INVITATION FOR BID/PUBLIC BID OPENING

### BID INFORMATION

**ISSUED DATE: June 7, 2013**

**TITLE: Rail Car Floats for New York New Jersey Rail**

**BID NO.: 32610**

**SUBMIT SEALED BIDS BEFORE THE DUE DATE AND TIME TO THE ABOVE ADDRESS  
WHERE THEY WILL BE PUBLICLY OPENED AND READ**

**BID DUE DATE: July 19, 2013**

**TIME: 11:00 AM**

**BUYER NAME: Emily Baxter**

**PHONE NO.: (201) 395-3421**

**FAX NO.: (201) 395-3425**

**EMAIL: ebaxter@panynj.gov**

### **BIDDER INFORMATION** **(TO BE COMPLETED BY THE BIDDER)** **(PLEASE PRINT)**

\_\_\_\_\_  
**(NAME OF BIDDING ENTITY)**

\_\_\_\_\_  
**(ADDRESS)**

\_\_\_\_\_  
**(CITY, STATE AND ZIP CODE)**

\_\_\_\_\_  
**(REPRESENTATIVE TO CONTACT-NAME & TITLE**

\_\_\_\_\_  
**(TELEPHONE)**

\_\_\_\_\_  
**(FEDERAL TAX I.D. NO.)**

\_\_\_\_\_  
**(FAX NO.)**

\_\_\_\_ **BUSINESS CORPORATION**    \_\_\_\_ **PARTNERSHIP**    \_\_\_\_ **INDIVIDUAL**

\_\_\_\_ **OTHER (SPECIFY):** \_\_\_\_\_

## **INVITATION FOR BID**

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## **PART I - STANDARD INFORMATION FOR BIDDERS**

### **1. General Information: The Port Authority of New York and New Jersey**

The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) is an agency 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. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

In addition, the Port Authority operates the Port Authority Bus Terminal in Manhattan, the largest facility of its kind in the world, and the George Washington Bridge and Journal Square Transportation Center bus stations. A key link in interstate commuter travel, the Port Authority also operates the Port Authority Trans-Hudson Corporation (PATH), a rapid rail transit system linking Newark, and the Jersey City and Hoboken waterfronts, with midtown and downtown Manhattan. A number of other key properties are managed by the agency including but not limited to a large satellite communications facility (the Teleport) in Staten Island, and a resource recovery co-generation plant in Newark. Prior to September 11, 2001, the Port Authority’s headquarters were located in the World Trade Center, and that complex is still owned and being partially redeveloped by the Authority.

### **2. Form and Submission of Bid**

The Bidder shall review carefully every provision of this document, provide all the information required, and sign and return one entire copy to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained herein must be completed and signed by the Bidder. The Pricing Sheet(s) contained herein must also be completed. The bid shall be sealed in the enclosed self-addressed envelope conspicuously marked with the Bidder’s name, address, and Vendor Number, if available. In addition, the outside of the package must clearly state the Bid title, the Bid Collective Number and the Bid Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting this bid, the Bidder offers to assume the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Bids must be received by the bid custodian on or before the due date and time specified on the cover page, at which time they will be publicly opened and read. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery. If your bid is to be hand-delivered by messenger or you are planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Port Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.

### **3. Buy America**

By submitting a bid, or executing a contract, hereunder, Contractor certified compliance with 23 U.S.C. 313, which sets forth the FHWA Buy America requirements; all steel and iron used in federally funded construction projects must be domestic. All foreign steel and iron materials and products are covered by Buy America regardless of the percentage they comprise in a manufactured product or the form they may take.

See the regulations at 23 C.F.R. 635.410 for more information on compliance, including the some latitude through minimum use waivers, and alternate bids.

### **4. Vendor Profile**

To ensure maximum opportunities, it is vitally important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Bidders may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://panynjprocure.com/VenLogon.asp>.

### **5. Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this Bid, the Bidder shall complete, sign and include with its Bid the addenda form(s). In the event any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though the Addenda had been acknowledged.

If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any addenda that might have been issued in connection with this solicitation.

### **6. Firm Offer**

The Bidder offers to provide the Port Authority of New York and New Jersey the services and to perform all Work in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the Pricing Sheets provided herein.

**EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS WILL RESULT IN REJECTION OF THE BID.**

**7. Acceptance or Rejection of Bids**

The acceptance of a bid will be by a written notice signed by an authorized representative on behalf of the Authority. No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all bids or to accept any bid, which in its judgment will best serve the public interest and to waive defects in any bid. No rights accrue to any Bidder unless and until its bid is accepted.

**8. Bidder's Questions**

Any questions by prospective Bidders concerning the Work to be performed or the terms and conditions of the Contract may be addressed to the Contracts Specialist listed on the Cover Sheet of this document. The Contracts Specialist is only authorized to direct the attention of prospective Bidders to the portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written addenda issued under the name of the Manager, Purchasing Services Division of the Port Authority and may be posted on the Port Authority website. Addenda shall be considered part of the Contract.

**9. Additional Information To and From Bidders**

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the time frame specified by the Port Authority.

If the Bidder is a corporation, a statement of the names and residences of its officers should be submitted on the Name and Residence of Principals Sheet, directly following the Signature Sheet.

**10. Union Jurisdiction**

All prospective Bidders are advised to ascertain whether any union now represented or not represented at the Facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the paragraph entitled "Harmony" in the Standard Contract Terms and Conditions.

## **11. Assessment of Bid Requirements**

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the services and materials to be supplied and all other things required to be done by the Contractor.

## **12. Bidder's Prerequisites**

Only Bidders who can comply with the prerequisites specified in Part II hereof at the time of the submission of its bid should submit bids, as only bids submitted by such Bidders will be considered. By furnishing this document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to perform the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

## **13. Qualification Information**

The Port Authority may give oral or written notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder's qualifications and ability to fulfill the Contractor's obligations hereunder. The requested information shall be submitted no later than three (3) days after said notice unless otherwise indicated. Matters upon which the Port Authority may inquire may include, but may not be limited to, the following:

- a. The Bidder may be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder's financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be required by the Port Authority from time to time including, but not limited to, the following:
  1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.
    - (ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.
    - (iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that

such statements accurately reflect the present financial condition of the Bidder.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the bid opening, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or their designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. Bidder's statement of work on hand, including any work on which a bid has been submitted, and containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs.
  3. The name and address of the Bidder's banking institution, chief banking representative handling the Bidder's account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.
- b. Information relating to the Bidder's Prerequisites, if any, as set forth in this document.
  - c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.
  - d. A statement setting forth the names of those personnel to be in overall charge of the service and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.
  - e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."
  - f. In the event that the Bidder's performance on a current or past Port Authority or Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.

- g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority that it in fact can perform the services as called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's bid. Nothing stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the bid.

#### **14. Facility Inspection**

Details regarding the Facility inspection for all parties interested in submitting a bid are stipulated in Part II hereof. All Bidders must present company identification and photo identification for access to the Facility.

#### **15. Available Documents - General**

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders either at the Facility Inspection, or during regular business hours. Arrangements to review these documents at a time other than the Facility Inspection may be made by contacting the person listed in Part II as the contact for the Facility Inspection.

These documents were not prepared for the purpose of providing information for Bidders upon this Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Port Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the inferences or conclusions to be drawn there from.

#### **16. Pre-award Meeting**

The lowest qualified Bidder may be called for a pre-award meeting prior to award of the Contract.

#### **17. Certification of Recycled Materials**

Bidders are requested to submit, with their bid, a written certification entitled "Certified Environmentally Preferable Products / Practices" attached hereto as "Attachment I-A", attesting that the products or items offered by the Bidder contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-

consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only.

### **Recycling Definitions:**

For purposes of this solicitation, the following definitions shall apply:

- a. "Recovered Material" shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- b. "Post-consumer Material" shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".
- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with an greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

### **18. City Payroll Tax**

Bidders should be aware of the payroll tax imposed by the:

- a) City of Newark, New Jersey for services performed in Newark, New Jersey;
- b) City of New York, New York for services performed in New York, New York;  
and
- c) City of Yonkers, New York for services performed in Yonkers, New York.

These taxes, if applicable, are the sole responsibility of the Contractor. Bidders should consult their tax advisors as to the effect, if any, of these taxes. The Port

Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph headed “Sales or Compensating Use Taxes”, in the Standard Contract Terms and Conditions included herein, does not apply to these taxes.

**19. Additional Bidder Information**

Prospective Bidders are advised that additional vendor information, including but not limited to, forms, documents and other information, including protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>

## ATTACHMENT I A - Certified Environmentally Preferable Products/Practices

Bidder Name: \_\_\_\_\_ Date: \_\_\_\_\_

In line with the Port Authority's efforts to promote products and practices which reduce our impact on the environment and human health, Bidders are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Bidders are requested to complete this form and submit it with their response, if appropriate. Bidders are requested to submit appropriate documentation to support the items for which the Bidder indicates a "Yes" and present this documentation, in the proper sequence of this Attachment.

### 1. Packaging

Has the Bidder implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- \_\_\_\_\_ Use of corrugated materials that exceed the required minimum EPA recommended post-consumer recycled content
- \_\_\_\_\_ Use of other packaging materials that contain recycled content and are recyclable in most local programs
- \_\_\_\_\_ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- \_\_\_\_\_ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- \_\_\_\_\_ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

**If yes, a description of the practices being followed should be include with the submission.**

### 2. Business Practices / Operations / Manufacturing

Does the Bidder engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates "Yes")

- \_\_\_\_\_ Recycles materials in the warehouse or other operations
- \_\_\_\_\_ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- \_\_\_\_\_ Use of energy efficient office equipment or signage or the incorporation of green building design elements
- \_\_\_\_\_ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- \_\_\_\_\_ Other sustainable initiative

**If yes, a description of the practices being followed should be included with the submission.**

### 3. Training and Education

Does the Bidder conduct/offer a program to train or inform customers and employees of the environmental benefits of the products to be offered under this contract, and/or does the Bidder conduct environmental training of its own staff?

- Yes       No      If yes, Bidder shall attach a description of the training offered and the specific criteria targeted by the training.

### 4. Certifications

Has the Bidder or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates "Yes")

- \_\_\_\_\_ ISO 14000 or adopted some other equivalent environmental management system
- \_\_\_\_\_ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- \_\_\_\_\_ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

**If yes, Bidders should attach copies of the certificates obtained.**

I hereby certify under penalty of law, the above statements are true and correct.

\_\_\_\_\_ Name      \_\_\_\_\_ Date

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## PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

### **1. Service(s) Required**

Provision of car floats for the transport of rail cars between the Greenville Yard, Jersey City, NJ and the 65th Street Yard, Brooklyn, NY

### **2. Location(s) Services Required**

Delivery at Greenville Yard, Jersey City, NJ and Commissioning at Greenville Yard and 65th Street Yard, Brooklyn, NY, as more fully described in the definition of "Facility" in the Specifications.

### **3. Expected Date of Commencement of Contract**

On or about August 15, 2013

### **4. Contract Type**

Firm-fixed price

### **5. Duration of Contract**

Twenty-three (23) months after contract commencement

### **6. Facility Inspection**

**Date and Time:** July 1, 2013 at 10 AM

Inspection will be held at Greenville Yard, Jersey City, NJ with a subsequent visit to 65th Street Yard, Brooklyn, NY. Please contact Don Hutton at 201-433-0360 or [huttondb@aol.com](mailto:huttondb@aol.com) to confirm attendance and receive travel directions. A valid photo identification is required for all participants wishing to attend.

### **7. Specific Bidder's Prerequisites**

- a. The Bidder shall have had at least five (5) years of continuous experience immediately prior to the date of submission of its bid in the design and construction or modification of car floats, barges or equivalent marine vessels classed to American Bureau of Shipping or other recognized standards and during that time shall have actually engaged in providing said or such services to commercial or industrial accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least five (5) years of experience immediately prior to the date of the submission of its bid in the management and operation of a business actually engaged in providing these services to commercial or industrial accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.

- b. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Bid as follows: The prerequisite in subparagraph (a) will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants should be listed followed by the words "acting jointly and severally". All joint venture Bidders must provide documentation of their legal status.

**Proof that the above prerequisites are met should be submitted with the bid.**

## **8. Bid Bond**

Either the Bid Bond annexed to this Part II as Attachment A, duly executed by the bidder as principal and by one or more surety companies duly authorized to carry on the business of suretyship in the state(s) in which the construction site is located, whose names appear on the current list of the Treasury Department of the United States as acceptable as sureties upon federal contracts; or, in lieu of a Bid Bond; A certified check, payable to the order of The Port Authority of New York and New Jersey, in the same amount appearing in the Bid Bond form, which check shall be placed in an envelope marked "Bid Security" and enclosed with the Proposal.

## **9. Available Documents**

The following documents will be made available for reference and examination:

Greenville Yard Transfer Bridge No. 10 Drawings (currently in design and will be made available by the Authority's Engineer upon request). These documents were not prepared for the purpose of providing information for bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Authority makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the bidders merely for the purpose of providing them with such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent or of any value to the bidders.

## **10. Contractor Staff Background Screening**

The Contractor awarded this contract may be required to have its staff, and any subcontractor's staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor (and subcontractor) may also be

required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense. Staff that are rejected for a credential for any reason are not reimbursable.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and/or regulation. Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877)522-7922.

**ATTACHMENT A: BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned<sup>1</sup>

as principal(s); and<sup>2</sup>

as surety are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") an amount equal to five percent (5%) of the total bid price in the penal sum of \$\_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

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

The condition of the above obligation is such that whereas the above named principal(s) has submitted to the Authority a certain Proposal, bound herewith and hereby made a part hereof, to perform the obligations of the Contractor under a contract in writing, known as Bid 32610 now therefore:

- A. If said Proposal shall not be accepted, or
- B. If said Proposal shall be accepted and the Authority does not require the principal(s) to furnish a Performance and Payment Bond, or
- C. If said Proposal shall be accepted and the Authority requires the principal(s) to furnish a Performance and Payment Bond and either the principal(s) furnishes a Performance and Payment Bond satisfactory to the Authority in accordance with the requirements of said Proposal or the Authority does not terminate the Contract as provided therein on account of the failure to furnish such a bond,

Then, this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The surety, for value received, hereby stipulates and agrees that the obligations of said surety and its bond shall be in no way impaired or affected by any extensions of the times within which the Authority may receive or accept such Proposal or within which the principal(s) may furnish a Performance and Payment Bond or by any waiver by the Authority of any of the requirements of said Proposal; and said surety does hereby waive notice of any such extensions or waivers.

IN WITNESS WHEREOF, the principal(s) and surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

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<sup>1</sup> Insert bidder's name. If a corporation, give the state of incorporation using the phrase "a corporation organized under the laws of the \_\_\_\_\_".  
 If a partnership, give full names of partners, using also the phrase, "co-partners doing business under the firm name of \_\_\_\_\_".  
 If an individual using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of \_\_\_\_\_".  
 If a joint venture, give the information required above for each participant in the joint venture.

<sup>2</sup> Insert name of surety.

(Seal)

\_\_\_\_\_  
Principal <sup>3</sup>

By<sup>4</sup> \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal)

By<sup>5</sup> \_\_\_\_\_

---

<sup>3</sup> If bidder is a joint venture, insert signature and information required as appropriate for one participant of the joint venture on this page and attach and complete an additional sheet in the same form as appears on this page for each other participant as required.

<sup>4</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>5</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

**ACKNOWLEDGMENT<sup>6</sup>**

**ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_, that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

<sup>6</sup> If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required.

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## PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

### 1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (“Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract as specified in Part II, and fully set forth in Part V, “Specifications,” at the location(s) listed in Part II and fully set forth in Part V, “Specifications,” and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the provisions of the Contract Documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

### 2. Duration

The term of this Contract (“Base Term”) shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority’s written notice of bid acceptance (“Commencement Date”) and, unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire as specified in Part II hereof (“Expiration Date”).

### 3. Payment

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder, a compensation calculated from the actual quantities of services performed and the respective prices inserted by the Contractor in the Pricing Sheet(s), forming a part of this Contract, exclusive of compensation under the clause hereof entitled “Extra Work.” The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures:

- a) Payment shall be made in accordance with the milestone payment schedule set forth below, minus any deductions and/or any liquidated damages to which the invoice may be subject and/or subject to any adjustments as may be required pursuant to increases and/or decreases in area, quantity or frequencies, if applicable.
- b) Within thirty (30) days after the work constituting each milestone, as set forth below, is completed, commissioned and accepted, and after receipt of invoice, the Port Authority

will pay the Contractor by check according to the following schedule (the Contractor shall not proceed to the next milestone before the prior milestone has been satisfactory completed, commissioned and accepted):

<b><u>Percent Payment</u></b>	<b><u>Milestone</u></b>
1) 5% of the price	Authority Engineer's acceptance of the 60% engineering design review
2) 10% of the price	Delivery of signed and sealed drawings, ABS-approved and issued for construction design package
3) 25% of the price	Completion of the car float assembly to a weight exceeding 1,500,000 pounds
4) 35% of the price	Delivery of the completed car float to Greenville Yard
5) 20% of the price	Completion of commissioning at Greenville Yard and 65th Street Yard
6) 5% of the price	Completion of one year of successful operation with no outstanding warranty claims

Note:

1. The Authority Engineer is the duly authorized representative acting within the scope of the particular authority vested in him in Part V Specifications.
2. ABS stands for American Bureau of Shipping.
3. All payments require the Authority Engineer's approval.
4. The payment schedule above shall apply individually to both car floats.

- c) The Contractor shall submit to the Authority Engineer by the fifth day of each month following the month of commencement of this Contract and on or by the fifth day of each month thereafter (including the month following the termination, revocation or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Authority Engineer for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice.
- d) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to release the Contractor from any obligation under or upon this Contract, or to estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.
- e) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the

difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

"Final Payment," as the term is used throughout this Contract, shall mean the final payment made for services rendered in the last month of the Base Term or any extended term. However should this Contract be terminated for any reason prior to the last month of the Base Term or any extended term, then Final Payment shall be the payment made for services rendered in the month during which such termination becomes effective. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this 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.

#### **4. Liquidated Damages**

- a) 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 he can and will complete the performance of the Work within the time hereinbefore stipulated. In the event that the Contractor fails to satisfactorily perform all or any part of the Work required hereunder in accordance with the requirements set forth in the Specifications (as the same may be modified in accordance with provisions set forth elsewhere herein) then,
- b) Inasmuch as the damage and loss to the Authority which will result from delay in completing the performance of the Work will include items of loss whose amount will be incapable or very difficult of accurate estimation, the damages to the Authority for each calendar day by which the Contractor does not complete performance of the Work within the time or times stipulated in Part V, Sections 12 and 16, shall be liquidated in the sum of One Thousand Dollars (\$1,000) per calendar day.
- c) The Authority Engineer shall determine whether the Contractor has performed in a satisfactory manner and his/her determination shall be final, binding and conclusive upon the Contractor.
- d) Failure of the Port Authority to impose liquidated damages shall not be deemed Port Authority acceptance of unsatisfactory performance or of a failure to perform on the part of the Contractor or a waiver of its remedies hereunder.

#### **5. Insurance Procured by the Contractor**

The Contractor shall take out, maintain and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, and independent contractors coverage, with a contractual liability endorsement covering the obligations assumed by the contractor under this contract:

**A. Commercial General Liability Insurance:**

\$10,000,000 Combined Single Limit per occurrence for Bodily Injury and Property Damage. If Work is to be performed on or within 50 feet of railroad property, then the contractual liability coverage shall contain an endorsement deleting any railroad exclusion.

- B.** When watercraft are to be used, the contractor shall take out, maintain, and pay Premiums on a policy of Protection & Indemnity Insurance relating to the operation, maintenance or use of any vessel in connection with work to be performed in this Contract, in a limit of liability of not less than \$5 million per occurrence.

**C. Workers' Compensation Insurance and Employers' Liability Insurance**

The Contractor and any Subcontractor shall procure and maintain, at their own expense a policy of workers' compensation insurance as required by law where the work will take place and employers' liability insurance with limits of not less than \$1,000,000 per accident. And where applicable, the Contractor and/or the Subcontractor shall also include one or more endorsements to cover for (i) Federal Employer's Liability Act (work near railroad), (ii) Longshore and Harbor Workers' Compensation Act (work on or around navigable waters), (iii) Maritime Coverage (for masters or member of the crews of vessels).

In addition, the policy(ies) shall include the Port Authority of New York and New Jersey and its related entities as additional insureds, and the policy (ies) and its certificate must be specifically endorsed to contain a provision that the policy may not be canceled, terminated, or modified without thirty (30) days' prior written notice to the Port Authority of New York and New Jersey, Attn: Facility Contract Administrator, at the location where the work will take place and to the General Manager, Risk Financing.

The Commercial General Liability Policy shall not contain any provisions for exclusions from liability other than those forming part of the standard, basic, unamended, and unendorsed Commercial General Liability Policy. The liability policies shall be endorsed to state that the insurer shall not, without obtaining the express advance written 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 the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

All the aforesaid policies of liability insurance shall also contain an endorsement deleting any exclusion for severability of interests so that the policy or policies will provide that the protections afforded the Contractor thereunder with respect to any

claim or action against the Contractor by a third person shall pertain to and apply with like effect with respect to a claim or action against the Contractor by the Port Authority and that said protections shall also pertain to or apply with respect to any claim or action against the Port Authority by the Contractor, but such endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured.

Within five (5) days after the acceptance of its Proposal, the Contractor shall deliver to the General Manager, Risk Financing, The Port Authority of New York and New Jersey, 225 Park Avenue South, 12<sup>th</sup> Floor, New York, N.Y. 10003 (Attn: Contract Insurance Review), certificate of insurance evidencing the above insurance and endorsements, **stating the Contract number and title** and containing a separate express statement of compliance with each of the requirements above set forth in this Section. Upon the request of the General Manager, Risk Financing, the Contractor shall meet with the General Manager, Risk Financing and furnish for the Port Authority's inspection either the policies themselves or a certified copy of each policy and, if further requested, the provisions for establishing premiums. The Port Authority will not require that the Contractor leave this information with the Port Authority. The Contractor shall retain all documents and copies thereof.

The requirements of this Section are for the greater assurance of the Port Authority that the Contractor will be financially able to discharge its obligations under the Section hereof entitled "Risks Assumed by the Contractor" and shall not in any way be construed as a limitation on the nature or extent of such obligations. If at any time the above liability insurance should be canceled, terminated or modified so that insurance is not in effect as above required, then if the General Manager, Risk Financing shall so direct, the Contractor shall suspend performance of this Contract. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not so suspended (whether or not because of omission of the General Manager to order suspension), then the Authority may at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Contractor to the Authority. (CITS # 4208N)

## **6. Extra Work**

The Contractor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Authority Engineer. "Extra Work" as used herein shall be defined as work which differs from that expressly or impliedly required by the Specifications in their present form. Total Extra Work performed by the Contractor shall not exceed six percent (6%) of the Total Estimated Contract Price of this Contract for the entire Term of this Contract including extensions thereof, or six percent (6%) of the Total Estimated Contract Price of each Section if this Contract is awarded by separate Sections.

The Contractor is required to perform Extra Work pursuant to a written order of the Authority Engineer expressly recognizing such work as Extra Work. If Lump Sum or Unit Price compensation cannot be agreed upon by the parties in writing prior to the start of Work, the Contractor shall perform such Extra Work and the Contractor's

compensation shall be increased by the sum of the following amounts and such amounts only: (1) the actual net cost, in money, of the labor, and material, required for such Extra Work; (2) ten percent (10%) of the amount under (1) above; (3) such rental as the Manager deems reasonable for plant and equipment (other than small tools) required for such Extra Work; (4) if the Extra Work is performed by a subcontractor, an additional five percent (5%) of the sum of the amounts under (1) through (3) above.

As used in this numbered clause (and in this clause only):

“Labor” means laborers, mechanics, and other employees below the rank of supervisor, directly employed at the Site of the Work subject to the Authority’s Engineer or his/her designee’s authority to determine (1) what employees of any category are “required for Extra Work” and (2) the portion of their time allotted to Extra Work; and “cost of labor” means the wages actually paid to and received by such employees plus a proper proportion of (a) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (b) taxes actually paid by the employer pursuant to law upon the basis of such wages and workers’ compensation premiums paid pursuant to law. “Employees” as used above means only the employees of one employer.

“Net Cost” shall be the Contractor’s actual cost after deducting all permitted cash and trade discounts, rebates, allowances, credits, sales taxes, commissions, and refunds (whether or not any or all of the same shall have been taken by the Contractor) of all parts and materials purchased by the Contractor solely for the use in performing its obligation hereunder, provided that such purchase has received the prior written approval of the Authority Engineer as required herein. The Contractor shall promptly furnish to the Authority Engineer such bills of sale and other instruments as the Authority Engineer may require, executed, acknowledged and delivered, assuring to the Authority Engineer title to such materials, supplies, equipment, parts, and tools free of encumbrances.

“Materials” means temporary and consumable materials as well as permanent materials; and “cost of materials” means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the Site of the Work in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

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

The Contractor shall submit all reports, records and receipts as are requested by the Authority Engineer 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.

If the Contractor deems work to be Extra Work, the Contractor shall give written notice to the Authority Engineer within twenty-four (24) hours of performing the work that it so considers as Extra Work, and failure of the Contractor to provide said notice shall constitute a waiver of any claim to an increase in compensation for such work and a conclusive and binding determination that it is not Extra Work.

The Contractor shall supply the amount of materials, supplies, equipment and personnel required by the Authority Engineer within seventy-two (72) hours following the receipt of written or verbal notice from the Authority Engineer or in the case of an emergency as determined by the Authority Engineer, within twenty-four (24) hours following the receipt by the Contractor of the Authority Engineer's written or oral notification. Where oral notification is provided hereunder, the Authority Engineer shall thereafter confirm the same in writing.

All Extra Work shall be billed to the Port Authority on a separate invoice on a monthly basis.

## **7. Grant Funding Clause**

This Agreement may be funded in whole or in part by the United States Federal Highway Administration (FHWA). Contractor agrees to and shall comply with (and Contractor shall ensure that its subcontractors agree to and shall comply with) the applicable contract provisions of the FHWA Requirements, special grant conditions and all other federal, state and local laws that are or may become applicable to this Agreement. The current FHWA Requirements and Required Contract Provisions are set forth in Attachments A, B and C (Form 1273) of this Agreement.

## **8. Order Of Precedence Clause**

Anything to the contrary herein notwithstanding, all contract specific terms and conditions and applicable FHWA requirements and all applicable federal, state and local laws shall be deemed to control in the event of a conflict with the standard terms and conditions contained in this Agreement.

## **9. Disadvantaged Business Enterprise (DBE) Program**

A. The requirements for the Disadvantaged Business Enterprise (DBE) program are set forth in U.S. Department of Transportation (DOT) Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26) and is incorporated into this Agreement by reference.

B. The DBE participation goal for this Agreement is 5%.

- C. This regulation applies to all agreements that include any federal funds; therefore the Contractor agrees to include the clauses cited below in all agreements for this project and to enforce such clauses. With regards to paragraph 2) below, the Contractor agrees to pay each subcontractor within seven (7) days of receipt of payment from the Authority.
- D. The Contractor agrees to include the following clauses (printed in *Italics*) in all agreements and subcontracts:
1. *The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract and shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted agreements. This regulation is incorporated into this agreement by reference. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Authority deems appropriate. This provision shall likewise apply to each subcontractor at each tier.*
  2. *The Contractor agrees to pay each subcontractor on this project for satisfactory performance of its subcontract no later than seven (7) days from the receipt of each payment received from the Authority or within such later period as is provided in the subcontract.*
  3. *49 CFR Part 26 is incorporated into this Agreement by reference.*
  4. *The DBE participation goal for this agreement is 10 %.*
  5. *The obligation of the Contractor is to make good faith efforts to meet the Agreement DBE participation goal of 10 %. The Contractor can demonstrate that it has done so by meeting the Agreement goal or documenting good faith efforts. See Section 26.53 and Appendix A of 49CFR Part 26 for descriptions and discussions of good faith efforts. The Authority is responsible for determining whether a Contractor that has not met the Agreement goal has documented sufficient good faith efforts to be regarded as responsible.*
- E. Assistance is available from the Authority's Office of Office of Business Diversity and Civil Rights to identify DBE firms and to answer any questions related to the preparation and submission of the DBE Participation Plan (Exhibit A). Questions can be addressed to Jorge Mercado at (212) 435-7821 or email at [jmercado@panynj.gov](mailto:jmercado@panynj.gov). The Authority through the New York State and New Jersey Uniform Certification Programs (UCP) maintains Directories identifying all DBE firms. The Directories list the DBE firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises the Directory periodically. The Authority makes the Directories available as follows:
- 1) *New York State UCP Directory: [www.nysucp.net](http://www.nysucp.net)*
  - 2) *New Jersey UCP Directory: [www.njucp.net](http://www.njucp.net)*

## **10. Performance and Payment Bond**

If the Authority shall in its sole discretion so elect at the time of accepting the Contractor's Bid, the Contractor shall furnish a bond for the faithful performance of all obligations imposed upon him by the Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of the Contract. Such bond shall be in the form bound herewith as Attachment B to this Part III entitled, "Performance and Payment Bond", shall be in a penal sum equal to the Lump Sum and such bond shall be signed by one or more sureties<sup>1</sup> satisfactory to the Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of this Form of Contract as though herein set forth in full.

At any time after the opening of Bids, the Authority may give notice to one or more bidders to advise the Authority as to the names of their proposed sureties. Within forty-eight hours thereafter each bidder so notified shall so advise the Authority. The giving of such notice to a bidder shall not be construed as an acceptance of his Bid, and omission to give such notice shall not be construed as an election by the Authority not to require a bond.

If the Authority elects to require the Contractor to furnish a bond, he shall deliver such bond to the Authority within seven days after receipt by him of the acceptance of his Bid, and the sureties thereon shall be as proposed by him, provided, that if the Authority has theretofore given notice to him that his proposed sureties or any of them are not satisfactory, the bond shall be executed by other sureties satisfactory to the Authority.

The Authority shall give notice to the Contractor within ten (10) days after receipt of the Performance and Payment Bond as to whether or not such bond is satisfactory.

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<sup>1</sup> Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the construction site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

In the event of a default by the Contractor in his obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Bid, such default shall entitle the Authority in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Bid, without any liability on the part of the Authority. Inasmuch as the damages to the Authority resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory bond will include items whose accurate amount will be difficult or impossible to compute, such damages shall be liquidated in the sum of the following amounts:

1. The excess, if any, of the Lump Sum in the Bid finally accepted over that in the Bid of the Contractor; and
2. The expense of such new advertisement of the Contract, if any, as may be deemed necessary by the Authority; and
3. The sum of five hundred dollars (\$500) for each day after the receipt by the Contractor of the acceptance of his Bid that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

In the recovery of the damages above specified, the Authority may proceed against the sum represented by the certified check deposited with it or against the Bid Bond and take such other action as it may deem best in the public interest.

If the Contractor furnishes a bond in accordance with the requirements of the Authority under this numbered clause, the Authority shall reimburse the Contractor for the net amount actually paid by him to the surety or sureties as the premium on such bond. The Contractor shall deliver to the Engineer receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Engineer, the Authority shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Authority shall be or become dissatisfied with any surety or sureties then upon any bond furnished in accordance with the requirements of the Authority, or if for any other reason such bond shall cease to be adequate security to the Authority, the Contractor shall, within five days after notice from the Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Authority to constitute adequate security.

#### **11. Equal Employment Opportunity**

In order to conform with the policy of the Port Authority the Contractor agrees that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the Rules and Regulations promulgated pursuant thereto, are hereby made a part of this Contract and are binding upon him and that it shall not be a defense to the Contractor in any action arising directly or indirectly out of such legislation and Rules and Regulations that The Port Authority may not be subject thereto.

The provisions of this numbered clause are for the benefit of the Attorney General of the State of New Jersey, Division on Civil Rights in the Department of Law and Public Safety of the State of New Jersey, and the Director thereof, as well as for the benefit of the Port Authority, and said Division and Director shall have a right of action against the Contractor to effectuate the intent of this clause.

## **12. No Discrimination In Employment**

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training,
- B. The Contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the Contract to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the Contractor's obligations hereunder,
- C. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of the Contract with the Authority, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status,
- D. The Contractor will include the provisions of A. through C. of this numbered clause in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the Contract with the Authority,
- E. The Contractor will submit to The Port Authority every two weeks a report indicating the number of workers employed at the construction site as of the 1st and 15th days of each month and the projected number of workers to be so employed during the following month. This report shall also indicate the trade in which such workers are employed and, with respect to current employment (but

not projected employment), shall indicate the number of such workers who are members of the following groups:

1. *Black persons having origins in any of the Black African racial groups not of Hispanic origin;*
2. *Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;*
3. *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;*
4. *American Indian 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.*

- F. The Contractor agrees that he will fully cooperate with the office of the Attorney General of the State of New Jersey and with The Port Authority which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this Contract, and said Contractor will comply promptly with all requests and directions from the Attorney General of the State of New Jersey and The Port Authority in this connection, both before and during construction.
- G. Full cooperation as expressed in F. foregoing shall include, but not be limited to, being a witness or complainant in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by the Attorney General of the State of New Jersey, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by the Attorney General of the State of New Jersey, signing any and all documents involved in any proceeding involving questions of unlawful or invidious discrimination, the execution of which are deemed necessary by the Attorney General of the State of New Jersey, participating in meetings, submitting periodic reports on the racial aspects of present and future employment, assisting in inspection at the construction site, and promptly complying with all State directives deemed essential by the Attorney General of the State of New Jersey to insure compliance with all Federal and State laws, regulations and policies against racial or other unlawful or invidious discrimination.
- H. Upon the basis of a finding by the Attorney General of the State of New Jersey that the Contractor has not complied with these nondiscrimination requirements and that by reason thereof there has been a material breach of this Contract, the Executive Director of the Authority shall have the sole discretion and power to declare this Contract null and void upon 10 days' notice to the Contractor. In such event the Contractor shall become liable for any and all damages which shall accrue to The Port Authority including, but not limited to, the difference between the total cost of completion and the contract price under this Contract.
- I. The provisions of this numbered clause which refer to the Attorney General are inserted in this Contract for the benefit of the Attorney General of the State of

New Jersey as well as for the benefit of The Port Authority, and said Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

**13. Affirmative Action Requirements - Equal Employment Opportunity**

The Contractor shall comply with the provisions set forth hereinafter. These provisions are modeled on the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance in 1978.

The Contractor and each subcontractor must fully comply with the clause entitled "Equal Employment Opportunity" and the requirements in this numbered clause. The Contractor commits himself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of this numbered clause by submitting a properly signed Proposal.

The Contractor shall appoint a company executive to assume the responsibility for the implementation of the requirements, terms and conditions of this numbered clause.

A. The goals for minority and female participation, expressed in percentage terms, for the Contractor's workforce at the construction site under this Contract are as follows:

Minority, except laborers	30%
Minority, laborers	40%
Female, except laborers	6.9%
Female, laborers	6.9%

These goals are applicable to all construction Work performed at the construction site under the Contract.

The Contractor's compliance with this numbered clause shall be based on his implementation of the clause entitled "Equal Employment Opportunity", and specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the Contract and in each trade. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract. Compliance with the goals will be measured against the total work hours performed.

B.

- 1) The Contractor shall provide written notification to the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated start and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty days after acceptance of the Contractor's Proposal, for the approval of the Engineer. The Contractor shall maintain and periodically update it at intervals as required by the Engineer. The Workforce Projection Schedule shall include the time period in which

each trade shall be utilized, the average number of workers required per trade on a weekly basis, the peak period for each trade, and the number of workers required per trade for the peak period on a weekly basis.

C.

1. *As used in this numbered clause:*
  - a. "Director" means Director, Office of Business Diversity and Civil Rights of the Authority;
  - b. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
  - c. "Minority" includes:
    - i. *Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);*
    - ii. *Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;*
    - iii. *Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and*
    - iv. *American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).*
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, he shall physically include in each subcontract in excess of \$10,000 such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.
3. The Contractor shall implement the specific affirmative action standards provided in 6.) a. through p. hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in the total workforce at the construction site under the Contract including employees of the Contractor and the subcontractors. The Contractor is expected to make substantially uniform progress toward his goals in each craft during the period specified. These goals may be achieved through utilization of journeyworkers and apprentices. In the event they are not achieved through the utilization of journeyworkers, the maximum number of apprentices provided for in the applicable collective bargaining agreement may be utilized to achieve said goals.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining

agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

5. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
6. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these provisions shall be based upon his effort to achieve maximum results from his actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or his unions have employment opportunities available, and maintain a record of the organizations' responses.
  - b. Develop maximum job opportunities for apprentices appropriate to the conditions of the Work and subject to the applicable collective bargaining agreement, in conjunction with training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 6.a. above.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet his obligations.

- e. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting his EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct his recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth.
  - k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (6.a. through p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of his obligations under 6.a. through p. hereof provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet his individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
8. Goals for minorities and for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently,

the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved his goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).

9. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
10. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
11. The Contractor shall carry out such sanctions and penalties for violation of this clause and of the clause entitled "Equal Employment Opportunity", including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by The Port Authority. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
12. The Contractor, in fulfilling his obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in 6. hereof so as to achieve maximum results from his efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, The Port Authority shall proceed accordingly.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports, including the Monthly Employment Utilization Report, relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
14. Nothing herein provided shall be construed as a limitation upon the application of any laws which establish standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## EXHIBIT A

### THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY DBE PARTICIPATION PLAN

PAGE \_\_\_\_ OF \_\_\_\_

**INSTRUCTIONS:** Submit this completed form with your bid. Note: If more than one (1) page is used, complete all totals on last page.

Bid Title: \_\_\_\_\_  
 Contractor's Name: \_\_\_\_\_ Bid Amt: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Telephone No: \_\_\_\_\_ DBE Goal: \_\_\_\_\_ %

Name, Address, Telephone No. of DBE Subcontractor (Including name of contact person)	DBE	Description of Work/Services to be Provided	Anticipated Date DBE Will Start Work	Approximate \$ Amount to DBE Sub	DBE % of Tot. Agreement Amount
<b>TOTAL</b>				\$	%

Signature of Contact Person: \_\_\_\_\_ Approved by: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of Business Diversity and Civil Rights (OBDCR) Representative

**Note:**  
 A) All subsequent revisions to the plan must be submitted for approval to the Project Manager for acceptance by OBDCR.

**EXHIBIT B: PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>1</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

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<sup>1</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of \_\_\_\_\_".

If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of \_\_\_\_\_".

If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of \_\_\_\_\_".

are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") in the penal sum of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract XXX.XXX - "YYY-YYY", and

WHEREAS, the Authority has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit of the Authority and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as the Authority itself) shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the Authority.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, 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 to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and 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 said sureties as though done by or in relation to said principal.

The sureties shall give the General Counsel of the Authority the following notices:

- A. Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;
- B. Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt by said General Counsel of notice under either subparagraph A or B above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

\_\_\_\_\_  
Principal  
By <sup>2</sup> \_\_\_\_\_

\_\_\_\_\_  
Surety  
By <sup>3</sup> \_\_\_\_\_

APPROVED AS TO ACCEPTABILITY OF SURETIES:

\_\_\_\_\_  
Credit Manager  
\_\_\_\_\_ 20

<sup>2</sup> \_\_\_\_\_  
If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>3</sup> Add signatures of additional sureties, if any.

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and \_\_\_\_\_ which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

**EXHIBIT C**

**BUY AMERICA CERTIFICATIONS**

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR  
MANUFACTURED PRODUCTS**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER  
ROLLING STOCK AND ASSOCIATED EQUIPMENT**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND PRICING SHEET(S), TABLE OF CONTENTS**

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**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING SHEET(S)**

**1. SIGNATURE SHEET**

OFFER: The undersigned offers and agrees to furnish to the Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and addenda of the Contract. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions. This offer shall be irrevocable for 90 days after the date on which the Port Authority opens this bid.

**ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS INDICATED ON THE COVER SHEET**

Bidding Entity\_\_\_\_\_

Bidder's Address\_\_\_\_\_

City, State, Zip\_\_\_\_\_

Telephone No.\_\_\_\_\_ FAX\_\_\_\_\_

Email\_\_\_\_\_ EIN# \_\_\_\_\_

SIGNATURE\_\_\_\_\_ Date\_\_\_\_\_

Print Name and Title\_\_\_\_\_

Note: This offer shall be irrevocable for 90 days after the date on which the Port Authority opens this bid.

\_\_\_\_\_  
Signature of Person Signing Above

**ACKNOWLEDGEMENT:**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally came before me, \_\_\_\_\_, who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated and they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

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

NOTE: If a joint venture is allowed, duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions, Part III. Indicate below if a signed, explanatory statement in connection with this section is attached hereto.

If certified by the Port Authority as an SBE or MWBE: \_\_\_\_\_ (indicate which one and date).

**2. NAME AND RESIDENCE OF PRINCIPALS SHEET**

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

NAME	TITLE	ADDRESS OF RESIDENCE (Do not give business address)
------	-------	--

### **3. PRICING SHEET(S)**

#### **Entry of Prices**

- a. The prices quoted shall be written in figures, in ink, preferably in black ink, in the spaces provided on the Pricing Sheet(s) attached hereto and made a part hereof.
- b. All Bidders are asked to ensure that all charges quoted for similar operations in the Contract are consistent.
- c. Prices must be submitted for each Item required on the Pricing Sheet(s). Bidders are advised that the Items on the Pricing Sheet(s) correspond to the required services set forth in the Specifications hereunder.
- d. Bidders must insert all figures as required and verify all computations for accuracy. The Port Authority in its sole judgment reserves the right to: (1) reject Bids without checking them for mathematical errors or omissions, (2) reject Bids that contain or appear to contain errors or omissions, and (3) supply corrections to Bids that contain or appear to contain mathematical errors and omissions, and in this case the Port Authority reserves the right to recompute the Total Estimated Contract Price (which amount shall then govern in all cases) based upon the Unit Prices inserted by the Bidder
- e. In the event that a Bidder quotes an amount in the Total Estimated column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.
- f. The Total Estimated Contract Price is solely for the purpose of facilitating the comparisons of Bids. Compensation shall be in accordance with the section of this Contract entitled "Payment".

**CONTRACTOR'S PRICING SHEET**

<b>Item of Work (Description)</b>	<b>Estimated Quantity</b>		<b>Unit Price</b>		<b>Estimated Contract Total</b>
Design, Build, and Deliver Car Float to Greenville Yard, Jersey City, NJ (FOB)	2	x	\$	=	\$

**TOTAL ESTIMATED CONTRACT PRICE: \$ \_\_\_\_\_**

**4. CERTIFICATE OF CURRENT COST OR PRICING DATA:**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to The Port Authority of NY & NJ or to The Port Authority of NY & NJ's representative in support of:

Bid No. 32610 are accurate, complete, and current as of **the date of Submission of this BID.**

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the bidder and The Port Authority of NY & NJ that are part of the Bid.

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

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

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

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

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Attachment B – FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

Attachment C – FORM 1273- REQUIRED CONTRACT PROVISIONS FEDERAL-AID  
CONSTRUCTION CONTRACTS

## **1. INTRODUCTION**

This document provides technical specifications for a design-build contractor to provide two (2) barge type Car Floats for the transport of rail cars between the Greenville Yard in Greenville, NJ, and the 65<sup>th</sup> Street Yard in Brooklyn, NY, both managed by the New York and New Jersey Rail, LLC. The owner of the operation is the Port Authority of New York and New Jersey (“Port Authority” or “Authority”). Both yards have existing bridges to transfer rail cars from the yard to the car floats. Two (2) existing bridges will service the car floats at the 65<sup>th</sup> Street Yard. At the Greenville Yard, there is only one (1) existing bridge: a pontoon bridge at Slip 11. Adjacent to Slip 11, an additional Greenville Yard bridge, Bridge 10, is in the design phase and will service the car floats at Greenville Yard upon its completion.

Port operations are currently conducted with a single existing three (3)-track wide car float. It uses a system of winches and locking bars with latches to rigidly maintain track alignment during loading and unloading. The new car floats will have four (4) tracks to increase capacity and to facilitate a more stable loading operation. The fendering arrangement at both yards will accept both the four track car floats and the three-track car float currently in service. The new car floats are to be compatible with the pontoon bridge at Slip 11, the planned new bridge, Bridge 10 at Greenville Yard, and with the existing bridges of the 65<sup>th</sup> Street Yard.

The existing facilities were heavily damaged by Hurricane Sandy. As a consequence, the old Greenville Yard Slip 11 transfer bridge was removed and replaced with a pontoon bridge which was salvaged and restored from the non-operational 51<sup>st</sup> Street Brooklyn Yard.

## **2. CONTRACTOR SCOPE**

The Contractor shall furnish all materials, labor, equipment, and services necessary to complete design, fabrication, delivery, and commissioning of two (2) identical car floats, each with four (4) tracks and capacity for eighteen (18) sixty-foot (60’) rail cars. The Contractor shall assume full responsibility for design and construction, including quality control. The Contract shall be supervised by an experienced naval architect with a professional engineer's license in both New York and New Jersey. The car floats shall meet the structural strength, safety, durability, and performance requirements as established by these Specifications, the Contract Drawings (Exhibit A), all other Contract documents and good industry practice for the intended service. In the event of discrepancy among the documents, these Specifications shall govern over the Contract Drawings and the Contract Drawings shall govern over other Contract documents.

The Contractor’s detailed scope of work includes, but is not limited to:

- a. Develop detailed design documents for two (2) identical car floats conforming to the requirements specified in this and other Contract documents.
- b. Submit Engineering Quality Assurance/Quality Control (QA/QC) Plan for the Port Authority Engineer's approval. Provide QA/QC for the design in accordance with approved QA/QC Plan. Engineering drawings shall be sealed by a Professional Engineer licensed in the States of New York and New Jersey.
- c. Coordinate with Authority Engineer to address any structural interface information gaps.
- d. Prepare and submit Shop Drawings for Authority Engineer's review and approval. Such additional review will not augment or replace the Contractor's quality control nor relieve the Contractor of contractual responsibility.
- e. Coordinate with Authority Engineer to receive all engineering reviews and comments. Collaborate with Authority Engineer in weekly coordination meetings to discuss and incorporate comments.
- f. Provide engineering and construction schedules that meet the project goals to be reviewed and approved by Authority Engineer.
- g. Monitor design to ensure compliance with the project schedule. Prepare design and construction progress reports for the Authority and Authority Engineer.
- h. Construct two car floats per approved Design and Shop Drawings.
- i. Inspect and monitor construction to ensure compliance with the project schedule.
- j. Perform required controlled inspection in accordance with all applicable codes and standards and submit appropriate sign-off documents.
- k. Coordinate with Authority Engineer for shop fabrication/construction inspections by Authority Engineer. Such additional inspections will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.
- l. Submit Construction QA/QC Plan for Authority's Engineer's approval. Provide QA/QC for all fabrication and construction in accordance with the approved QA/QC Plan.
- m. Provide Record Drawings sealed by a professional engineer licensed in both New York and New Jersey.
- n. Deliver the car floats to Greenville Yard (FOB shipping point: New York Harbor - Greenville Yard Bridge, located on the Greenville Peninsula, Jersey City, in Hudson County, New Jersey; herein referred to as "Greenville Yard"). The delivery schedule shall be mutually agreed upon with the Authority.
- o. Direct Commissioning Services for the two (2) car floats.
- p. Comply with the Authority's Sustainable Infrastructure Guidelines and provide necessary documentation to receive certification status.
- q. Field-verify that the car floats are compatible with the yard facilities (rail track and lock bar alignment, moorings, etc.). This shall be accomplished by

mandatory ongoing coordination meetings with the Authority Engineer on a weekly basis, to commence after Contract award. Should an incompatibility be discovered that contradicts the design information furnished herein, the Contractor may be required to modify its design. In such case, the cost of the change will be considered an extra cost item and negotiated separately.

- r. The Authority Engineer is the Authority's duly authorized representative acting within the scope of the particular authority vested in him in these Specifications.

### **3. APPLICABLE CODES AND STANDARDS**

The Contractor must comply with all applicable rules, regulations and standards. These include, but are not limited to those in the documents specifically listed below as well as the rules, regulations, standards, and guidelines promulgated by the entities listed below.

- a. American Bureau of Shipping (ABS), "Rules for Building and Classing Steel Vessels for Service on Rivers and Intra-Coastal Waterways" (2007 Edition)
- b. American Railway Engineering and Maintenance-of-way Association (AREMA), Manual for Railway Engineering
- c. American Institute of Steel Construction (AISC), Manual of Steel Construction
- d. ASTM- American Society for Testing of Materials
- e. American Welding Society (AWS), Standard Welding Code Steel D1.1
- f. The Society for Protective Coatings (SSPC) Standards
- g. National Institute for Occupational Safety & Health (NIOSH) Guidelines
- h. National Association of Corrosion Engineers (NACE)
- i. Federal Regulations:
  - 1. US Occupational Safety & Health Administration (OSHA) Regulations
  - 2. US Environment Protection Agency (EPA) Regulations
  - 3. US Coast Guard (USCG) Regulations
- j. 29 CFR 1926 Occupational Safety and Health Regulations for Construction
- k. 29 CFR 1915 Occupational Safety and Health Regulations for Shipyard Employment
- l. The Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' (<http://www.panynj.gov/about/pdf/Sustainable-infrastructure-guidelines.pdf>)
- m. Preliminary Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' Project Credit Checklist Form (Exhibit B).

### **4. DESIGN ALTERNATIVES**

The Contractor may, at its option, provide newly constructed car floats. As an alternative however, the Contractor may procure existing barges and then modify them to meet the requirements of these Technical Specifications, Contract Drawings, and other Contract Documents. If existing barges are used, the Contractor may at its option:

Alternative 1: Taper the Bow of an Existing Barge

Alternative 2: Fabricate a Tapered Bow and Weld to an Existing Barge

If existing barges are used, a recent in-depth condition survey is required to be conducted by ABS or an equivalent inspection agency that is approved by the Authority Engineer.

## **5. DESIGN SPECIFICATIONS**

- a. The car float hull structure shall be designed in accordance with American Bureau of Shipping (ABS), "Rules for Building and Classing Steel Vessels for Service on Rivers and Intra-Coastal Waterways" (2007 Edition).
- b. ABS shall review and certify the car float hull structural design in accordance with its requirements.
- c. The Contractor shall submit the car float stability, floatation, and hull structure design calculations to the Authority Engineer for additional review. Such additional review will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.
- d. The Contractor shall obtain and deliver to the Authority's Engineer at car float delivery the following certifications.
  1. ABS Certificate of Classification (Maltese Cross +A1 Barge, River Service)
  2. USCG Certificate of Inspection (COI), inspected and approved for carriage of freight rail cars occasionally containing hazardous material in River Service. Hazardous Material includes Municipal Solid Waste (MSW) - garbage, diesel fuel oil, home heating oil etc.
  3. USCG Builder's Certification and First Transfer of Title.
- e. The Contractor shall assist the Authority in obtaining the following documents.
  1. USCG Certificate of Documentation (COD).
  2. USCG Stability Letter.
- f. Car float hydrostatic stability shall satisfy the requirements of U.S. Coast Guard Federal Regulations, Part 174 – Special Rules Pertaining to Specific Vessel Types.

- g. Car float rail tracks shall be designed in accordance with American Railway Engineering and Maintenance-of-Way Association (AREMA)'s "Manual for Railway Engineering" (2012 Edition).

## **6. LOAD REQUIREMENTS**

### **a. Environmental**

#### **1. Wind:**

Storm Gust Velocity: 104 MPH  
Storm Gust Duration: 3 Seconds  
Gust Exposure Classification: D

#### **2. Wave:**

Significant Wave Height: 5.6 ft.  
Maximum Wave Height: 10.4 ft.  
Wave Peak Period: 4 Seconds

#### **3. Current:**

Current Velocity: 3.5 knots  
Current Direction: 204 degrees North

### **b. Rail Car Live Loads**

- 1. Rail Car Type: 60 foot
- 2. Fully Loaded Individual Car Weight: 286,000 lbs.
- 3. Deck Load Capacity: eighteen (18) Fully Loaded Rail Cars, on four (4) tracks width; four (4) 60 ft. rail cars per port and starboard tracks and five (5) 60 ft. rail cars on the center tracks. Refer to Exhibit A, drawing number S203.

### **c. Mooring and Berthing**

- 1. Mooring Loads on Cleats: 60,000 lbs.
- 2. Berthing Velocity: 0.6 knots

### **d. Minimum Design Life**

The minimum design life for car floats shall be fifty (50) years.

## **7. COATING AND CATHODIC PROTECTION REQUIREMENTS**

### **a. Coatings**

- 1. Hull - below water area coating shall consist of Hempadur

Multi-Strength 45751, Hemsil 27302 and an anti-fouling coating of Hempasil X3 87500 as manufactured by Hempel (USA) or Authority's Engineer approved equal.

2. Hull - above water area coating shall consist of Hempadur Multi-Strength 45751 and Hemplathane HS 55610 as manufactured by Hempel (USA) or Authority's Engineer approved equal.
3. Main top deck coating shall be Hempadur Multi-Strength 45751 and Hemplathane HS 55610, including application of non-skid component, as manufactured by Hempel (USA) or Authority's Engineer approved equal.
4. Color selection for each of the above items 1, 2 and 3 is to be designated by the Authority.
5. Refer to attached coating specification and datasheets for additional information including surface preparation and application instructions. (See Exhibit D).
6. Coating shall be applied in accordance with manufacturer's recommendations.

b. Cathodic Protection

1. The cathodic protection system shall consist of cast zinc alloy hull type sacrificial anodes welded to the bottom and sides of the car float hull. The anodes shall be cast using 99.99% pure high-grade zinc and shall meet ASTM-B-418 and military specification MIL-A-18001. Anodes shall be GA-23 and GA-26 hull type military anodes as manufactured by Galvotec Alloys, Inc. or Authority Engineer's approved equal.
2. The bottom hull section of the car float shall have three (3) rows of 38 GA-23 (23 lb.) anodes and two (2) rows of 28 GA-23 (23 lb.) anodes spaced nine feet (9'-0") to ten feet (10'-0") apart center-to-center. (One hundred and seventy (170) total of GA-23 (23 lb.) anodes shall be installed on the bottom hull section.)
3. The port and starboard hull sections of the car float shall each have one (1) row of thirty six (36) of the GA-26 (26 lb.) anodes spaced nine feet (9'-0") to ten feet (10'-0") apart center-to-center. (Seventy two (72) total GA-26 (26 lb.) anodes installed shall be installed in total the port and starboard hull section.)
4. The stern hull section of the car float shall have one (1) row of six (6) of the GA-26 (26 lb.) anodes spaced nine feet (9'-

0”) to ten feet (10’-0”) apart center-to-center. (Six (6) total GA-26 (26 lb.) anodes installed on stern hull section.)

5. Anodes shall be welded to the car float using butt welds along each side and across the end of the core tab. After installation of the anodes, the weld locations shall be coated with same coating as applied to the hull.
6. Apply same hull coating to the bottom of each anode prior to installation. Do not allow coating on top or sides of anodes or core tab.
7. Follow manufacturer’s recommendations for storage, handling and installation of anodes.
8. Following installation, perform a survey to determine whether the cathodic protection system is connected and operating effectively as designed. This survey, using reference electrodes and appropriate instruments, shall include structure to reference electrode potential measurements in sufficient detail to demonstrate that protection has been attained. A final record copy of the survey shall be issued to the Authority’s Engineer.

## **8. FUNCTIONAL REQUIREMENTS**

### **a. Dimensional Constraints**

Dimensional constraints for the completed car floats are presented in Dwg. S204 (Exhibit A). The completed car floats shall be three hundred and sixty feet to three hundred and seventy feet (360’ to 370’) long with tapered bows that are one hundred feet (100’) long. If a new construction is not pursued, the two (2) alternatives indicated in Section 4 of these Specifications are acceptable.

If Alternative 1 is pursued, the procured barges shall be three hundred and sixty feet to three hundred and seventy feet (360” to 370’). If Alternative 2 is pursued, the procured barges shall be two hundred and sixty to two hundred and seventy feet (260’ to 270’) long. The procured barges shall be twelve to fourteen feet (12’ to 14’) deep with a width not narrower than fifty-seven feet (57’) and not wider than fifty-nine feet (59’). For either alternative, one (1) large barge may be procured and cut into two (2) identical separate barges for incorporation into the two (2) car floats.

### **b. Freeboard Constraint**

The maximum top of train rail elevation relative to water level in the unloaded condition shall be not greater than nine and a half feet (9.5’).

c. Maximum Draft Constraint

The maximum loaded draft shall be not greater than ten (10) feet.

d. Stability Requirements

US Coast Guard regulations – Part 170 shall apply for hydrostatic stability. The rail cars are stable on the tracks up to a maximum twelve (12) degree heeling angle. Therefore, the US Coast Guard regulations must be satisfied prior to reaching a heeling angle of twelve (12) degrees.

## **9. RAIL AND SPECIAL TRACK WORK REQUIREMENTS**

- a. The car floats shall have two (2) tracks at the very front of the car float to mate with the tracks on the existing bridges at both Greenville Yard, Jersey City, NJ and 65<sup>th</sup> Street Yard, Brooklyn, NY. From that point, the tracks shall transition to four (4) tracks by means of turnouts. Details are provided in Dwg. S207 (Exhibit A).
- b. Rail section shall be 115# RE. See drawing S207 (Exhibit A) for further details.
- c. Turnouts and guardrails shall match rail size.
- d. Track fasteners shall be Pandrol clips. The clip bases shall be welded to the car float decks.
- e. Weep holes shall be provided as necessary to eliminate excessive ponding.
- f. An End-of-Track bumper shall be provided for each track. The bumpers shall have sufficient capacity to resist horizontal load of one hundred twenty thousand pounds (120,000 lbs.) per track set.

## **10. ENGINEERING DELIVERABLES**

a. Preliminary Design Drawings

The Contractor shall submit Preliminary Design drawings and calculations by the Engineer of Record for review by the Authority's Engineer. The Engineer of Record shall be either Contractor's Engineer or a third party working under a contract with the Contractor. The additional review by the Authority's Engineer will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.

b. Final Design Drawings

Upon completion of the review and acceptance of the preliminary design, the Contractor shall proceed with detailed design by the Engineer of Record. The Contractor shall submit Final Design drawings and calculations by the Engineer

of Record for review by the Authority's Engineer. Such additional review will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.

c. Shop Drawings, Catalog Cuts and Samples

1. Upon completion of the review and acceptance of the final design, the Contractor shall proceed with detailed Shop Drawings.
2. The Contractor shall submit a general "Submittal Schedule" for the Authority's review and approval listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within thirty (30) days after receipt by the Contractor of the Final Design as produced by the Engineer of Record. A more detailed schedule shall be submitted no less than thirty (30) calendar days prior to the actual date of any submittal.
3. All submittals required by this Contract, including all Shop Drawings and Catalog Cuts shall be reviewed and approved by the Engineer of Record prior to submittal to the Authority's Engineer.
4. The Shop Drawings shall indicate every detail necessary for construction and shall contain specific reference to the approved final design drawings and technical specification sections to which they apply, as indicated below or as otherwise identified as the Authority's Engineer may require. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, conformance to the specified performance and design criteria, materials, test results and similar information to enable Authority's Engineer to review the submittal as required.
5. The Engineer of Record shall review all submittals for proper content, format and conformance to the design concept of the Contract and compliance with the information given in the Technical Specifications.
6. The Engineer of Record shall place an approval review status stamp on all submittals. The stamp shall include check boxes allowing for the review status of the submittal to be indicated. As a minimum, submittals review status shall fall into one (1) of the following categories:
  - i. Approved: The Engineer of Record has determined that the submittal is in conformance to the design concept of the

project and complies with the information given in the Contract Documents.

- ii. Approved As Corrected: The submittal meets general requirements of the design concept but is lacking or contains minor errors in one or more areas, as indicated by marked up comments made by the Engineer of Record. Unless otherwise indicated by the Engineer of Record, the Contractor shall make all corrections indicated by the Engineer of Record and shall re-submit the affected documents to him for approval. In the event the Engineer of Record does not require a re-submittal, the Contractor will be required to comply with all comments made by the Engineer of Record.
  - iii. Not Approved: The submittal does not conform to the design concept and does not comply with the information given in the Contract Documents. The Contractor shall make all corrections indicated by the Engineer of Record and re-submit the affected documents to him for approval.
7. Unless otherwise indicated in the Technical Specifications, or as directed by the Authority's Engineer, only those submittals that have been approved by the Engineer of Record shall be submitted to the Authority's Engineer for review and comment.
- i. If the Authority returns submittals to the Engineer of Record with no comments, the approved submittals shall be forwarded by the Engineer of Record to the Contractor.
  - ii. If the Authority returns submittals to the Engineer of Record, with comments, the Engineer of Record shall review and incorporate the Authority's comments.
  - iii. The Authority reserves the right to disapprove any submittal that has been approved by the Engineer of Record.
  - iv. Additional reviews by the Authority's Engineer will not augment or replace the Contractor's quality control or relieve the Contractor of contractual responsibility.
8. When requested by the Authority's Engineer, the Engineer of Record may be required to submit to the Authority draft or preliminary submittal documentation prior to certain designs being

finalized or certain items being approved by the Engineer of Record. The Authority, at its sole discretion, shall review such draft or preliminary documentation and provide comments to the Engineer of Record. The Engineer of Record shall make all Draft or Preliminary submittals required by these Technical Specifications.

9. Unless otherwise stated in the Technical Specifications, final documentation shall be delivered to the Authority as follows:

- i. Ten (10) bound paper copies and one (1) unbound reproducible
- ii. The final Shop Drawings shall be signed and sealed by a Professional Engineer registered in the States of New York and New Jersey and shall meet all of the requirements for issuance of all applicable permits.

10. Before final payment for the Work is made, the Contractor shall furnish to the Engineer of Record and to the Authority one set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be marked "RECORD DRAWING – NOT FOR REVIEW," dated and signed by the Contractor and be in the form of Mylar reproducible and electronic copy (both pdf and CAD) from which clear prints can be made. By signature, the Contractor is verifying that the drawing reflects the as-constructed condition.

- d. All drawings, data, calculations and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared in connection with this Contract and submitted to the Authority shall become the property of the Authority. The Authority shall have the non-exclusive right to use or permit the use of all such drawings, data and other papers for any purpose (subject to confidentiality obligations) and at any time without additional compensation.

## **11. ENGINEERING QUALITY CONTROL**

- a. Bidders are encouraged to submit generic versions of their QA/QC plans with their submittals. Shortly after contract award, a QA/QC plan specific to this contract shall be submitted to the Authority's Engineer for

approval.

- b. Shop Drawings shall bear the seal of a qualified Professional Engineer registered in the States of New York and New Jersey.

## **12. ENGINEERING SCHEDULE**

The Contractor shall submit a complete detailed design schedule to deliver the first car float and complete the commissioning at Greenville Yard no later than sixteen (16) months after commencement of contract; and to deliver the second car float and complete the commissioning at Greenville Yard no later than six (6) months thereafter. The schedule shall be reviewed and approved by the Authority's Engineer. The time associated with all the requirements established by this document shall be included.

## **13. CONSTRUCTION MATERIAL REQUIREMENTS**

- a. Rolled Sections:

Material of structural steel members of car float (Rolled Sections) shall be ABS D, E or equivalent. Substitutes will be considered only upon approval of Authority's Engineer.

- b. Plating:

All car float plating shall be ABS D, E or equivalent. Substitutes will be considered only upon approval of Authority's Engineer.

- c. Material testing shall be performed according to ABS.
- d. All Federal procurement rules along with the American Recovery and Reinvestment Act's Buy American provisions shall apply.

## **14. CONSTRUCTION QUALITY ASSURANCE AND QUALITY CONTROL**

- a. Shortly after contract award, the Contractor shall submit a QA/QC Plan for review and approval by Authority's Engineer. QA /QC shall satisfy both ABS requirements and the following.
- b. A minimum of seven (7) days prior to start of fabrication, the Contractor shall submit the name and qualifications of its proposed independent testing and inspection agency to the Authority's Engineer for approval.
- c. The Contractor shall submit to the Authority's Engineer certified copies of mill reports, analyses, and tests covering chemical and physical properties of materials to be used in the Work.
- d. All welding, welders, and weld procedures shall be AWS D1.1 certified.
- e. Welding inspection shall be carried out by a qualified independent agency and approved by the Authority's Engineer. Such additional inspections will not augment or replace the Contractor's quality control or relieve the

Contractor of contractual responsibility.

- f. Welding, Fabrication and NDE of car float structures shall be in accordance with AWS D1.1, "Structural Welding Code - Steel" (2010 Edition).
- g. All welds shall be one hundred percent (100%) visually inspected. Visual inspection shall be performed before, during and after the completion of welds. At least ten percent (10%) of all CP (Complete Penetration) welds are to be Ultrasonic Tested (UT) and ten percent (10%) of all fillet welds are to be Magnetic Particle Tested (MT). The importance to the integrity of structure shall be considered when selecting the welds to be examined.
- h. Tanks shall be leak tested with water up to the highest level of tank. Leak tests shall be performed before coatings have been applied and after all welding at the joints and penetrations has been visually examined to the satisfaction of the Authority's Engineer.

## **15. SUSTAINABLE INFRASTRUCTURE COMPLIANCE**

- a. The Contractor shall comply with the Port Authority's Sustainable Infrastructure Guidelines to meet 'certified' status. Credits for preliminary compliance are included in Exhibit B.
- b. Contractor shall submit a Final Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' Project Credit Checklist Form confirming certification level attained.
- c. Contractor shall submit a Final Port Authority of New York & New Jersey 'Sustainable Infrastructure Guidelines' Project Credit Documentation Form (Exhibit B) and any other required documentation to confirm a minimum of 'Certified' status has been achieved.

## **16. CONSTRUCTION SCHEDULE**

The Contractor shall submit a complete construction schedule that is compatible with the design schedule. It shall call for delivery of the first car float and complete the commissioning at Greenville Yard no later than sixteen (16) months after commencement of contract; and to deliver the second car float and complete the commissioning at Greenville Yard no later than six (6) months thereafter. The schedule shall be reviewed and approved by the Authority's Engineer. The time associated with all the requirements established by this document shall be included.

## **17. COMMISSIONING, FINAL TESTING AND ACCEPTANCE**

- a. Commissioning tests shall be conducted as a joint activity between the Contractor and the Authority. The commissioning tests shall include at least three consecutive satisfactory cycles of operations per car float. One

operation cycle includes loading rail cars at Greenville Yard, transiting the harbor to 65<sup>th</sup> Street Yard at Brooklyn, unloading and loading rail cars at 65<sup>th</sup> Street Yard, returning to Greenville Yard and then unloading rail cars at Greenville Yard.

- b. The following shall be demonstrated to the satisfaction of the Authority's Engineer:
  1. Proper and reliable functionality of the car float while loading and unloading rail cars.
  2. Proper floatation, lightship freeboard, light ship pitch and heeling angle.
  3. Smooth passage of rail cars onto car float tracks.
  4. Secure connection between the car rails and car float deck.
  5. Sufficient drainage performance, i.e. the weep holes are adequate to prevent excessive ponding.
  6. Proper interface performance with the bridges. Special attention shall be paid to operation and alignment of the locking pins and the rail track.
  7. Proper interface performance with the mooring and berthing structures.
  8. Proper performance with the tug boat.

**EXHIBIT A.      CONTRACT DRAWINGS**

<b>Drawing Title</b>	<b>Drawing Number</b>
Title Page	S201
Drawing List, Design Criteria and General Notes	S202
Car Float General Arrangement	S203
Car Float Dimensional Constraints	S204
Suggested Design Concepts – Concept 1	S205
Suggested Design Concepts – Concept 2	S206
Car Float Track Layout Requirements	S207
Car Float to Pontoon Bridge Latches – Layout and Details	S208

**THE PORT AUTHORITY** OF NY & NJ

**GREENVILLE YARD  
PORT JERSEY CROSS HARBOR  
FREIGHT TERMINAL  
REPLACEMENT OF CAR FLOATS**

**CONTRACT No. NYNJR-644.516**

**30% SUBMISSION**  
02/11/2013

No.	Date	Revision	Approved

FEDERAL AVIATION ADMINISTRATION

ASSISTANT CHIEF ENGINEER/DESIGN \_\_\_\_\_ DATE \_\_\_\_\_

PROGRAM DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

CHIEF ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

Drawing  
Number

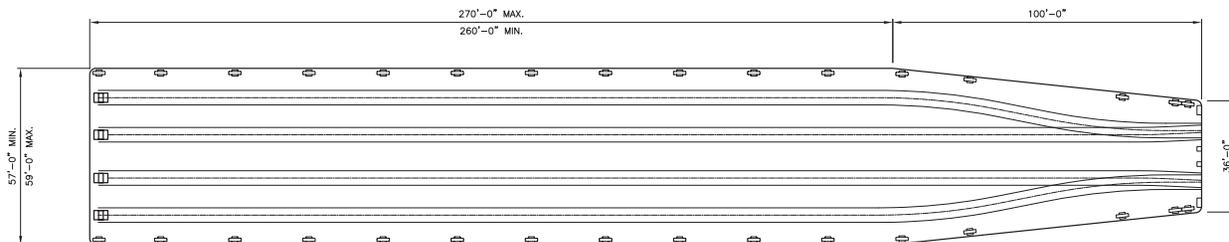
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PID# 10195000



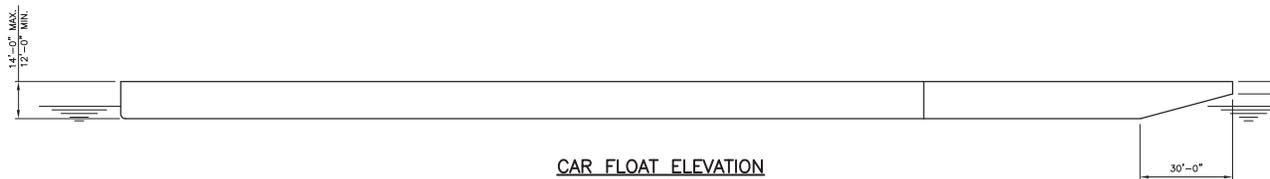




**30% SUBMISSION**  
02/11/2013



**PLAN - CAR FLOAT**  
1"=20'-0"



**CAR FLOAT ELEVATION**  
1"=20'-0"

No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
<b>GREENVILLE YARD</b>			

Title  
**GREENVILLE YARD  
REPLACEMENT OF CAR FLOATS**

**CAR FLOAT  
DIMENSIONAL  
CONSTRAINTS**

This drawing subject to conditions in contract, all specifications, plans, notes and reference herein are subject to their authority and may not be used without the written consent, including bidders and those who do not require the contract documents, before they become the property of the contractor. The contractor shall be responsible for the accuracy of the information contained in the documents. Before the drawings are issued, the contractor shall be responsible for the accuracy of the information contained in the documents. Before the drawings are issued, the contractor shall be responsible for the accuracy of the information contained in the documents. Before the drawings are issued, the contractor shall be responsible for the accuracy of the information contained in the documents.

DESIGNED BY: A. ESFANDIARI  
DRAWN BY: C. MILLARD  
CHECKED BY: J. JOHNSON

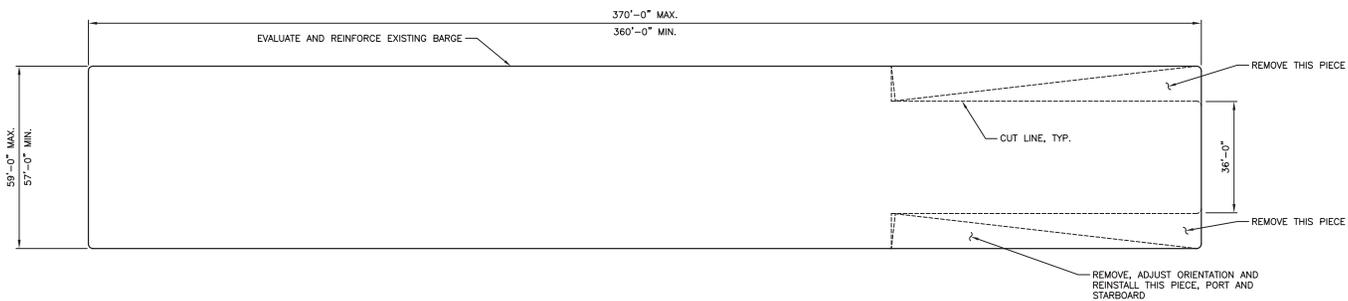
Date: 10/18/12

Contract Number: **NYNJR-644.516**

Drawing Number: **S204**

PID# 10195000





**PLAN - EXISTING BARGE MODIFICATIONS**  
1"=20'-0"



**PLAN - MODIFIED BARGE (CAR FLOAT)**  
1"=20'-0"

**30% SUBMISSION**  
02/11/2013

No.	Date	Revision	Approved
<b>ENGINEERING DEPARTMENT</b>			
<b>GREENVILLE YARD</b>			

Title  
**GREENVILLE YARD  
REPLACEMENT OF CAR FLOATS**

**SUGGESTED DESIGN  
CONCEPTS -  
CONCEPT 2**

This drawing subject to conditions in contract, all specifications, plans, notes and reference herein are subject to their hierarchy and may not be used without the written consent, including bidders and those who do not require and contract documents, and those who do not require all or a part of the Contract documents or copies thereof, shall make every effort to ensure the accuracy and appropriate disposal of the Contract documents to prevent further circulation of the information contained in the documents. Copies that duplicate these plans include without limitation, electronic and/or physical, shall not be distributed to the documents' contents after their date of their release. Documents may also be obtained by e-mail from the Contract Office of the Port Authority of New York and New Jersey, 200 Vesey Street, New York, NY 10038.

It is a condition of use for any person to alter a document in any way, without the written consent of the Port Authority of New York and New Jersey. Any alteration, modification, deletion, or addition to the document shall be clearly marked and dated, and the person shall be held responsible for the accuracy and the date of such alteration, and a specific description of the alteration.

A.ESFANDIARI C.MILLARD J.JOHNSON  
Designed by Drawn by Checked by

Date 10/18/12

Contract Number **NYNJR-644.518**

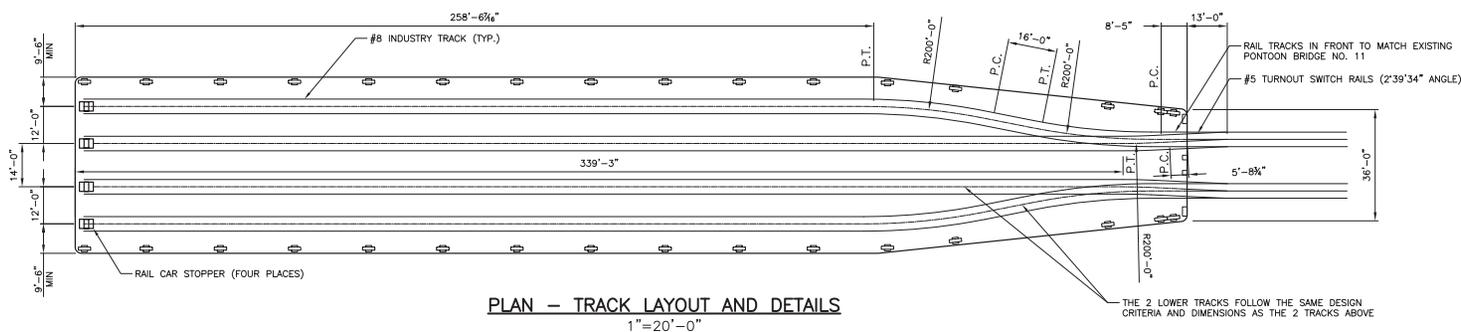
Drawing Number **S206**

PID# 10195000



- NOTES:
- CAR FLOAT TRACKS AT BOW WILL MATCH EXISTING PONTOON BRIDGE NO. 11 TRACKS.
  - PONTOON BRIDGE NO. 11 TRACK LOCATIONS ARE APPROXIMATE. CONTRACTOR SHALL DETERMINE EXACT LOCATIONS BY FIELD MEASUREMENTS.
  - CAR FLOAT TRACKS WILL ACCOMMODATE 18-60 FOOT RAIL CARS. SEE DWG. S203 FOR RAIL CAR ARRANGEMENT.

**30% SUBMISSION**  
02/11/2013



No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
<b>GREENVILLE YARD</b>			

Title

**GREENVILLE YARD  
REPLACEMENT OF CAR FLOATS**

**CAR FLOAT  
TRACK LAYOUT  
REQUIREMENTS**

This drawing subject to conditions in contract, all specifications, plans, notes and reference herein are subject to field verification and may not be used without the written consent, including bidders and those who do not intend to contract thereunder, and those who may be required to do so as part of the contract documents or other drawings. Each party shall be responsible for the accuracy and appropriateness of the information contained in the documents. Stationing and elevations shown include vertical curve data and are subject to change. All dimensions shall be taken from the documents' controls unless otherwise specified. Documents may also be obtained by e-mail from the Contract Office of the Port Authority of New York and New Jersey, 200 Vesey Street, 10th Floor, New York, NY 10037-3200.

A. ESFANDIARI	G. GRANT	J. JOHNSON
Designed by	Drawn by	Checked by
Date	10/18/12	
Contract Number	<b>NYNJR-644.516</b>	
Drawing Number	<b>S207</b>	
	PID# 10195000	



**EXHIBIT B. SUSTAINABILITY DOCUMENTS**

<b>Document Title</b>
Sustainable Infrastructure Guidelines - Project Credit Checklist Form
Sustainable Infrastructure Guidelines - Project Credit Documentation Form

**SUSTAINABLE INFRASTRUCTURE GUIDELINES  
PROJECT CREDIT CHECKLIST FORM - Version 1.0**

**PORT AUTHORITY OF NY & NJ**

<b>GENERAL PROJECT INFORMATION</b>	<b>PROJECT NAME:</b>	Cross Harbor Freight Program - Contract No. #2&7
	<b>FACILITY:</b>	Port Jersey - Greenville Yard
	<b>LE/A or RE:</b>	Yu S. Wong
	<b>PHONE NUMBER:</b>	973-792-4541
	<b>EMAIL ADDRESS:</b>	ywong@panynj.gov
	<b>PID #</b>	10195000/10199000
	<b>CONTRACT #</b>	NYNJRR-644.516
	<b>DATE:</b>	8/2/2012
<b>PROJECT ACHIEVEMENT:</b>		Gold

**PROJECT TYPE**

<b>Choose a Project Type or Types</b>	
Airfield New Construction / Reconstruction	<input type="checkbox"/>
Airfield Pavement Rehabilitation	<input type="checkbox"/>
Bridge New Construction / Reconstruction	<input type="checkbox"/>
Bridge and Tunnel Rehabilitation	<input type="checkbox"/>
Civil - Work Orders	<input type="checkbox"/>
Intelligent Transportation System	<input type="checkbox"/>
<b>Marine Structures - Docks, Wharves, Bulkheads, etc.</b>	<input checked="" type="checkbox"/>
Parking Lot New Construction / Reconstruction	<input type="checkbox"/>
Parking Lot Rehabilitation	<input type="checkbox"/>
Port Site Work	<input type="checkbox"/>
Roadway New Construction / Reconstruction	<input type="checkbox"/>
Roadway Pavement Rehabilitation	<input type="checkbox"/>
Trackwork	<input type="checkbox"/>
Utility New Construction	<input type="checkbox"/>
Utility Rehabilitation	<input type="checkbox"/>

<b>Associated Scopes of Work</b>	
Landscaping	<input type="checkbox"/>
Exterior Lighting	<input type="checkbox"/>
MECH / EL / Fire Suppression System Installation	<input type="checkbox"/>
Traffic Safety and Public Environment	<input type="checkbox"/>

<b>PROJECT CERTIFICATION SIGNATURES</b>	By entering the names below as a digital signature, the LEA and Principal Engineer certify that all information in this document is correct and accurate.	
	LEA (stage 3) or RE (stage 4) digital signature:	
	Type digital signature here	
	I certify that the information contained in this document is correct and accurate.	
Principal digital signature (Stage 3):		
Type digital signature here		
I certify that the information contained in this document is correct and accurate.		

	CREDIT NUMBER	POINTS ACHIEVABLE	CREDIT NAME	PURSUEING CREDIT?	POINTS ACHIEVED	INCLUDE CREDIT	
<b>SITE</b>	IS-1		Utilize Integrated Team Approach	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-2		Prepare a Site Assessment	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-3		Maximize Use of Previously Developed Land	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-4		Maximize Use of Known Contaminated Sites	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-5		Protect the Ecological Health of Wetlands and Floodplains	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-6		Protect and Maintain Absorbent Landscapes				<input type="checkbox"/>
			15% of absorbant landscape protected and maintained (1 point)	<input type="checkbox"/>			
			30% of absorbant landscape protected and maintained (2 points)	<input type="checkbox"/>			
	IS-7		Utilize Pervious Pavements				<input type="checkbox"/>
			25% of total pavement area utilizes pervious pavement (1 point)	<input type="checkbox"/>			
			50% of total pavement area utilizes pervious pavement (2 points)	<input type="checkbox"/>			
			75% of total pavement area utilizes pervious pavement (3 points)	<input type="checkbox"/>			
	IS-8		Utilize Appropriate Vegetation	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-9		Use Turfgrass Appropriately	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-10		Amend and Reuse Existing Soils	<input type="checkbox"/>		<input type="checkbox"/>	
	IS-11		Balance Earthwork				<input type="checkbox"/>
			25% less removal of material or less new material required (1 point)	<input type="checkbox"/>			
			50% less removal of material or less new material required (2 points)	<input type="checkbox"/>			
	IS-12		Coordinate Utility Work				<input type="checkbox"/>
			Coordinat Utility Work (1 point)	<input type="checkbox"/>			
			Install Leak Detection System (1 point)	<input type="checkbox"/>			
IS-13		Utilize Trenchless Technology				<input type="checkbox"/>	
		Rehabilitation of existing pipe (2 points), or: Replacement of pipe (1 point)	<input type="checkbox"/>				
IS-14		Mitigate Heat Island Effect				<input type="checkbox"/>	
		50% of site area utilizes heat island effect mitigation strategies (1 point)	<input type="checkbox"/>				
		75% of site area utilizes heat island effect mitigation strategies (2 points)	<input type="checkbox"/>				
		95% of site area utilizes heat island effect mitigation strategies (3 points)	<input type="checkbox"/>				
IS-15		Minimize Light Pollution	<input type="checkbox"/>		<input type="checkbox"/>		
IS-16		Optimize Public Environments - Bicycles and Pedestrians				<input type="checkbox"/>	
		Pedestrian amenities (1 point)	<input type="checkbox"/>				
		Bicycle amenities (2 points)	<input type="checkbox"/>				
IS-17		Optimize Traffic Safety	<input type="checkbox"/>		<input type="checkbox"/>		
IS-18		Optimize Roadway Alignment Selection	<input type="checkbox"/>		<input type="checkbox"/>		
IS-19		Expand or Enhance Intermodal Connection	<input type="checkbox"/>		<input type="checkbox"/>		
IS-20		Use Transportation System Management	<input type="checkbox"/>		<input type="checkbox"/>		
IS-21		Use Transportation Technologies	<input type="checkbox"/>		<input type="checkbox"/>		
<b>WATER</b>	IW-1		Implement Stormwater Best Management Practices			<input type="checkbox"/>	
			> 1/4 NJ (new imperv surface) or >1 acre NY (soil erosion) (1 point)	<input type="checkbox"/>			
			< 1/4 NJ (new imperv. surface) or <1 arce NY (soil erosion) (3 points)	<input type="checkbox"/>			
	IW-2		Implement Rainwater Neutrality	<input type="checkbox"/>		<input type="checkbox"/>	
IW-3		Reduce Use of Potable Water for Irrigation				<input type="checkbox"/>	
		Use harvested storm water for 50% of irrigation requirements (1 point)	<input type="checkbox"/>				
		Use harvested storm water for 75% of irrigation requirements (2 points)	<input type="checkbox"/>				
IW-4		Utilize End Use Metering - Water	<input type="checkbox"/>		<input type="checkbox"/>		
<b>ENERGY</b>	IE-1		Optimize Energy Performance			<input type="checkbox"/>	
			10% reduction (2 point)	<input type="checkbox"/>			
			20% reduction (4 points)	<input type="checkbox"/>			
			30% reduction (6 points)	<input type="checkbox"/>			
IE-2		Commissioning Electrical and Mechanical Systems	<input type="checkbox"/>		<input type="checkbox"/>		

<b>EN</b>	IE-3		Utilize End Use Metering - Energy	<input type="checkbox"/>	<input type="checkbox"/>
	IE-4		Use On-Site Renewable Energy	<input type="checkbox"/>	<input type="checkbox"/>
	IE-5		Protect Ozone Layer	<input type="checkbox"/>	<input type="checkbox"/>
	IE-6		Provide Alternative Fueling Stations	<input type="checkbox"/>	<input type="checkbox"/>
<b>MATERIAL</b>	IM-1	1 to 3	Use Recycled Materials	<input type="checkbox"/>	<input type="checkbox"/>
			Specify one (1) type of material (1 point)	<input checked="" type="checkbox"/>	1
			Specify three (3) types of materials (2 points)	<input type="checkbox"/>	
			Specify five (5) types of materials (3 points)	<input type="checkbox"/>	
	IM-2	1	Use Local / Regional Materials	<input type="checkbox"/>	<input type="checkbox"/>
	IM-3		Reuse Materials	<input type="checkbox"/>	<input type="checkbox"/>
	IM-4	1	Use Durable Materials	<input type="checkbox"/>	<input type="checkbox"/>
	IM-5	1	Use Sustainably Harvested Wood	<input type="checkbox"/>	<input type="checkbox"/>
	IM-6		Minimize Use of Toxic and / or Hazardous Materials	<input type="checkbox"/>	<input type="checkbox"/>
IM-7		Enhance Pavement Lifecycle	<input type="checkbox"/>	<input type="checkbox"/>	
IM-8		Utilize Thin Surface Paving	<input type="checkbox"/>	<input type="checkbox"/>	
IM-9		Utilize Warm Mix Asphalt Technology	<input type="checkbox"/>	<input type="checkbox"/>	
<b>CONSTRUCTION</b>	IC-1	2	Minimize Pollution from Construction Activity	<input checked="" type="checkbox"/>	2
	IC-2	2	Protect Existing Natural Systems	<input checked="" type="checkbox"/>	2
	IC-3		Utilize Transportation Management During Construction	<input type="checkbox"/>	<input type="checkbox"/>
	IC-4	1	Utilize Green Construction Equipment	<input checked="" type="checkbox"/>	1
	IC-5	1	Reduce Noise and Vibration During Construction	<input checked="" type="checkbox"/>	1
	IC-6	1 to 2	Implement Construction Waste Management	<input type="checkbox"/>	<input type="checkbox"/>
			75% diversion - all required materials (1 point)	<input checked="" type="checkbox"/>	1
		75% diversion - all recommended materials (1 point)	<input checked="" type="checkbox"/>	1	
IC-7		Implement Integrated Pest Management During Construction	<input type="checkbox"/>	<input type="checkbox"/>	
<b>O + M</b>	IO-1		Implement Sustainable Landscape Maintenance	<input type="checkbox"/>	<input type="checkbox"/>
	IO-2		Maintain Soil Quality	<input type="checkbox"/>	<input type="checkbox"/>
<b>TOTAL POINTS</b>			<b>RATING</b>	<b>POINTS</b>	
	TOTAL POINTS ACHIEVABLE: <b>14</b>		CERTIFIED	6	to 8
			GOLD	9	to 10
			PLATINUM	11	to 14
			POINTS ACHIEVED:	<b>9</b>	
			RATING ACHIEVED:	<b>GOLD</b>	

**SUSTAINABLE INFRASTRUCTURE GUIDELINES  
PROJECT CREDIT DOCUMENTATION FORM**

**PORT AUTHORITY OF NY & NJ**

<b>INSTRUCTIONS</b>	For each credit, provide applicable documentation type (drawing #, specification # or narrative) as indicated in project manual.	<b>GENERAL PROJECT INFORMATION</b>	<b>PROJECT NAME:</b>	<i>Enter project name here</i>		
	All documentation is required at the end of Stage 3 and/or 4 as indicated below.		<b>FACILITY:</b>	<i>Enter facility here</i>		
			<b>LE/A or RE:</b>	<i>Enter LEA or RE name here</i>		
			<b>PHONE:</b>	<i>Enter phone number here</i>		
			<b>EMAIL:</b>	<i>Enter email address here</i>		
			<b>PID #</b>	<i>Enter PID number here</i>		
			<b>CONTRACT #</b>	<i>Enter contract number here</i>		
			<b>DATE:</b>			

Credit Number	Credit Title	Document-ation Stage	Contract Drawing Number	Reference Specification Number	Narrative Description
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**SITE SECTION**

<b>IS-1</b>	UTILIZE AN INTEGRATED TEAM APPROACH	1, 2, & 3			
<b>IS-2</b>	PREPARE A SITE ASSESSMENT	1, 2, & 3			
<b>IS-3</b>	MAXIMIZE USE OF PREVIOUSLY DEVELOPED SITES	3			
<b>IS-4</b>	MAXIMIZE USE OF KNOWN CONTAMINATED SITES	3, 4			
<b>IS-5</b>	PROTECT ECOLOGICAL HEALTH OF WETLAND, FLOODPLAINS & RIPARIAN BUFFERS	3			
<b>IS-6</b>	PROTECT AND MAINTAIN ABSORBENT LANDSCAPES	3			
<b>IS-7</b>	UTILIZE PERVIOUS PAVEMENT	3			
<b>IS-8</b>	UTILIZE APPROPRIATE VEGETATION	3, 4			

Credit Number	Credit Title	Documentation Stage	Contract Drawing Number	Reference Specification Number	Narrative Description
IS-9	USE TURFGRASS APPROPRIATELY	3, 4			
IS-10	AMEND AND REUSE EXISTING SOILS	3, 4			
IS-11	BALANCE EARTHWORK	3			
IS-12	COORDINATE UTILITY WORK	3			
IS-13	UTILIZE TRENCHLESS TECHNOLOGY	3			
IS-14	MITIGATE HEAT ISLAND EFFECT	3			
IS-15	MINIMIZE LIGHT POLLUTION	3			
IS-16	OPTIMIZE PUBLIC ENVIRONMENTS - BICYCLES AND PEDESTRIANS	3			
IS-17	OPTIMIZE TRAFFIC SAFETY	3			
IS-18	OPTIMIZE ROADWAY ALIGNMENT SECTION	3			
IS-19	EXPAND OR ENHANCE INTERMODAL CONNECTIVITY	3			
IS-20	USE TRANSPORTATION SYSTEM MANAGEMENT	3			
IS-21	USE TRANSPORTATION TECHNOLOGIES	3			
<b>WATER SECTION</b>					
IW-1	IMPLEMENT STORMWATER BEST MANAGEMENT PRACTICES STRATEGIES	3			

Credit Number	Credit Title	Documentation Stage	Contract Drawing Number	Reference Specification Number	Narrative Description
IW-2	IMPLEMENT RAINWATER NEUTRALITY	3			
IW-3	REDUCE USE OF POTABLE WATER FOR IRRIGATION	3			
IW-4	UTILIZE END USE METERING - WATER	3			
<b>ENERGY SECTION</b>					
IE-1	OPTIMIZE ENERGY PERFORMANCE	3			
IE-2	COMMISSION ELECTRICAL AND MECHANICAL SYSTEMS	3, 4			
IE-3	UTILIZE END USE METERING - ENERGY	3			
IE-4	USE ON-SITE RENEWABLE ENERGY	3			
IE-5	PROTECT OZONE LAYER	3			
IE-6	PROVIDE ALTERNATIVE FUELING STATIONS	3			
<b>MATERIAL SECTION</b>					
IM-1	USE RECYCLED MATERIALS	3, 4			
IM-2	USE LOCAL / REGIONAL MATERIALS	3, 4			
IM-3	REUSE MATERIALS	3			
IM-4	USE DURABLE MATERIALS	3			

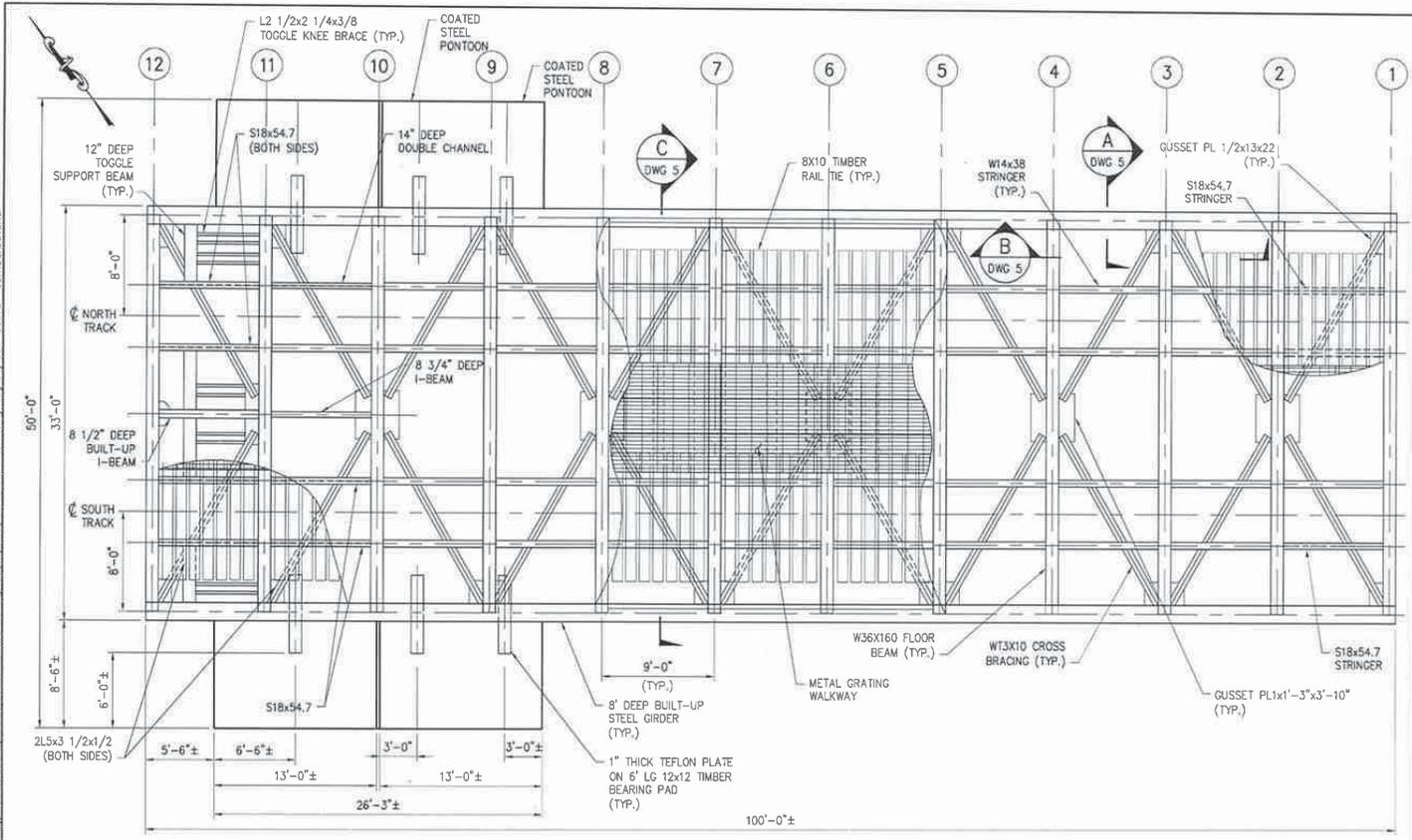
Credit Number	Credit Title	Documentation Stage	Contract Drawing Number	Reference Specification Number	Narrative Description
IM-5	USE SUSTAINABLY HARVESTED WOOD	3, 4			
IM-6	MINIMIZE USE OF TOXIC AND/OR HAZARDOUS MATERIALS	3			
IM-7	ENHANCE PAVEMENT LIFECYCLE	3			
IM-8	UTILIZE THIN SURFACE PAVING	3			
IM-9	UTILIZE WARM-MIX ASPHALT TECHNOLOGY	3			
<b>CONSTRUCTION SECTION</b>					
IC-1	MINIMIZE POLLUTION FROM CONSTRUCTION ACTIVITY	3, 4			
IC-2	PROTECT EXISTING NATURAL SYSTEMS	3, 4			
IC-3	UTILIZE TRANSPORTATION MANAGEMENT DURING CONSTRUCTION	3, 4			
IC-4	UTILIZE GREEN CONSTRUCTION EQUIPMENT	3, 4			
IC-5	REDUCE NOISE AND VIBRATION ABATEMENT DURING CONSTRUCTION	3, 4			
IC-6	IMPLEMENT CONSTRUCTION WASTE MANAGEMENT	3, 4			
IC-7	IMPLEMENT INTEGRATED PEST MANAGEMENT DURING CONSTRUCTION	3, 4			
<b>OPERATIONS &amp; MAINTENANCE SECTION</b>					
IO-1	IMPLEMENT SUSTAINABLE LANDSCAPE MAINTENANCE	3			

Credit Number	Credit Title	Documentation Stage	Contract Drawing Number	Reference Specification Number	Narrative Description
IO-2	MAINTAIN SOIL QUALITY	3			

**EXHIBIT C. REFERENCE DRAWINGS**

<b>Drawing Title</b>	<b>Drawing Number</b>
Float Bridge and Pontoon Plan (Currently Located at Greenville Yard Slip 11)	4
Float Bridge Elevation and Sections	5
65 <sup>th</sup> Street Rail Yard Transfer Bridges Brooklyn, New York (22 Drawings)	1 to 22
65 <sup>th</sup> Street Rail Yard Fender and Mooring System Slip No. 1 & 2 (7 Drawings - 50% Submission)	SK101 to SK105, SK110, SK113

S:\1\PAFB200\Figure Submittal\2009-04-24\PAFB200-Submission-Figure Report\UPAFB200-FDA.dwg 04/24/09 09:15 cumberbatch



**FLOAT BRIDGE PLAN**  
SCALE 1/8"=1'-0"



No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

**NEW YORK MARINE TERMINAL**

QUALITY ASSURANCE DIVISION

File: **FACILITY CONDITION SURVEY OF 61st STREET FLOAT BRIDGE**

**FLOAT BRIDGE AND PONTOON PLAN**

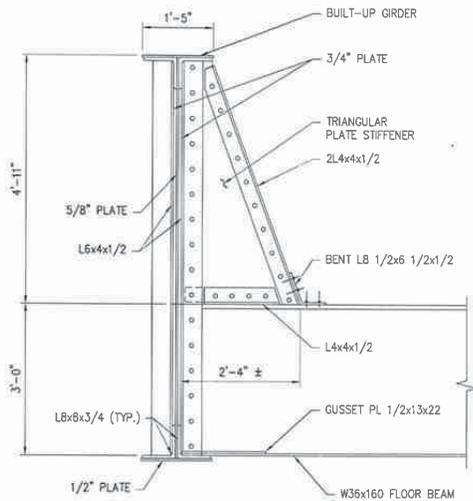
This drawing is subject to conditions in contract. All inventions, design, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

JC	CC	MO
Designed by	Drawn by	Checked by
Date	APRIL 2009	

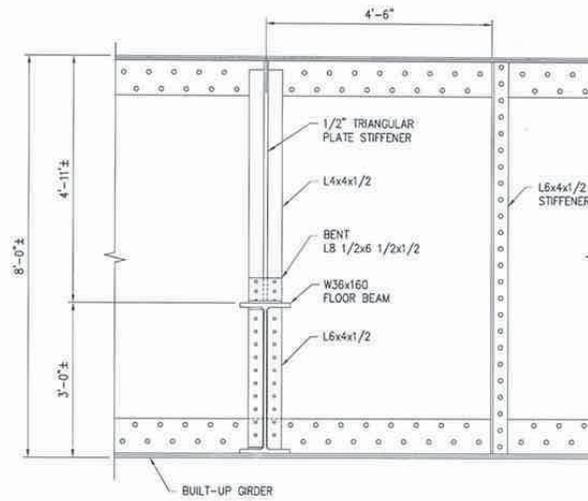
Contract Number **405-06-019**

Drawing Number **4**

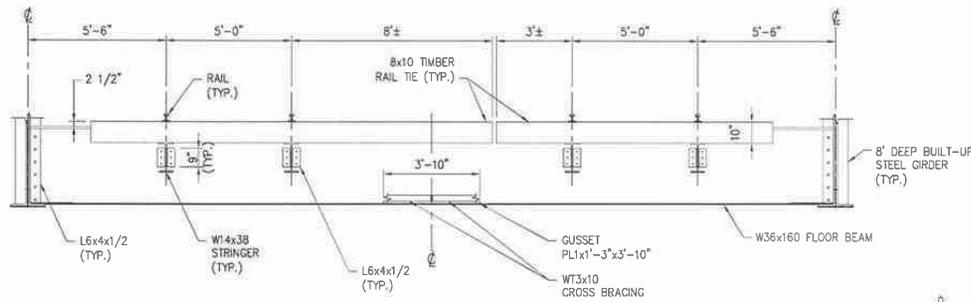
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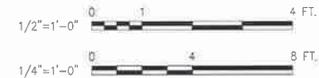
**A SECTION**  
DWG 4 / SCALE 1/2"=1'-0"



**B ELEVATION**  
DWG 4 / SCALE 1/2"=1'-0"



**C SECTION**  
DWG 4 / SCALE 1/4"=1'-0"



Sheet of



No. Date Revision Approved

ENGINEERING DEPARTMENT

NEW YORK  
MARINE TERMINAL

QUALITY ASSURANCE DIVISION

File  
FACILITY CONDITION SURVEY  
OF 61st STREET FLOAT  
BRIDGE

FLOAT BRIDGE  
ELEVATION  
AND SECTIONS

The drawing subject to conditions in contract.  
All inventions, ideas, designs and methods  
herein are reserved to Port Authority and  
may not be used without its written consent.

JC DC MD  
Designed by Drawn by Checked by  
Date APRIL 2009

Contract Number 405-06-019

Drawing Number 5

# 65 th. STREET RAIL YARD TRANSFER BRIDGES BROOKLYN, NEW YORK

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION  
CAPITAL IMPROVEMENTS

I, SIDNEY M. JOHNSON, A DULY LICENSED PROFESSIONAL ENGINEER, IN THE STATE OF NEW YORK DO HEREBY CERTIFY THAT THE FIELD AND OFFICE WORK REQUIRED IN THE PREPARATION OF THESE PLANS WAS DONE BY ME OR UNDER MY SUPERVISION BY ONE OF MY REGULAR EMPLOYEES AND THAT NO PART OF THE WORK WAS DONE BY ANY EMPLOYEE OF THE CITY OF NEW YORK.

*Sidney M. Johnson*  
SIDNEY M. JOHNSON AND ASSOCIATES  
DATE 11-24-97

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION

*Melvin A. Glickman* 10/10/97  
MELVIN A. GLICKMAN, P.E., VICE PRESIDENT DATE  
CAPITAL PROGRAMS

BOROUGH OF BROOKLYN, NEW YORK  
CONTRACT NO. 4410007

**SCOPE OF WORK:**

- THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION WANTS TO PROVIDE TWO TRANSFER BRIDGES AT THE 65th STREET RAIL YARD, BROOKLYN NEW YORK. THE BRIDGES WILL LINK EXISTING WATERFRONT RAIL HEADS TO SPECIAL BARRIES, FOR TRANSPORT ACROSS THE HARBOR.
- THE REQUIRED WORK IN GENERAL INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:
1. REHABILITATION OF EXISTING BULKHEAD FOR DESIGNATED LENGTHS USING RIP RAP SLOPE PROTECTION.
  2. CONSTRUCT NEW BULKHEAD WITH STEEL SHEET PILE WALL AT DESIGNATED LOCATIONS.
  3. CONSTRUCT TWO NEW CONCRETE BRIDGE FOUNDATIONS WITH TRANSFER BRIDGE BEARINGS.
  4. CONSTRUCT FOUR NEW RUBBING PLATFORMS WITH COUNTERWEIGHT TOWERS AND BRIDGE HOIST EQUIPMENT.
  5. CONSTRUCT AND INSTALL TWO NEW TRANSFER BRIDGES.
  6. CONSTRUCT TWO NEW GALLOW'S TOWERS.
  7. UPLAND RAILROAD TRACK WORK AND GRADING TO LINK EXISTING RAILROAD TRACKS WITH NEW TRANSFER BRIDGES.
  8. OFF SHORE DOLPHINS AND FENDERING TO GUIDE CAR FLOATS AND PROTECT FIXED STRUCTURES.
  9. ELECTRICAL UTILITY WORK TO PROVIDE LIGHTING AND POWER TO BRIDGE HOSTING EQUIPMENT.

**LIST OF DRAWINGS**

1. TITLE SHEET
2. BORING LOGS
3. TOPOGRAPHIC PLAN
4. GENERAL ARRANGEMENT
5. TRACK PLANS AND PROFILES
6. TRACK DETAILS I
7. TRACK DETAILS II
8. REMOVALS AND SHORELINE STABILIZATION
9. GRADING DRAINAGE AND PAVING
10. SHEET PILE BULKHEAD AND BRIDGE FOUNDATION
11. FENDER RACKS AND GALLOW'S FOUNDATION
12. REHABILITATED FENDER RACK
13. TRANSFER BRIDGES - DECK PLAN & DETAILS
14. TRANSFER BRIDGES - FRAMING PLANS & SECTIONS
15. TRANSFER BRIDGES - FLOOR BEAM DETAILS
16. TRANSFER BRIDGES - STRINGER AND MISCELLANEDUS DETAILS
17. TRANSFER BRIDGES - MISCELLANEOUS DETAILS
18. GALLOW'S FRAMES - GENERAL ARRANGEMENT
19. GENERAL NOTES AND GALLOW'S FRAMES-DETAILS I
20. GALLOW'S FRAMES - DETAILS II
21. ELECTRICAL I
22. ELECTRICAL II
23. FENDER SYSTEM PLAN 9802-01
24. FENDER SYSTEM PLAN 9802-02
25. FENDER SYSTEM PLAN 9802-03
26. HYDROGRAPHIC SURVEY

**AS-BUILT DRAWINGS**

1. Contractor:  
BCCO III ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Economic Planning  
Contractor's Signature: *John G. Kelly* Date: 6/26/96

2. NYC Economic Development Corporation  
Checked by: *E. BARNETT P.E.* Date: 10/25/96

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION  
CONTRACT NO. 4410007

65 TH. STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

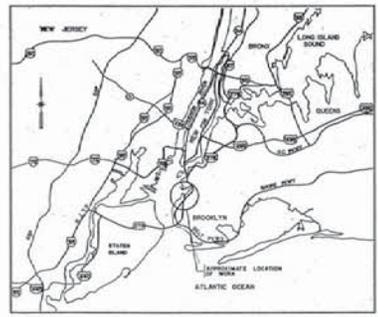


TITLE SHEET 222  
DRAW

DRAWING NO. 1 SCALE AS SHOWN DATE 11-24-97 SHEET 1 OF 22



LOCATION PLAN  
1" = 2000'

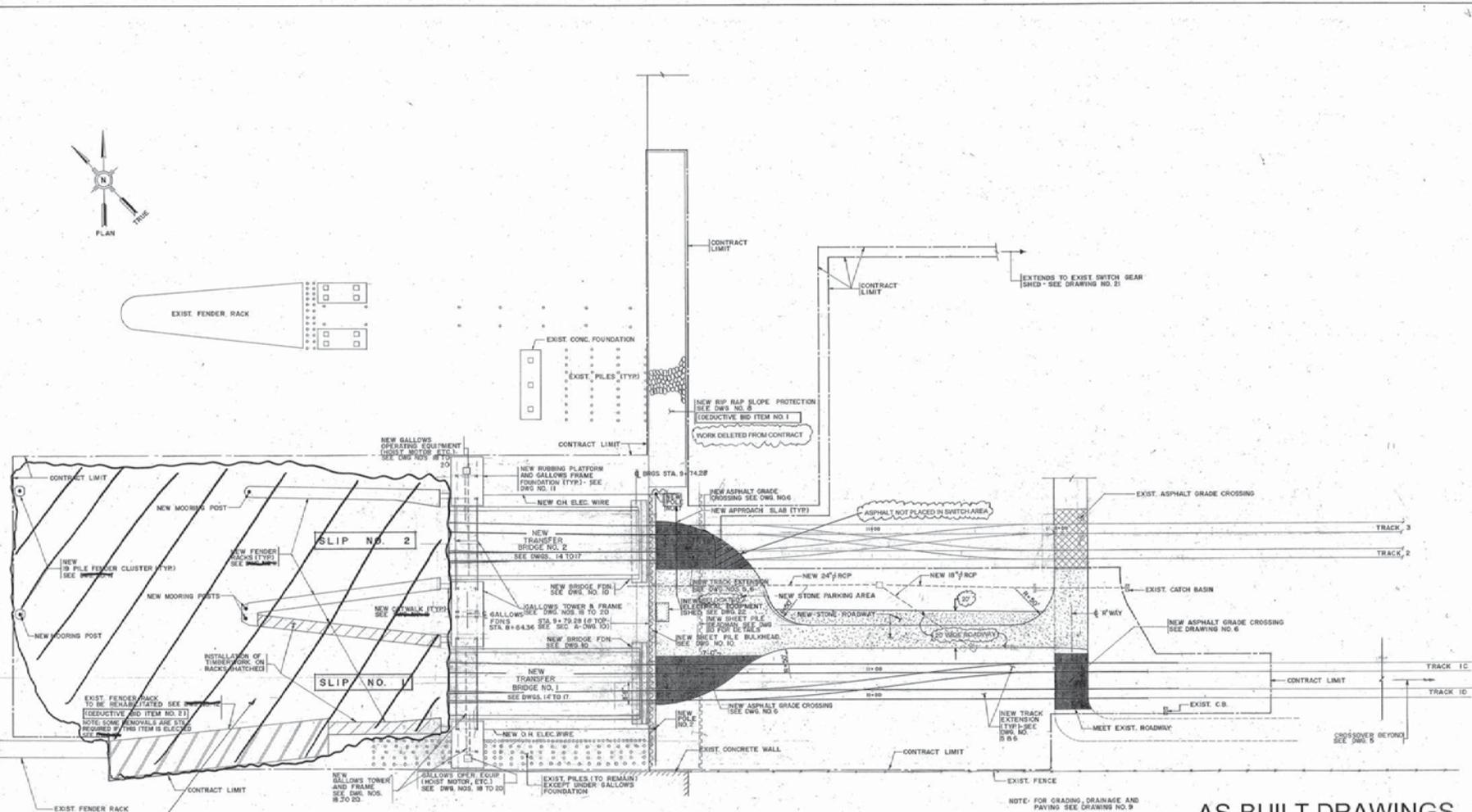


VICINITY PLAN  
1" = 5 MILES (APPROXIMATE)

AS-BUILT CHANGES MARKED WITH







GENERAL PLAN OF NEW FACILITY  
1" = 20'-0"

REVISED DETAILS - SEE DRAWINGS 9802-01, 9802-02, AND 9802-03

NOTE: FOR GRADING, DRAINAGE AND PAVING SEE DRAWING NO. 9

AS-BUILT DRAWINGS

1. Contractor:  
ECO-11 ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Dominic Pappalardo Date: 05/26/06  
Contractor's Signature: *Dom Pappalardo*

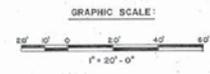
2. NYC Economic Development Corporation  
Checked by: *R. BACHRITZ PK* Date: *10/10/06*

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION

CONTRACT NO. 4410007

65<sup>TH</sup> STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

GENERAL ARRANGEMENT

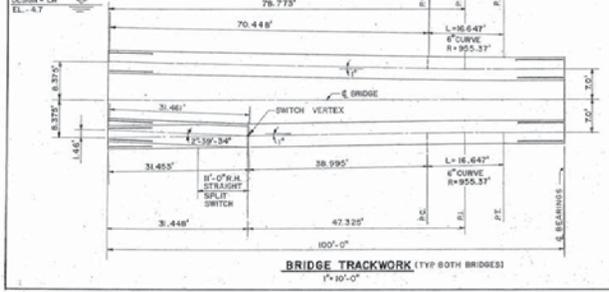
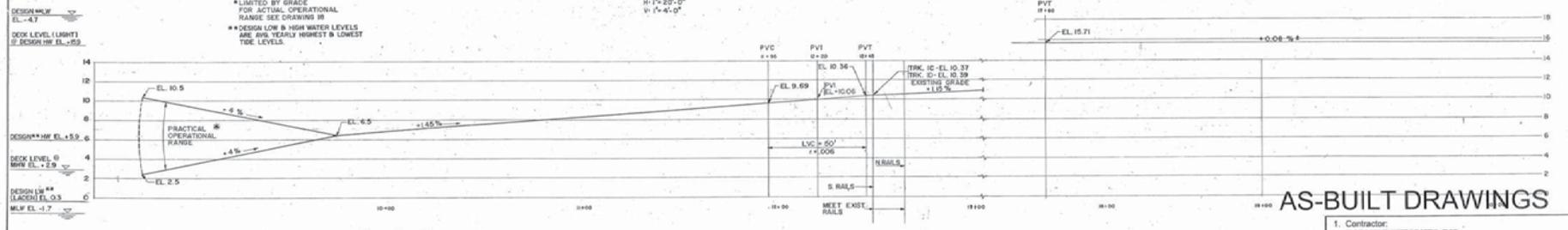
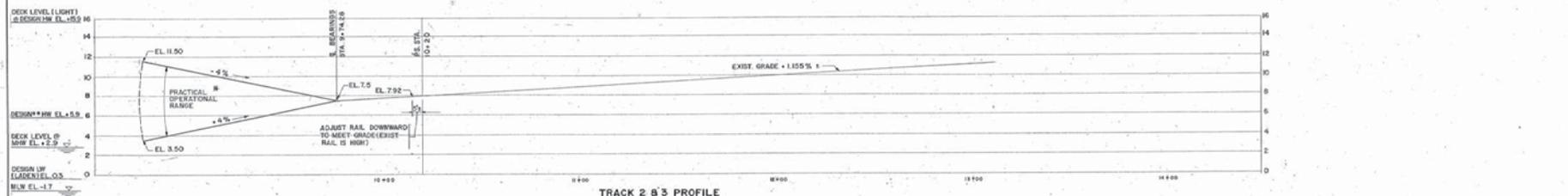
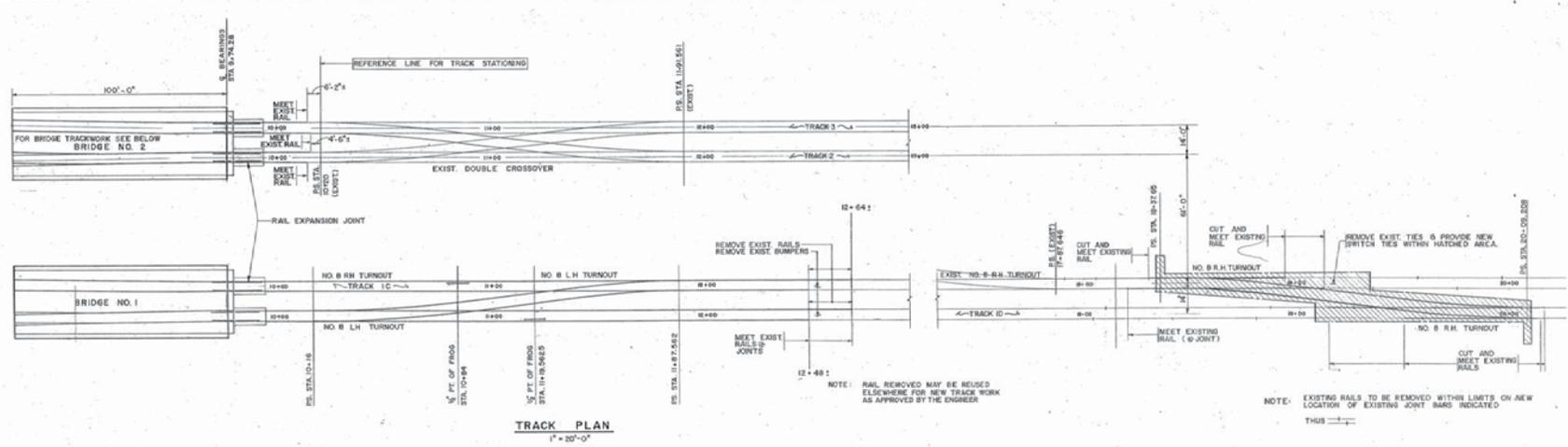


AS-BUILT CHANGES MARKED WITH



DRAWING NO.	SCALE	DATE	SHEET
4	AS SHOWN	11-24-97	4 OF 22

HONEY & JOHNSON & ASSOC.  
CONSULTING ENGINEERS  
REGISTERED PROFESSIONAL ENGINEERS  
STATE OF NEW YORK



**AS-BUILT DRAWINGS**

- Contractor:  
EXCO III ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Dominic Paquet Date: 05/26/00  
Contractor's Signature: *[Signature]*
- NYC Economic Development Corporation  
Checked by: *[Signature]* Date: 06/15/00

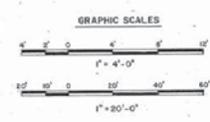
**NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION**

CONTRACT NO. 4410007  
65<sup>TH</sup> STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

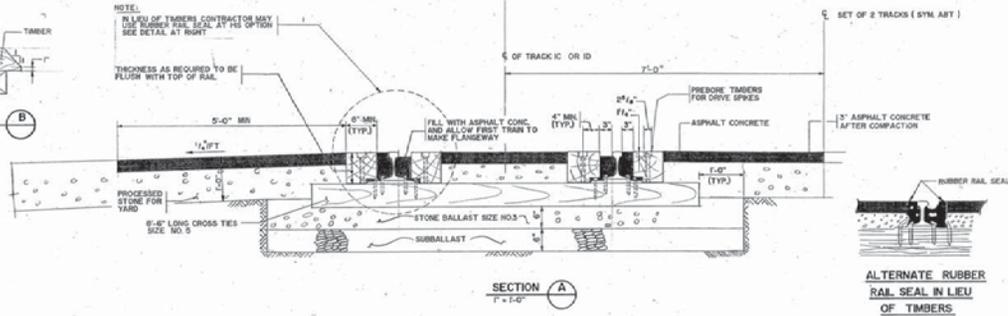
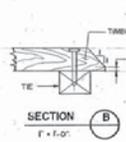
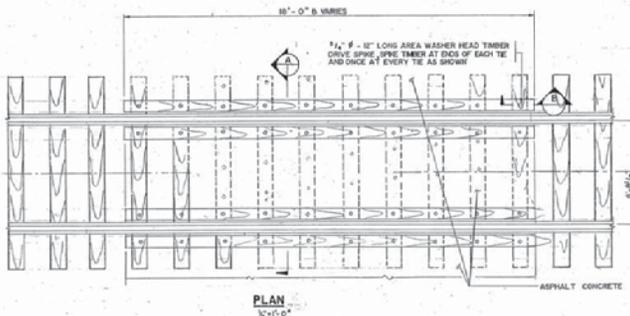
**TRACK PLANS & PROFILES**



DRAWING NO. <b>5</b>	SCALE AS SHOWN	DATE 11-24-97	SHEET 5 of 22
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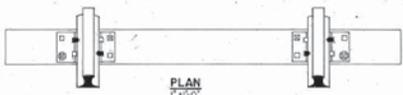


**NOTE:**  
ELEVATIONS SHOWN ARE TOP OF RAIL



**ASPHALT GRADE CROSSING**

NOTE  
WASHER HEAD TIMBER DRIVE SPIKES SHALL CONFORM TO PLAN DIMS OF AREA AND OTHER APPLICABLE SECTIONS OF AREA MANUAL



INDICATES RAIL HOLDING SPIKES IN ALL CASES

INDICATES PLATE HOLDING SPIKES

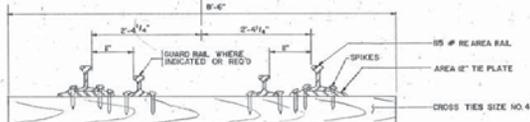
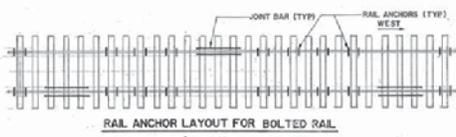
ADDITIONAL PLATE HOLDING SPIKE FOR CURVATURE 12"-30" OR SHARPER

RAIL HOLDING SPIKES SHALL HAVE APPROXIMATELY 1/4" CLR BETWEEN UNDERSIDE OF HEAD AND TOP OF RAIL BASE

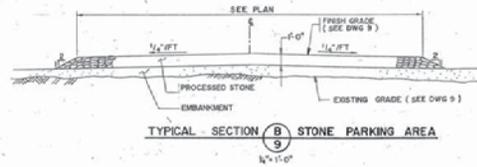


**SECTION @ JOINT BARS**

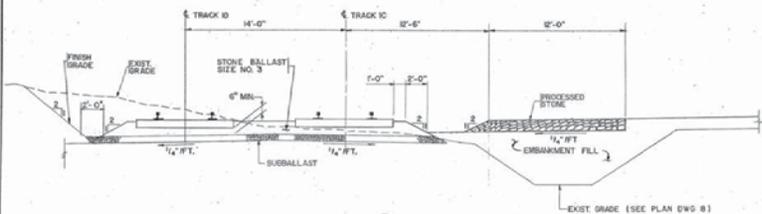
**SPIKING ARRANGEMENT FOR RAIL AND TIE PLATES**



**TYPICAL TRACK SECTION**



**TYPICAL SECTION B STONE PARKING AREA**



**SECTION A**

NOTE: ALL TRACKWORK SHALL CONFORM TO AREA STANDARDS UNLESS OTHERWISE SPECIFIED.

**AS-BUILT DRAWINGS**

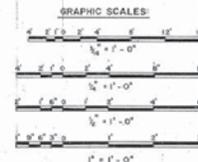
- Contractor:  
SIXCO II ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: *Domestic Project* Date: 05/26/00  
Contractor's Signature: *John C. Murphy*
- NYC Economic Development Corporation  
Checked by: *E. BARNETT JR.* Date: *10/26/00*

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION

CONTRACT NO. 4410007

65<sup>TH</sup> STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

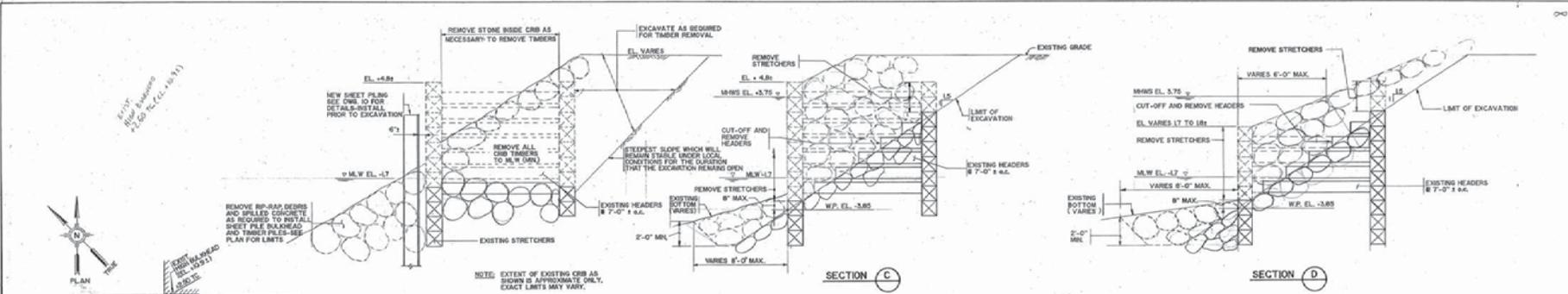
TRACK DETAILS I



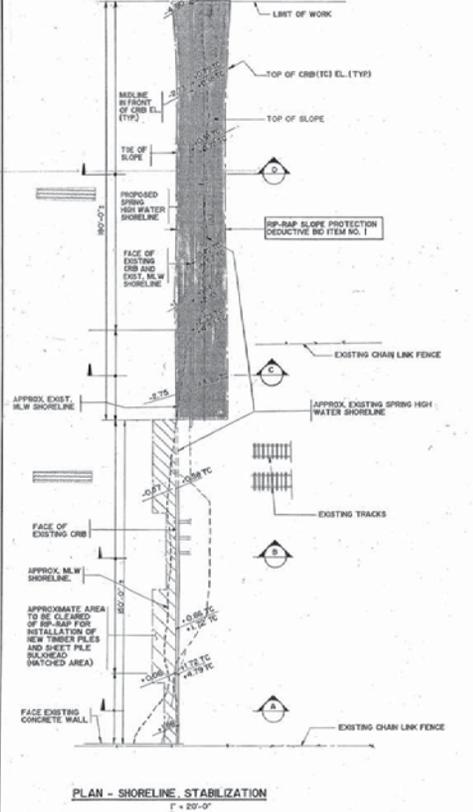
SONEY H. JOHNSON RABAGO  
CONSULTING ENGINEER  
100 WALL STREET  
NEW YORK, N.Y. 10038

DRAWING NO.	SCALE	DATE	SHEET
6	AS SHOWN	11-24-07	6 of 22

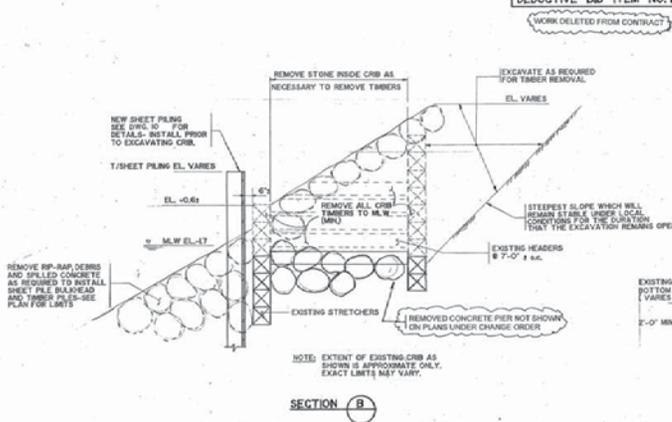




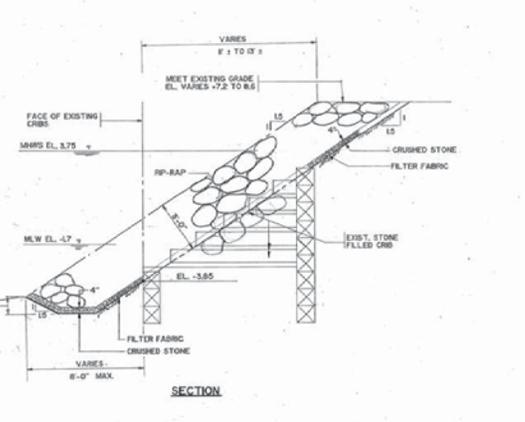
**EXCAVATION AND REMOVALS FOR RIP-RAP SLOPE PROTECTION**



**EXCAVATION & REMOVALS FOR INSTALLATION OF SHEET PILE BULKHEAD AND BRIDGE FOUNDATION**



**EXCAVATION & REMOVALS FOR RIP-RAP SLOPE PROTECTION**

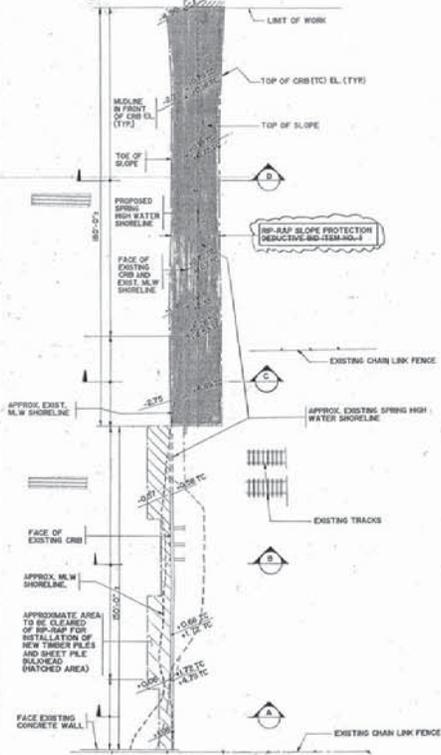


- NOTES**
- REMOVALS AND LIMITS OF REMOVALS SHOWN ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL VISIT THE SITE TO MAKE HIS OWN ESTIMATION OF THE ACTUAL REMOVAL QUANTITIES.
  - ALL STONE REMOVED WHICH IN THE OPINION OF THE ENGINEER MEETS THE REQUIREMENTS FOR NEW STONE MAY BE REUSED IN NEW RIP-RAP SLOPE. IN THE EVENT DEDUCTIVE BID ITEM NO. 1 IS ELECTED, STONE REMOVED IN THE AREA OF THE NEW SHEET PILE BULKHEAD WHICH MEETS THE REQUIREMENTS FOR NEW STONE MAY, AT THE CONTRACTORS OPTION, BE STOCKPILED AND LEFT ON SITE AT AN AREA TO BE DESIGNATED BY THE ENGINEER.
  - RRAP: STONE RRAP SHALL BE ANGULAR, DRAINABLE, FIELD OR QUARRY STONE, AND SHALL BE SOUND, HARD AND FREE FROM SEAMS, CRACKS, AND OTHER DEFECTS. NO STONE SHALL HAVE A DIMENSION LESS THAN 3 INCHES AND NEITHER THE BREADTH NOR THICKNESS OF ANY STONE SHALL BE LESS THAN ONE-THIRD OF ITS LENGTH. LIMB WIDTHS SHALL BE AT LEAST 80 PERCENT. ALL STONES SHALL BE PLACED IN AN INTERLOCKED SYSTEM SO THAT EACH IS FIRMLY EMBEDDED. STONES SHALL BE PLACED BY GRAP BUCKET AND MANUAL LABOR. CURRING IS STRICTLY PROHIBITED. RRAP SHALL ALSO BE PLACED WITH CARE NOT TO PENETRATE FILTER FABRIC.
  - CRUSHED STONE: CRUSHED STONE SHALL CONFORM TO ASTM C33, SIZE NO.67

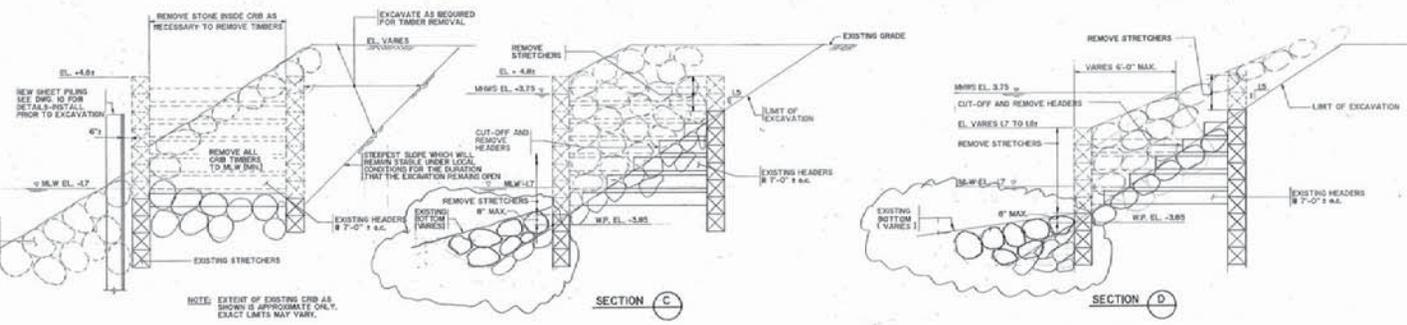
**AS-BUILT DRAWINGS**



1. Contractor ECCO III ENTERPRISES, INC. 201 Saw Mill River Road, Yonkers, NY 10701 Prepared by: Dominic Pappalardo Date: 05/26/06 Contractor's Signature: <i>[Signature]</i>			
2. NYC Economic Development Corporation Checked by: <i>[Signature]</i> Date: 06/14/06			
<b>NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION</b>			
<b>CONTRACT NO. 4410007 65<sup>TH</sup> STREET RAIL YARD TRANSFER BRIDGES BOROUGH OF BROOKLYN</b>			
<b>REMOVALS AND SHORELINE STABILIZATION</b>			
DRAWING NO. <b>B</b>	SCALE AS SHOWN	DATE 11-24-97	SHEET 9 OF 22

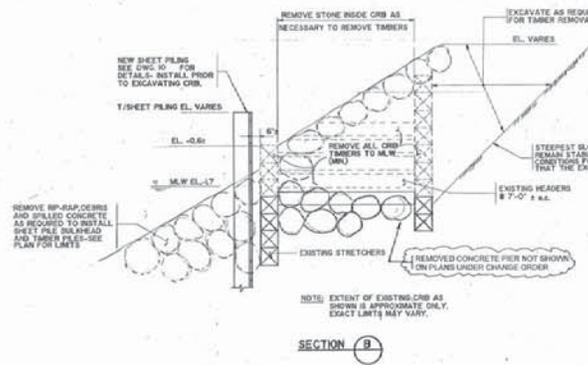


PLAN - SHORELINE STABILIZATION  
1/4" = 1'-0"

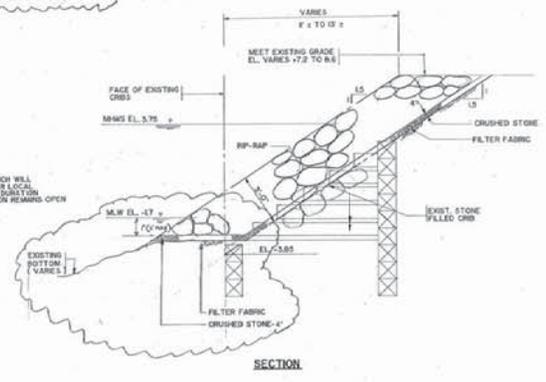


EXCAVATION AND REMOVALS FOR RIP-RAP SLOPE PROTECTION

DEDUCTIVE BID ITEM NO. 1  
MODIFIED SECTION PER CHANGE ORDER

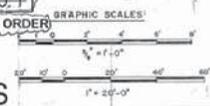


EXCAVATION & REMOVALS FOR INSTALLATION OF SHEET PILE BULKHEAD AND BRIDGE FOUNDATION  
1/4" = 1'-0"



RIP-RAP SLOPE PROTECTION  
1/4" = 1'-0"

DEDUCTIVE BID ITEM NO. 1  
MODIFIED SECTION PER CHANGE ORDER



AS-BUILT DRAWINGS

- NOTES:
- REMOVALS AND LIMITS OF REMOVALS SHOWN ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL VISIT THE SITE TO MAKE HIS OWN ESTIMATION OF THE ACTUAL REMOVAL QUANTITIES.
  - ALL STONE REMOVED WHICH IN THE OPINION OF THE ENGINEER MEETS THE REQUIREMENTS FOR NEW STONE MAY BE REUSED IN NEW RIP-RAP SLOPE. IN THE EVENT DEDUCTIVE BID ITEM NO. 1 IS SELECTED, STONE REMOVED IN THE AREA OF THE NEW SHEET PILE BULKHEAD WHICH MEETS THE REQUIREMENTS FOR NEW STONE MAY, AT THE CONTRACTOR'S OPTION, BE STOCKPILED AND LEFT ON SITE AT AN AREA TO BE DESIGNATED BY THE ENGINEER.
  - RIP-RAP: STONE RIP-RAP SHALL BE ANGULAR, CURABLE, FIELD OR QUARRY STONE, AND SHALL BE SOUND, HARD AND FREE FROM SEAMS, CRACKS, AND OTHER DEFECTS. NO STONE SHALL HAVE A DIMENSION LESS THAN 8 INCHES AND NEITHER THE BREADTH NOR THICKNESS OF ANY STONE SHALL BE LESS THAN ONE-THIRD OF ITS LENGTH. NET WEIGHT SHALL BE AT LEAST 80 LBS. ALL STONES SHALL BE PLACED IN AN INTERLOCKED SYSTEM SO THAT EACH IS FIRMLY EMBEDDED. STONES SHALL BE PLACED BY GRAB BUCKET AND MANUAL LABOR. DUMPING IS STRICTLY PROHIBITED. RIP-RAP SHALL ALSO BE PLACED WITH CARE NOT TO PENETRATE FILTER FABRIC.
  - CRUSHED STONE: CRUSHED STONE SHALL CONFORM TO ASTM C33, SIZE 10.67

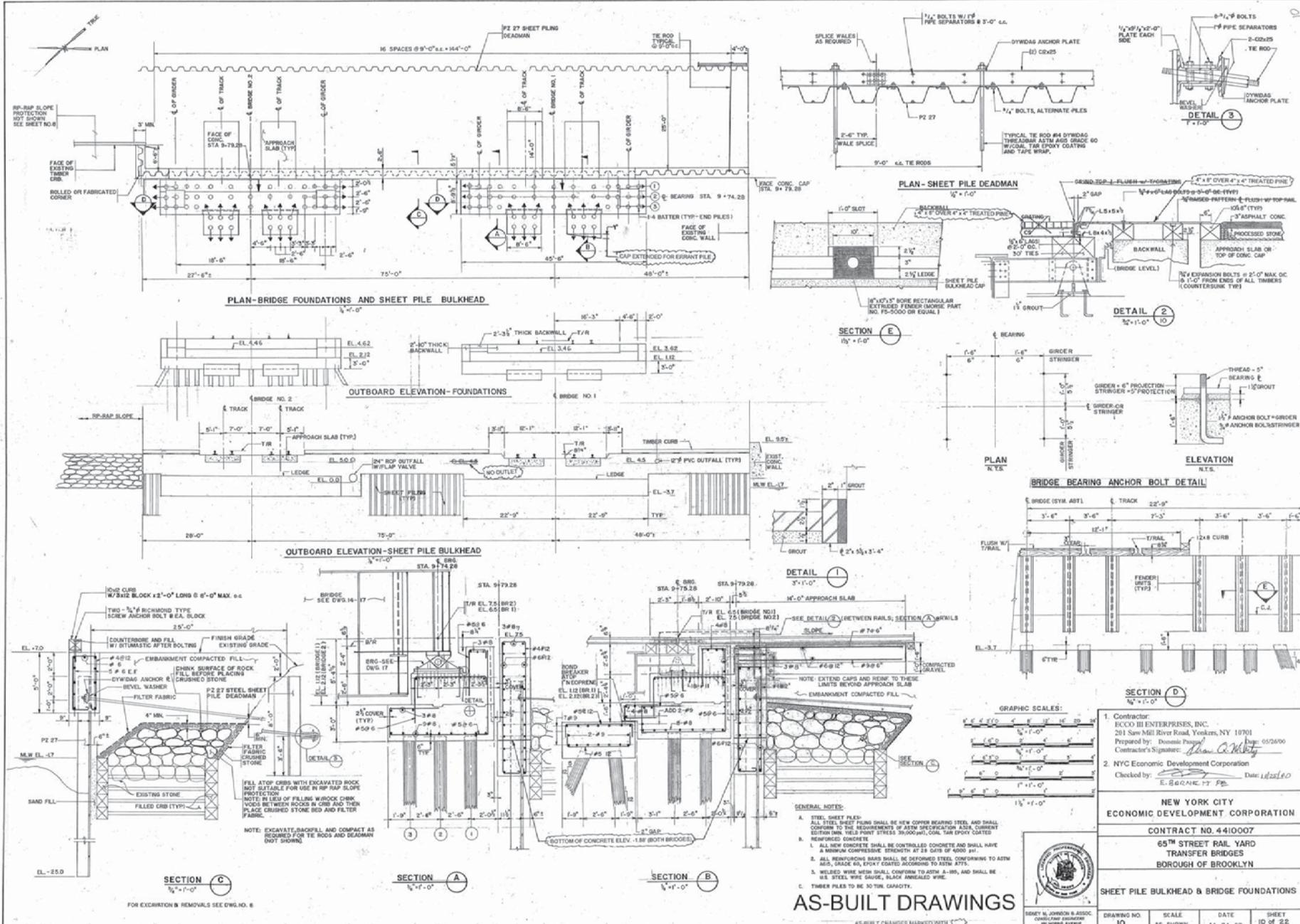
AS-BUILT CHANGES MARKED WITH



GREGORY H. JOHNSON & ASSOC.  
CIVIL/STRUCTURAL ENGINEERS  
100 WEST 107TH STREET  
NEW YORK, N.Y. 10026

1. Contractor: ECCO III ENTERPRISES, INC. 201 Saw Mill River Road, Yonkers, NY 10701 Prepared by: <i>Dennis Pappalardo</i> Date: 05/25/00 Contractor's Signature: <i>Alan A. ...</i>			
2. NYC Economic Development Corporation Checked by: <i>R. BARNATT</i> PE Date: 10/15/00			
<b>NEW YORK CITY</b> <b>ECONOMIC DEVELOPMENT CORPORATION</b>			
<b>CONTRACT NO. 4410007</b> <b>65<sup>TH</sup> STREET RAIL YARD</b> <b>TRANSFER BRIDGES</b> <b>BOROUGH OF BROOKLYN</b>			
<b>REMOVALS AND SHORELINE STABILIZATION</b>			
DRAWING NO.	SCALE	DATE	SHEET
8	AS SHOWN	11-28-97	8 OF 22

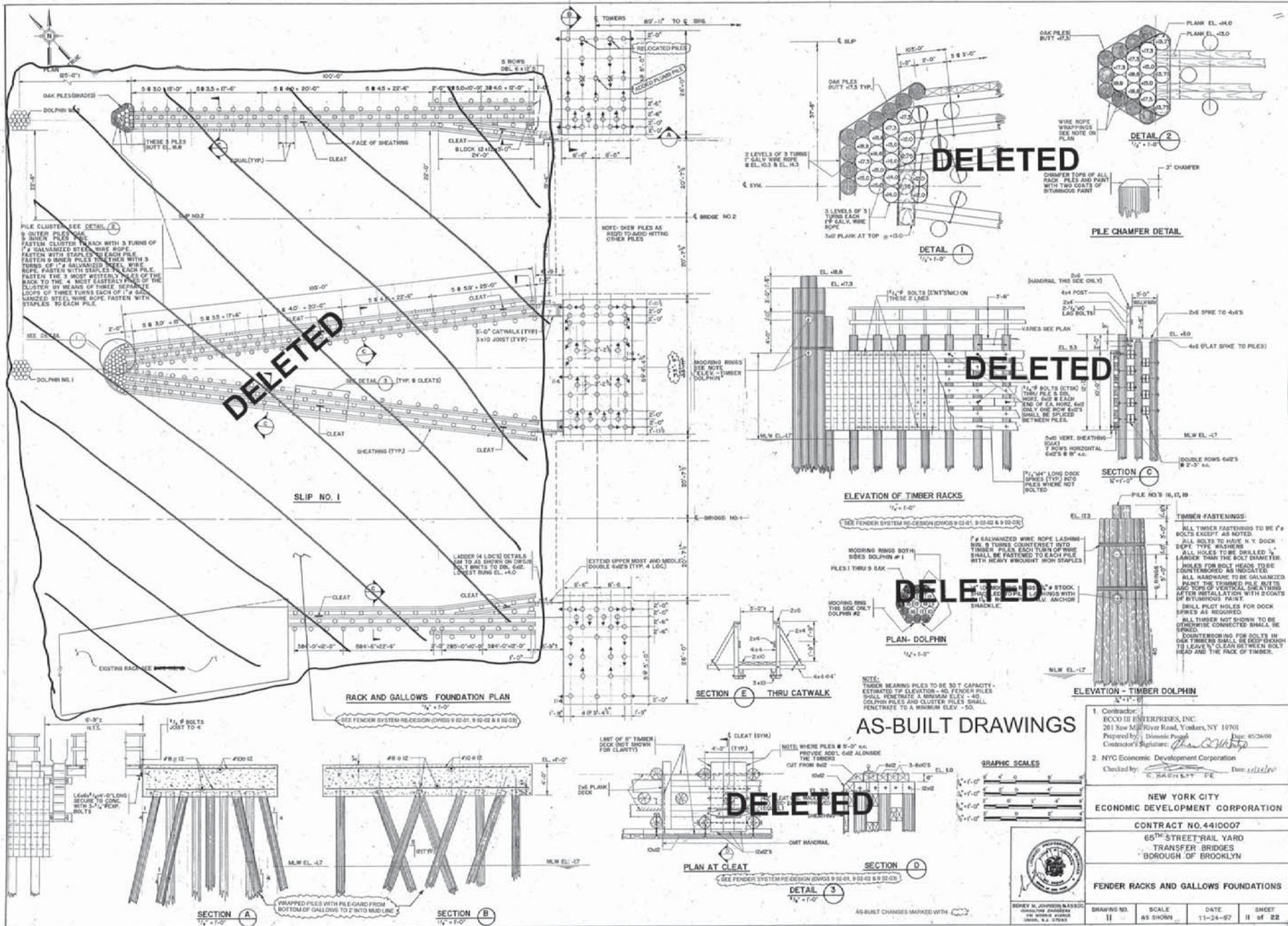




# AS-BUILT DRAWINGS



**GRAPHIC SCALES:**  
 1" = 1'-0"  
 1/2" = 1'-0"  
 3/8" = 1'-0"  
 1/4" = 1'-0"  
 1/8" = 1'-0"  
 1/16" = 1'-0"  
 1/32" = 1'-0"  
 1/64" = 1'-0"  
 1/128" = 1'-0"  
 1/256" = 1'-0"  
 1/512" = 1'-0"  
 1/1024" = 1'-0"  
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**AS-BUILT DRAWINGS**

1. Contractor: BCCO II ENTERPRISES, INC.  
 201 Saw Mill River Road, Yonkers, NY 10791  
 Prepared by: Dennis Prasad  
 Contractor's Signature: *[Signature]*  
 2. NYC Economic Development Corporation  
 Checked by: *[Signature]* Date: 11/21/97

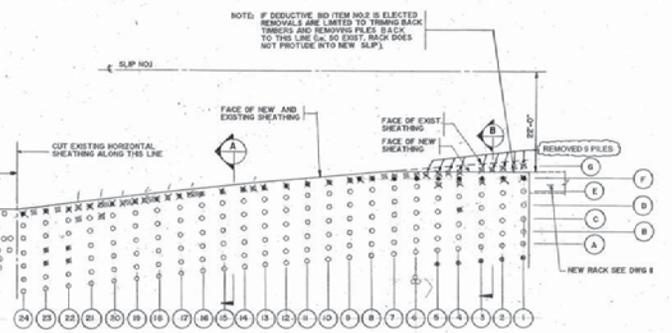
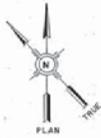
**NEW YORK CITY  
 ECONOMIC DEVELOPMENT CORPORATION**  
 CONTRACT NO. 4410007  
 65<sup>TH</sup> STREET RAIL YARD  
 TRANSFER BRIDGES  
 BOROUGH OF BROOKLYN

**FENDER RACKS AND GALLOWNS FOUNDATIONS**



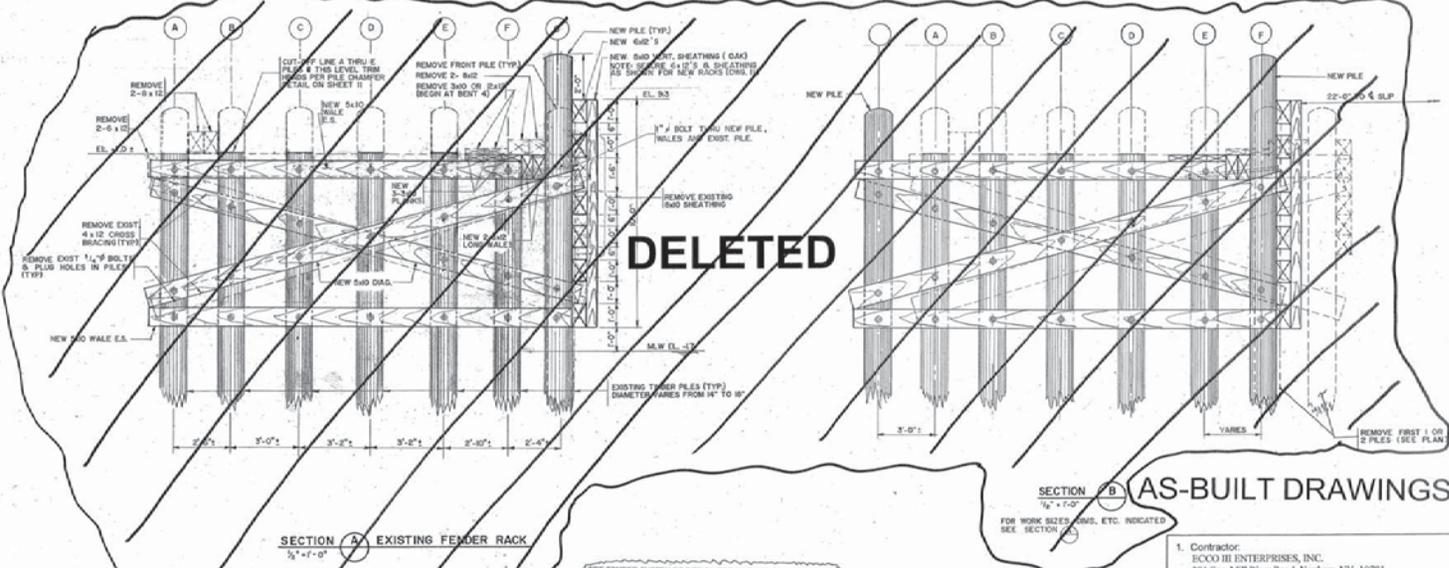
DRAWING NO.	SCALE	DATE	SHEET
11	AS SHOWN	11-24-97	11 OF 22

AS-BUILT CHANGES MARKED WITH



**LEGEND**  
 X - REMOVE EXISTING PILE  
 ○ - EXISTING PILE TO REMAIN  
 ● - NEW PILE  
 ○ - REMOVE EXISTING PILE & PROVIDE NEW PILE  
 REMOVE ONLY THE 8 PILES NOTED. NEW FENDER SYSTEM ERECTED IN FRONT OF THE EXISTING RACK.

**EXISTING PILE PLAN**  
 1" = 10'-0"

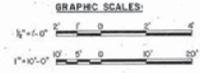


**SECTION A EXISTING FENDER RACK**  
 1/2" = 1'-0"

**SECTION B AS-BUILT DRAWINGS**  
 1/2" = 1'-0"

**NOTE:** PLUG ALL EXISTING BOLT HOLES IN PILES WITH GRESOTE PLUG.  
 ALL NEW BOLTS TO BE 1" UNLESS NOTED OTHERWISE.  
 USE OF EXIST. HOLES IN PILES WILL BE PROHIBITED.

SEE FENDER SYSTEM RE-DESIGN FOR PILE AND FENDER DETAILS



1. Contractor:  
 ECCO HI ENTERPRISES, INC.  
 201 Saw Mill River Road, Yonkers, NY 10701  
 Prepared by: Domestic Project  
 Contractor's Signature: *Thomas A. Meltzer* Date: 05/26/00  
 E. SARACITTA  
 2. NYC Economic Development Corporation  
 Checked by: *E. SARACITTA* Date: 12/15/00

**NEW YORK CITY  
 ECONOMIC DEVELOPMENT CORPORATION**  
 CONTRACT NO. 4410007  
 60<sup>TH</sup> STREET RAIL YARD  
 TRANSFER BRIDGES  
 BOROUGH OF BROOKLYN

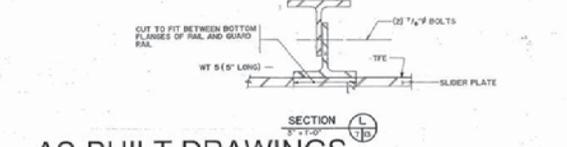
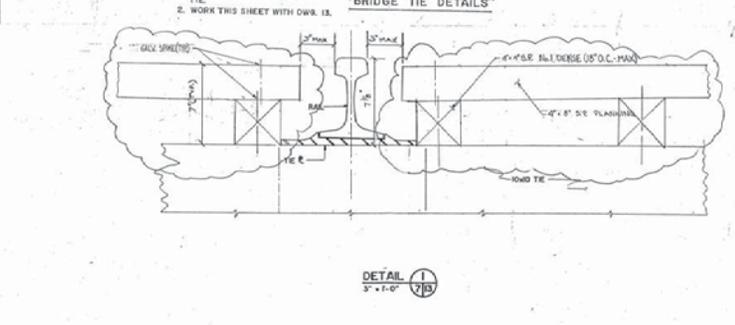
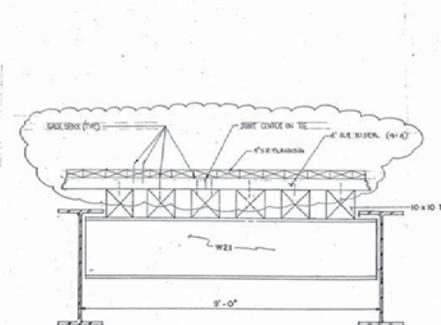
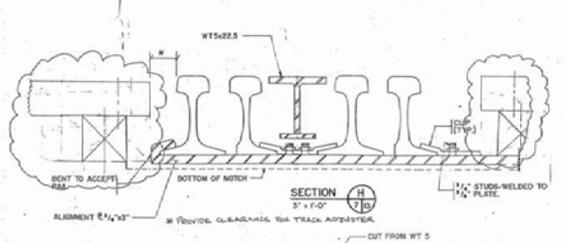
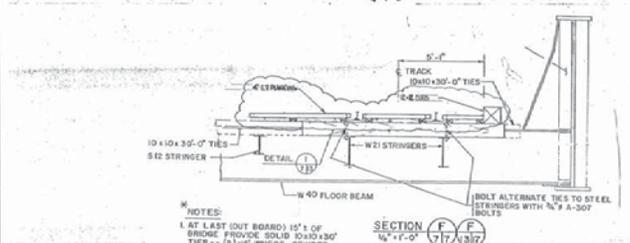
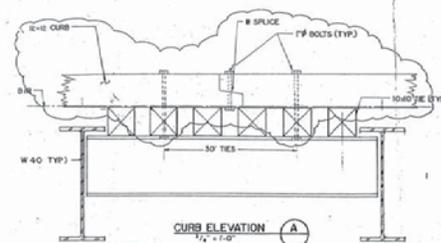
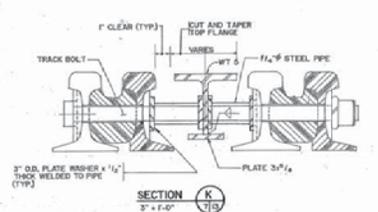
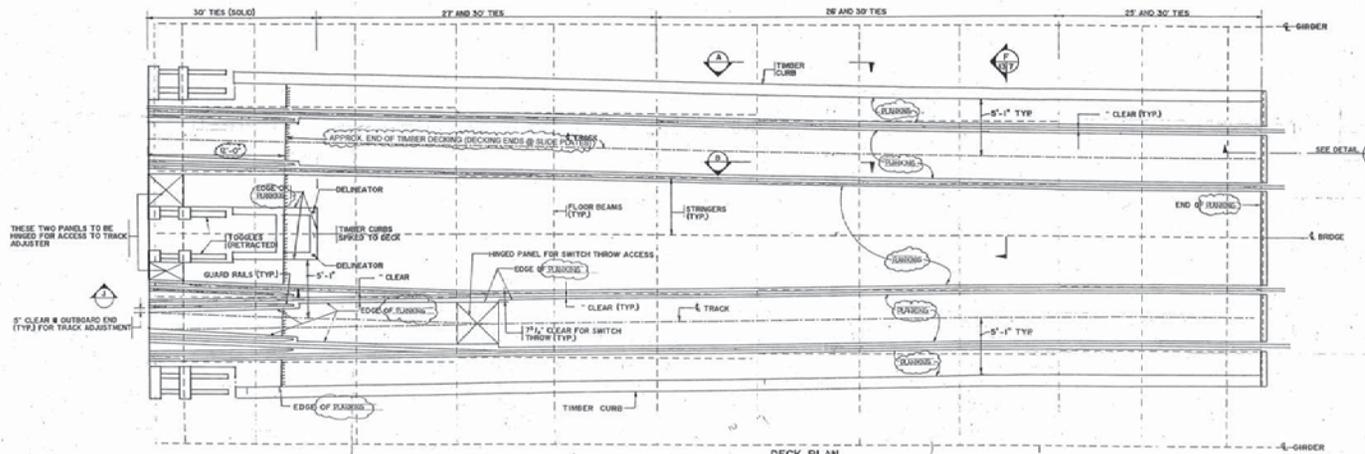
**REHABILITATED FENDER RACK**



SENEY M. JOHNSON & ASSOC.  
 CONSULTING ENGINEERS  
 100 HENRY STREET  
 BROOKLYN, N.Y. 11201

DRAWING NO.	SCALE	DATE	SHEET
12	AS SHOWN	11-24-97	12 OF 22

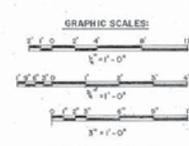
AS-BUILT CHANGES MARKED WITH



- NOTES:
1. AT LAST (OUT BOARD) 10' OF BRIDGE PROVIDE SOLID 30x10x30' TIES - (2) 1/2\"/>
  2. WORK THIS SHEET WITH DWG. 13.

- NOTES:
1. DECK TO BE TREATED WITH WATERBOURNE PRESERVATIVE PRESERVATIVE - SUPPLY 2.2 PCF
  2. S.P. = SOUTHERN YELLOW PINE NO. 1 DENSE SR
  3. 4\"/>

**AS-BUILT DRAWINGS**



WORK THIS SHEET WITH DWG NO. 13  
AS-BUILT CHANGES MARKED WITH

1. Contractor:  
ECCO III ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Demetrius Pappas Date: 05/26/09  
Contractor's Signature: *Demetrius Pappas*

2. NYC Economic Development Corporation  
Checked by: *E. S. Smith, Jr.* Date: 06/16/09

NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION

CONTRACT NO. 4410007

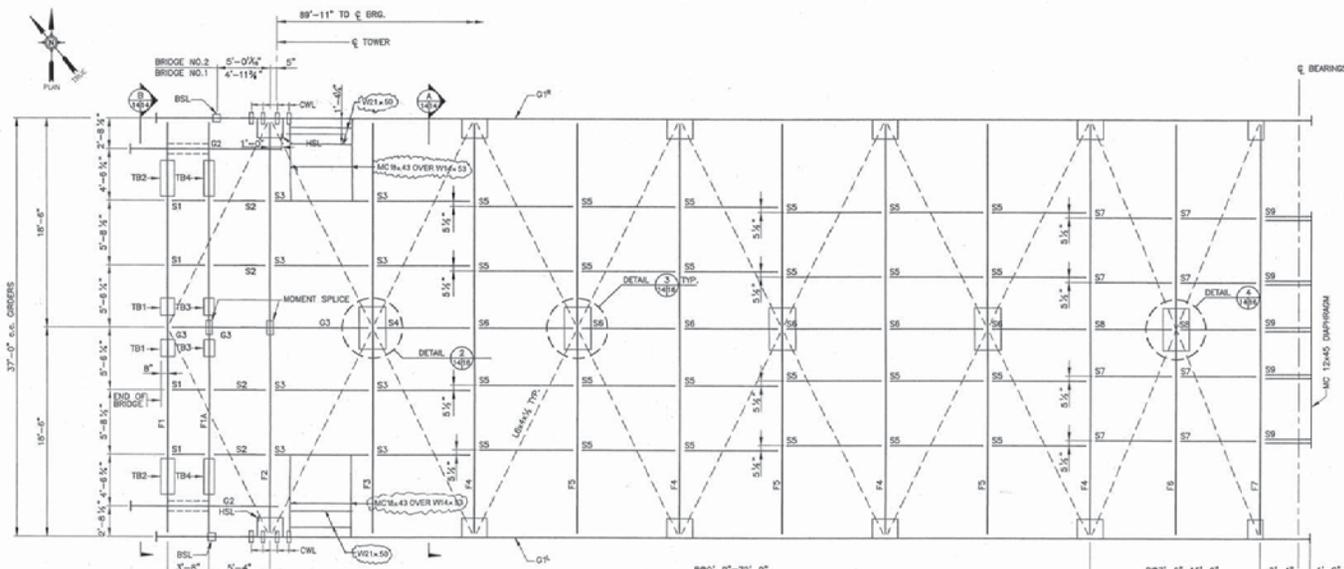
65<sup>TH</sup> STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

TRANSFER BRIDGES-DECK PLAN AND DETAILS



SENEY & JOHNSON & ASSOCIATES  
CONSULTING ENGINEERS  
100 AVENUE OF THE AMERICAS  
LONDON, N.Y. 10038

DRAWING NO.	SCALE	DATE	SHEET
13	AS SHOWN	11-24-07	15 OF 22



**LEGEND**

- TB - TOGGLE BOX
- S - STRINGER
- F - FLOOR BEAM
- G - GIRDER
- W - WELD
- BSL - BRIDGE SUPPORT LUG (NON-OPERATING)
- HSL - HOST SUPPORT LUG (OPERATING)
- CWL - COUNTER WEIGHT EQUALIZER SUPPORT LUG
- G1 - PLATE GIRDER SEE DETAILS THIS SHEET
- G2 - PLATE GIRDER SEE DETAILS SHEET 15
- G3 - W40X307
- F1 - PLATE GIRDER-SEE SHEET 15
- F2 - PLATE GIRDER-SEE SHEET 15
- F3 - W40X249
- F4-F5 - W40X237
- F6 - W40X215
- F7 - W14x45
- S1 - W14x45
- S2 - W14x45
- S3 - W21x44
- S4 - W21x44
- S5 - W21x44
- S6 - W21x44
- S7 - W21x44
- S8 - W21x44
- S9 - W21x44
- N - NEAR SIDE
- F - FAR SIDE
- N & F - NEAR & FAR SIDES
- F.S. - FITTED STIFFENER

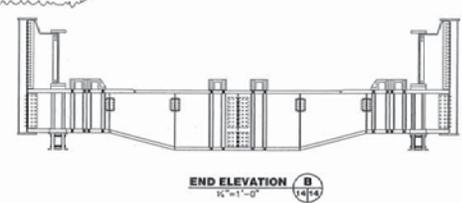
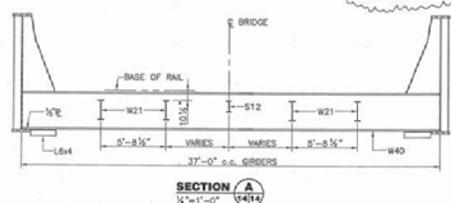
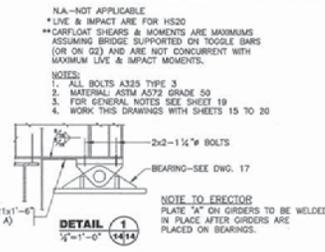
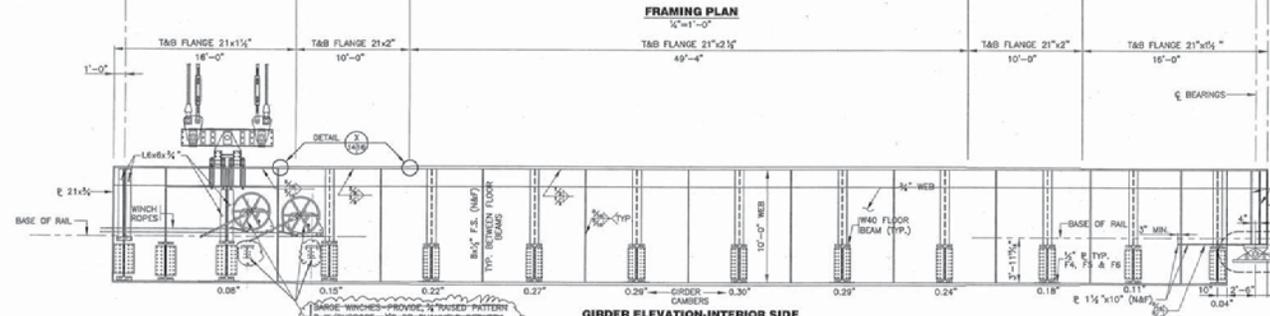
**DESIGN LOAD TABLE**

SUPERIMPOSED DEAD LOAD	TRACK 0.230 KLF
TIES	0.395 KLF*
LIVE LOAD	COOPER E-80 OR ASHTO HS 20

\*0.670 KLF FOR OUTBOARD 30'

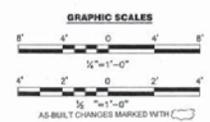
**SHEAR AND MOMENT TABLE (COOPER E 80)**

MEMBER	I.D.	SHEAR (KIPS)				MOMENT (FT-KIPS)			
		DEAD	LIVE	IMPACT	MOBFLOAT	DEAD	LIVE	IMPACT	MOBFLOAT
BRIDGE BEAMS	S1	1.3	44.8	26.9	N/A	1.2	41.5	24.9	N/A
	S2	1.9	47.3	28.4	N/A	2.6	59.3	35.6	N/A
	S3	3.2	64.5	37.0	N/A	7.1	101.0	58.0	N/A
	S4*	2.0	16.0	4.8	N/A	4.6	36.0	10.8	N/A
	S5	2.0	64.3	37.0	N/A	4.5	101.0	58.0	N/A
	S6*	1.4	16.0	4.8	N/A	3.2	36.0	10.8	N/A
	S7	1.6	59.7	35.8	N/A	3.1	84.0	50.4	N/A
	S8*	1.2	16	4.8	N/A	2.2	30.0	20.0	N/A
	S9	0.5	44.8	26.9	N/A	0.4	37.3	22.4	N/A
	F1	24.0	85.7	36.9	-939	234	912	392	-6847
FLOOR BEAMS	F1A	18.2	57.8	24.9	-532	162	535	230	-4830
	F2	11.0	62.0	26.7	-374	104	472	203	-1013
	F3	21.3	151	64	-165	230	1334	621	2098
	F4-F5	15.0	151.1	64.4	N/A	173	1734	739	N/A
	F6	12.4	133.6	56.9	N/A	140.0	1529.7	651.7	N/A
	F7	9.8	106.4	45.3	N/A	111.1	1218.3	519	N/A
	GIRDERS	G1	116	600.0	183.8	N/A	2444	12408	3387
G2		1.9	N/A	N/A	800	3.3	N/A	N/A	3098
G3		6.1	85	37	838	18.3	592	250	3074



**AS-BUILT DRAWINGS**

NOTE: RAILROAD STRUCTURE DESIGN IS BASED ON AREA DESIGN REQUIREMENTS



1. Contractor: ECCO III ENTERPRISES, INC.  
201 Saw Mill River Road, Tonawanda, NY 14204  
Prepared by: Donomic Pappas  
Contractor's Signature: *Donomic Pappas* Date: 8/26/99

2. NYC Economic Development Corporation  
Checked by: *E. GARNETT PK* Date: 10/10/00

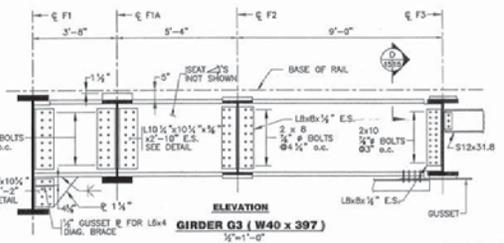
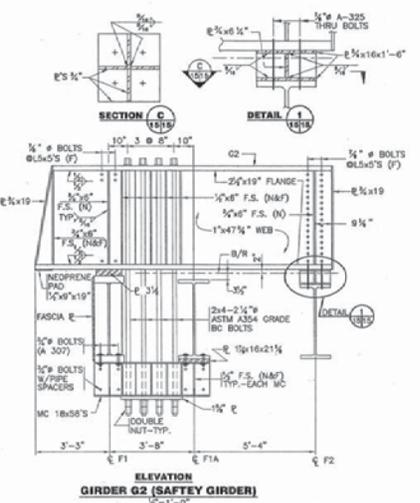
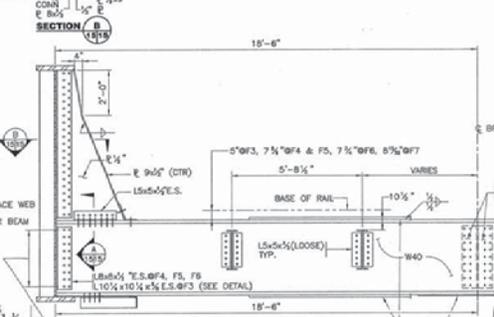
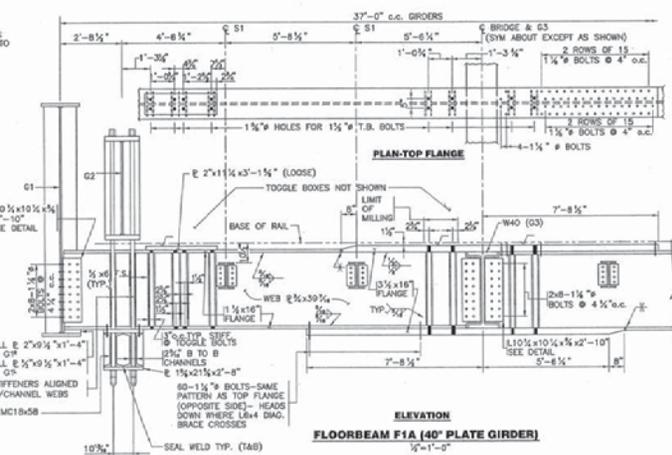
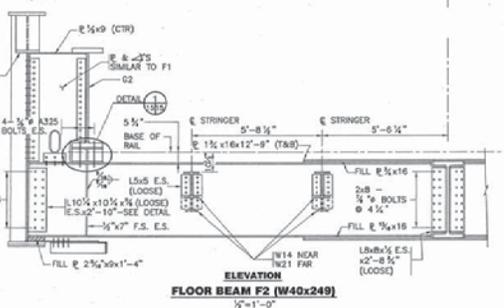
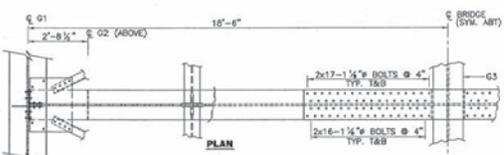
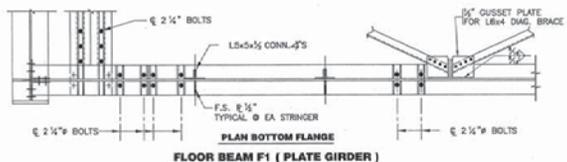
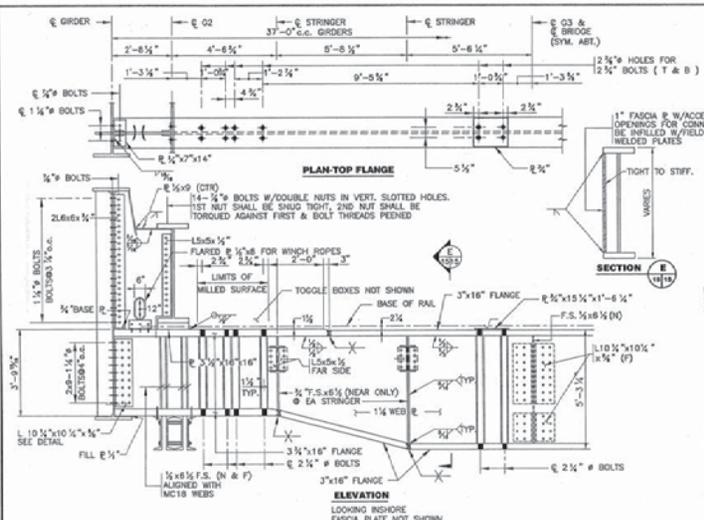
**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

CONTRACT NO. 4410007

65 TH STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

**TRANSFER BRIDGES FRAMING PLAN & SECTIONS**

DRAWING NO.	SCALE	DATE	SHEET
14	AS SHOWN	11-24-97	14 OF 22



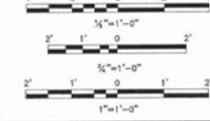
**AS-BUILT DRAWINGS**

NOTE: GUSSET PLATE @ F3 IS MOUNTED BELOW COVER PLATES

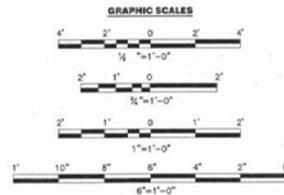
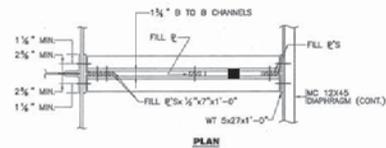
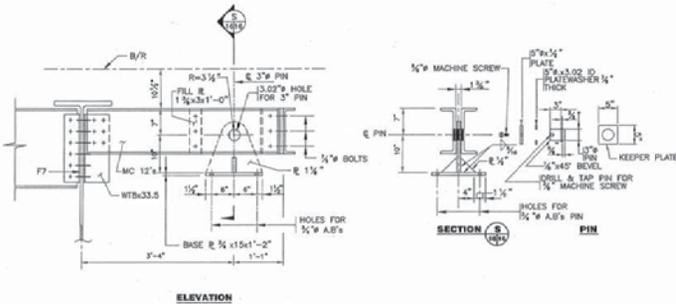
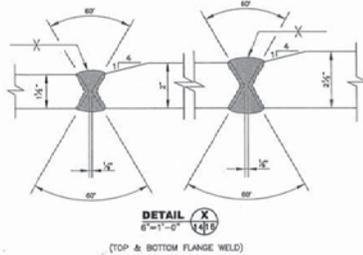
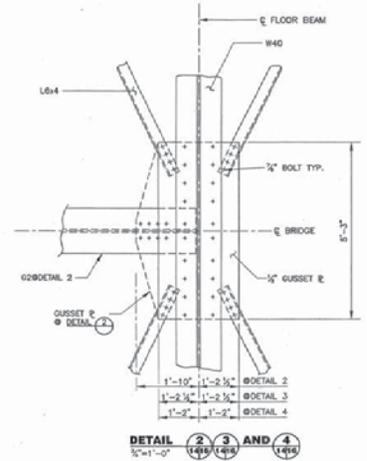
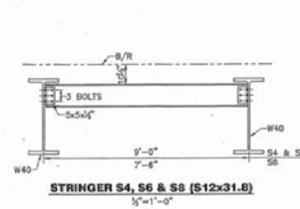
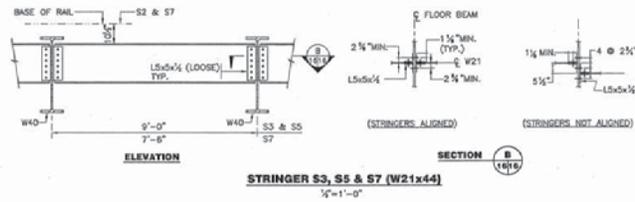
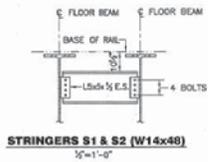
NOTE: 1. ✓ INDICATES MILLED SURFACE-ANSI 125  
2. ALL GROOVE WELDS TO BE FULL PENETRATION

GUSSET @ F3, F5 & F6 ONLY, SEE DETAILS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

GRAPHIC SCALES



1. Contractor: ECCO III ENTERPRISES, INC. 201 Saw Mill River Road, Yonkers, NY 10701 Prepared by: Dominic Pappalardo Contractor's Signature: <i>[Signature]</i> Date: 05/26/99			
2. NYC Economic Development Corporation Checked by: <i>[Signature]</i> Date: 05/26/99 E. BARNHART PE			
<b>NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION</b>			
CONTRACT NO. 4410007 65 TH STREET RAIL YARD TRANSFER BRIDGES BOROUGH OF BROOKLYN			
<b>TRANSFER BRIDGES FLOOR BEAM DETAILS</b>			
DRAWING NO.	SCALE	DATE	SHEET
15	AS SHOWN	11-24-97	15 of 22



**AS-BUILT DRAWINGS**

- Contractor:  
ECCO III ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Dominic Pasqua Date: 05/26/06  
Contractor's Signature: *[Signature]*
- NYC Economic Development Corporation  
Checked by: *[Signature]* Date: 06/16/06  
E. SANCHEZ PE

**NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION**

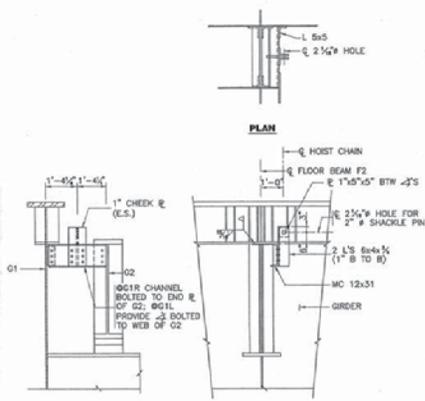
CONTRACT NO. 4410007

65 th. STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

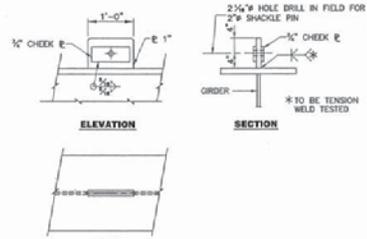
**TRANSFER BRIDGES  
STRINGER AND MISCELLANEOUS  
DETAILS**



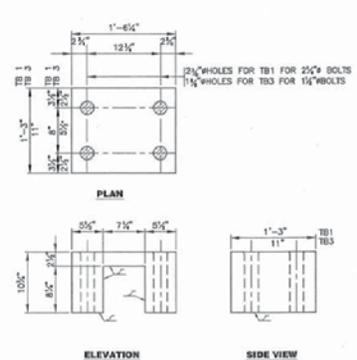
DONEY M. JOHNSON & ASSOC. ENGINEERS ARCHITECTS 1181 MORRIS AVENUE UNION, NEW JERSEY 07088	DRAWING NO. 16	SCALE AS SHOWN	DATE 11-24-97	SHEET 16 OF 22
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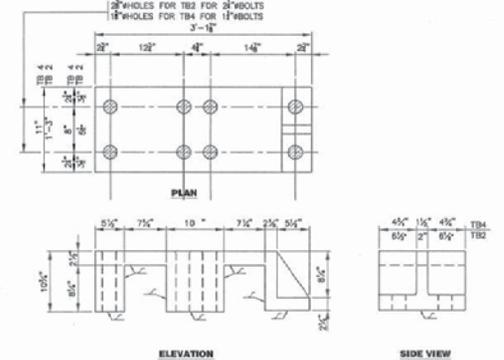
**HOIST SUPPORT LUG (OPERATING)**  
 1/2"=1'-0"  
 (4 REQUIRED, SHOWN AT G1R)



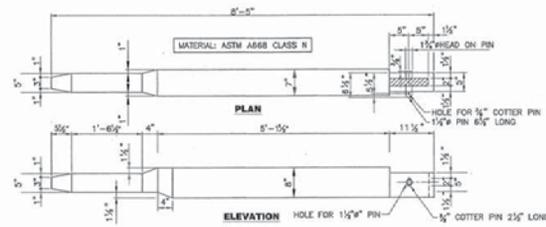
**BRIDGE SUPPORT LUG (NON OPERATING)**  
 1"=1'-0"  
 (4 REQUIRED)



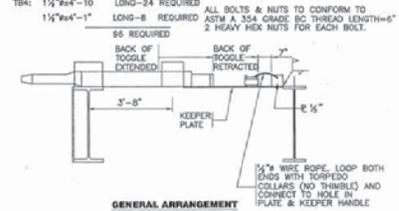
**SINGLE TOGGLE BOX**  
 1/2"=1'-0"



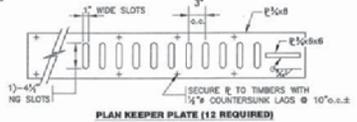
**DOUBLE TOGGLE BOX**  
 1/2"=1'-0"



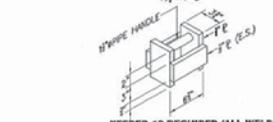
**DETAIL TOGGLE BARS (12 REQUIRED)**  
 1"=1'-0"



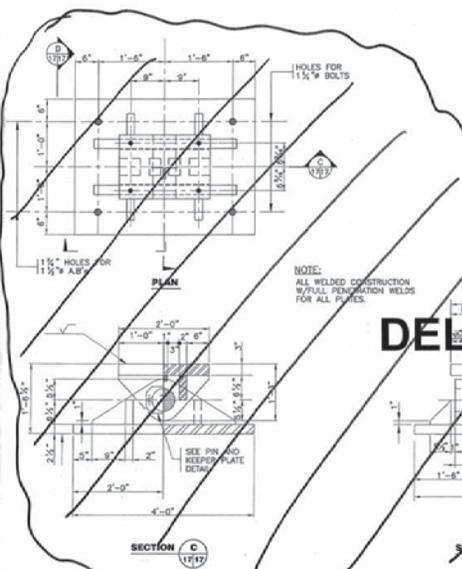
**TOGGLE STOP DETAIL**  
 1/2"=1'-0"



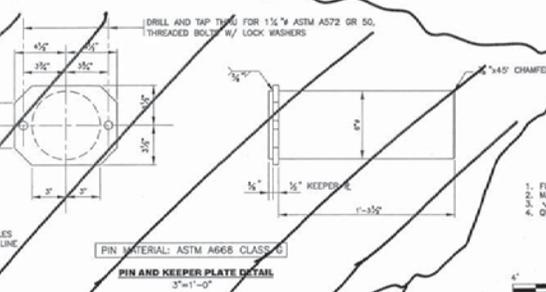
**KEEPER-12 REQUIRED (ALL WELDED)**  
 1/2"=1'-0"



**KEEPER-12 REQUIRED (ALL WELDED)**  
 1/2"=1'-0"



**DETAIL OF BEARINGS (4 REQUIRED)**  
 1"=1'-0"

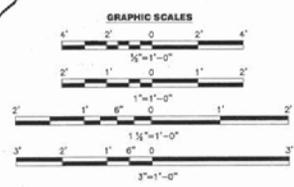


**PIN AND KEEPER PLATE DETAIL**  
 3"=1'-0"

**DELETED**

**AS-BUILT DRAWINGS**

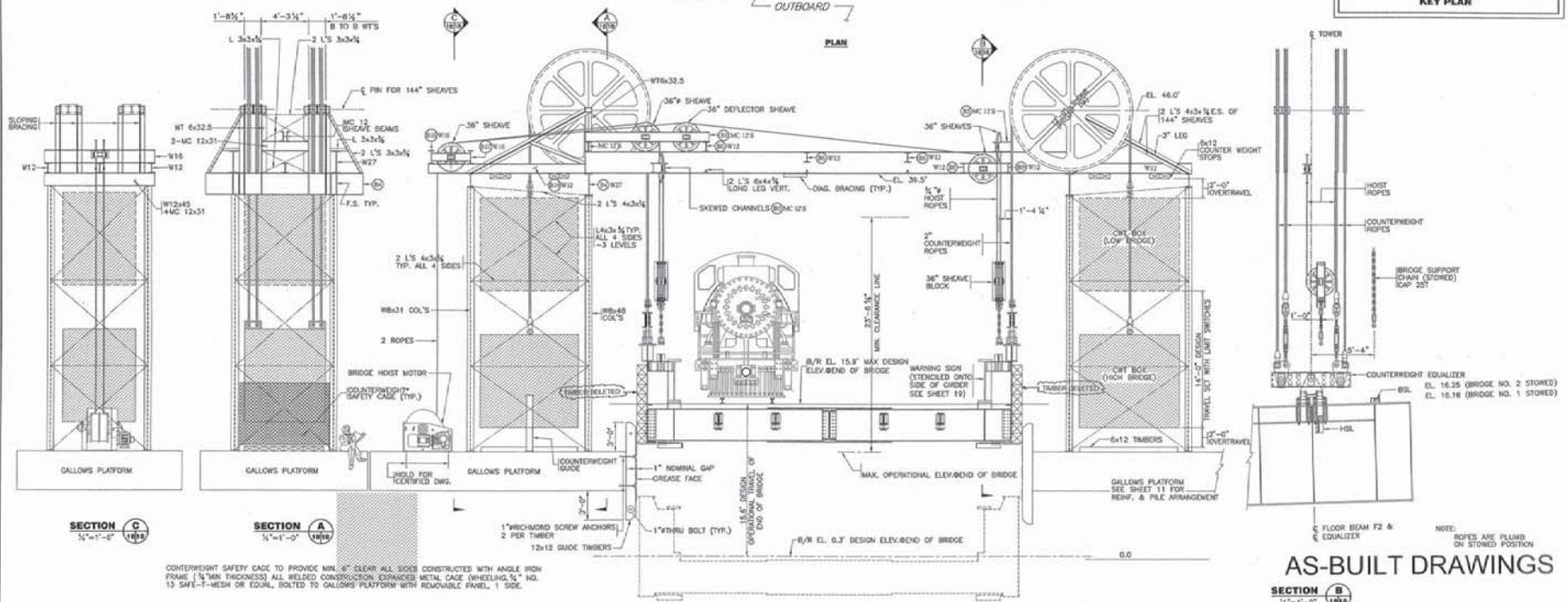
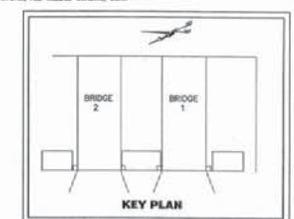
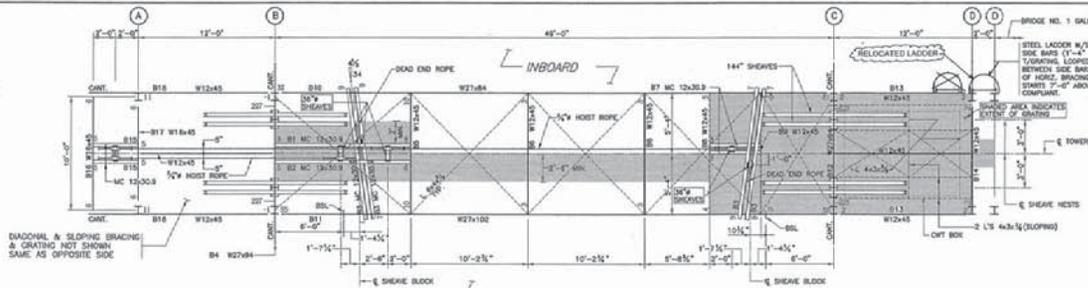
- AS-BUILT CHANGES MARKED WITH
- FOR GENERAL NOTES, SEE DRAWING NO. 1R.
  - MATERIAL ASTM A572 (F<sub>y</sub>=50ksi) U.S.A.
  - "V" INDICATES MILLED SURFACE - ANS I 25
  - QUANTITIES SHOWN ARE FOR TWO BRIDGES.



1. Contractor: ECCO III ENTERPRISES, INC. 201 Saw Mill River Road, Yonkers, NY 10701 Prepared by: Dominic Pappalardo Date: 05/24/00 Contractor's Signature: <i>[Signature]</i>			
2. NYC Economic Development Corporation Checked by: <i>[Signature]</i> Date: 10/15/00			
<b>NEW YORK CITY          ECONOMIC DEVELOPMENT CORPORATION</b>			
<b>CONTRACT NO. 4410007</b>			
<b>65 th. STREET RAIL YARD          TRANSFER BRIDGES          BOROUGH OF BROOKLYN</b>			
<b>TRANSFER BRIDGES          MISCELLANEOUS DETAILS</b>			
DRAWING NO. 17	SCALE AS SHOWN	DATE 11-24-97	SHEET 17 OF 22

DIANEY & JOHNSON & ASSOC.  
 STRUCTURAL ENGINEERS  
 1185 MADISON AVENUE  
 NEW YORK, NEW JERSEY 07017

NOTE:  
 PROVIDE GRATING & MISCELLANEOUS SUPPORTING FRAMING WITHIN LIMITS OF SHADING WITH OSHA COMPLIANT METAL HANDRAIL AROUND PERIMETER. PROVIDE REMOVABLE METAL SAFETY CAGES AROUND SHEAVES & COUNTERWEIGHTS (MIN. 7'-0" HIGH ABOVE TOP OF GRATING @ 144" SHEAVES, WITH ACCESS HATCHES AT PINS).



SECTION C  
 5/8"=1'-0"

SECTION A  
 5/8"=1'-0"

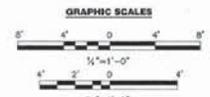
SECTION B  
 1/4"=1'-0"

COUNTERWEIGHT SAFETY CAGE TO PROVIDE MIN. 8" CLEAR ALL SIDES CONSTRUCTED WITH ANGLE IRON FRAME (1/4" MIN THICKNESS) ALL WELDED CONSTRUCTION (EXPANDED METAL CAGE, WHEELING 1/4" NO. 13 SAFETY-T-MESH OR EQUAL, BOLTED TO GALLOW'S PLATFORM WITH REMOVABLE PANEL, 1 SIDE.



SECTION E  
 1/4"=1'-0"

- NOTES:
- BRIDGE NO. 2 IS SHOWN. BRIDGE NO. 1 SIMILAR AND OPPOSITE HAND.
  - FOR GENERAL NOTES, SEE DWG. NO. 19.
  - WORK THIS DWG. WITH DWG. NO'S. 14 TO 20.
  - BOLTS CONNECTING TIMBERS TO BE 1" HOT DIP GALVANIZED WITH SQUARE HEAD, ONE SQUARE NUT AND TWO OJEE WASHERS. OMIT WASHERS WHEN BEARING ON STEEL.
  - SEE SHEET 19 FOR PLAN/FOUNDATION.

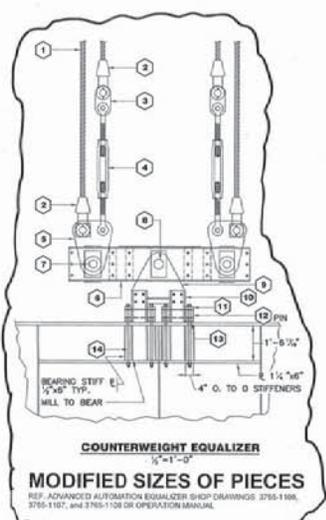


1. Contractor:  
 EOCO III ENTERPRISES, INC.  
 201 Saw Mill River Road, Yonkers, NY 10791  
 Prepared by: Dennis Pasquale  
 Contractor's Signature: *Dennis Pasquale*  
 2. NYC Economic Development Corporation  
 Checked by: *H. BARNETT PE* Date: *1/13/97*

**NEW YORK CITY  
 ECONOMIC DEVELOPMENT CORPORATION**  
 CONTRACT NO. 4410007  
 65 TH. STREET RAIL YARD  
 TRANSFER BRIDGES  
 BOROUGH OF BROOKLYN  
**GALLOW'S FRAMES  
 GENERAL ARRANGEMENT**

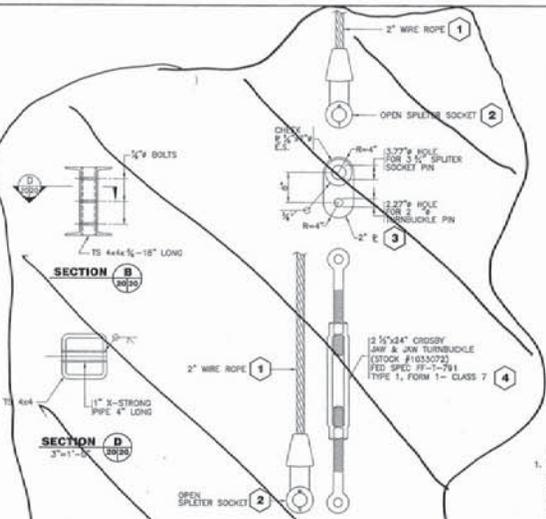
DRAWING NO.	SCALE	DATE	SHEET
18	AS SHOWN	11-24-97	18 OF 21



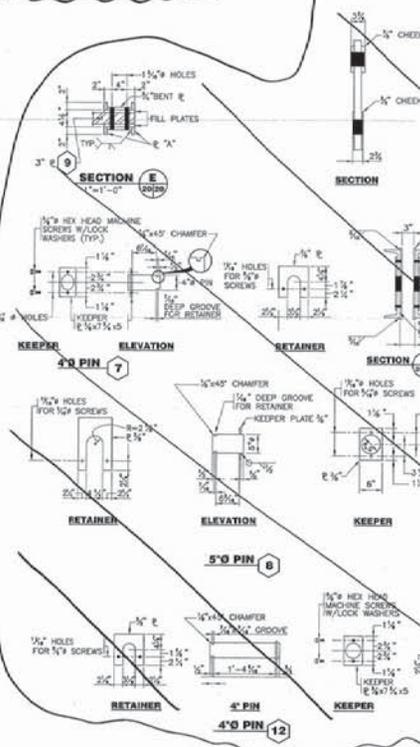


**COUNTERWEIGHT EQUALIZER**  
1 1/2" x 1'-0"

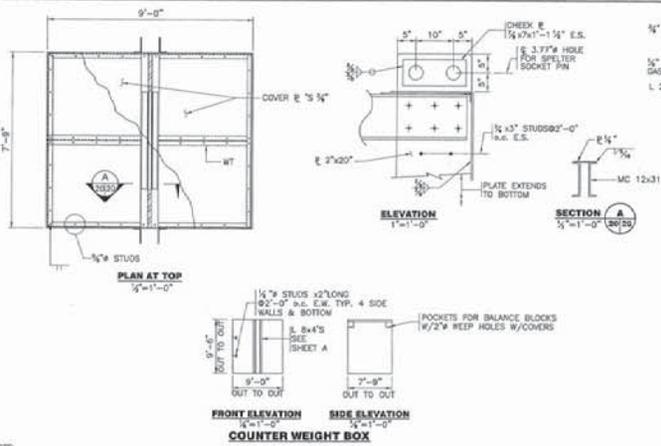
**MODIFIED SIZES OF PIECES**  
REF. ADVANCED AUTOMATION EQUALIZER SHOP DRAWINGS 3755-1108, 3755-1107, and 3765-1108 OR OPERATOR MANUAL.



**DELETED**  
**MODIFIED SIZES OF PIECES**  
REF. ADVANCED AUTOMATION EQUALIZER SHOP DRAWINGS 3755-1108, 3755-1107, and 3765-1108 OR OPERATOR MANUAL.

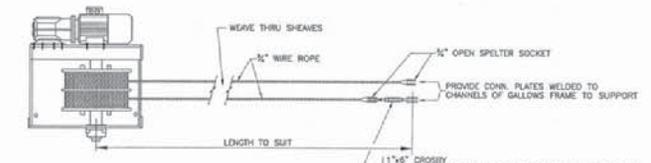


**COUNTERWEIGHT EQUALIZERS-COMPONENTS**  
1 1/2" x 1'-0" S.O.M.

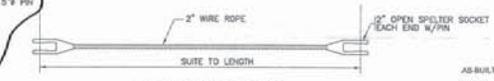


**NOTE:**

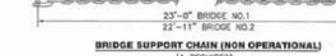
- BOX TO BE FILLED WITH HEAVYWEIGHT CONCRETE CONFORMING TO SECTION 5 OF THE SPECIFICATIONS AND SHALL BE MADE WITH TYPE II CEMENT, AND SHALL BE PROPORTIONED AS DIRECTED BY THE ENGINEER, WITH NOT MORE THAN 8 GALLONS OF WATER PER SACK OF CEMENT. THE COARSE AGGREGATE SHALL BE TRAP ROCK, MAGNETIC IRON ORE, OR OTHER HEAVY MATERIAL, OR THE CONCRETE MAY INCORPORATE STEEL PUNCHINGS OR SCRAP METAL, AND MIXTURE COMPOSED OF 1 PART OF CEMENT AND 2 PARTS OF FINE AGGREGATE. HEAVY CONCRETE SHALL CONSOLIDATED WITH VIBRATORS OR TAMPERS. METHODS OF MIXING AND PLACING SHALL BE SUCH AS TO GIVE CLOSE CONTROL OF THE UNIT WEIGHT OF THE CONCRETE AND UNIFORMITY OF UNIT WEIGHT THROUGHOUT THE MASS.
- AT THE CONTRACTOR'S OPTION (A) THE INTERIOR OF THE BOX MAY BE FITTED WITH ANGLE IRON, PLATES OR OTHER SUITABLE STEEL SHAPES, WELDED TO THE STEEL PLATE WALLS -OR- (B) THE EXTERIOR OF THE BOX MAY BE ENCLOSED WITH TEMPORARY STRONGBACKS OR OTHER BRACINGS AS REQUIRED FOR THE BOX TO ACT AS A FORM DURING PLACEMENT OF THE HEAVYWEIGHT CONCRETE. DESIGN OF EITHER OPTION SHALL BE THE CONTRACTOR'S RESPONSIBILITY AND SHALL BE IN ACCORDANCE WITH ACI 347 AND PREPARED BY A LICENSED PROFESSIONAL ENGINEER RETAINED BY THE CONTRACTOR AND SUBMITTED TO THE ENGINEER FOR APPROVAL. SHOULD THE CONTRACTOR ELECT OPTION A AND SUITABLE SHAPES ARE PROVIDED WHICH WILL ENGAGE THE CONCRETE FILL, THE STUDS INDICATED TO BE PROVIDED MAY BE OMITTED ON THE SIDEWALLS.



**HOIST ROPE ASSEMBLY (OPERATING)**  
(4 REQUIRED)  
1/2" x 1'-0"



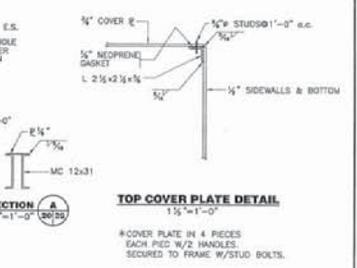
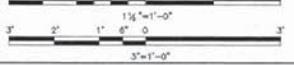
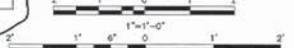
**CWT WIRE ROPE ASSEMBLY**  
(4 REQUIRED)  
1/2" x 1'-0"



**BRIDGE SUPPORT CHAIN (NON OPERATIONAL)**  
(4 REQUIRED)  
1/2" x 1'-0"



**TRANSFER BRIDGE OPERATING EQUIPMENT**  
(4 REQUIRED)  
1/2" x 1'-0"



**TOP COVER PLATE DETAIL**  
1 1/2" x 1'-0"

\*COVER PLATE IN 4 PIECES EACH PCD W/2 HANDLES. SECURED TO FRAME W/STUD BOLTS.

**AS-BUILT DRAWINGS**

AS-BUILT CHANGES MARKED WITH [Symbol]  
NOTE: ALL GROOVE WELDS TO BE FULL PENETRATION (EACH END (BRIDGE))

1. Contractor  
ECONY ENTERPRISES, INC.  
201 Saw Mill River Road, Yonkers, NY 10701  
Prepared by: Dominic Pappalardo Date: 05/26/00  
Contractor's Signature: [Signature] Date: 05/26/00

2. NYC Economic Development Corporation  
Checked by: E. BARNETT Date: 05/26/00

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
CONTRACT NO. 4410007

65 TH STREET RAIL YARD  
TRANSFER BRIDGES  
BOROUGH OF BROOKLYN

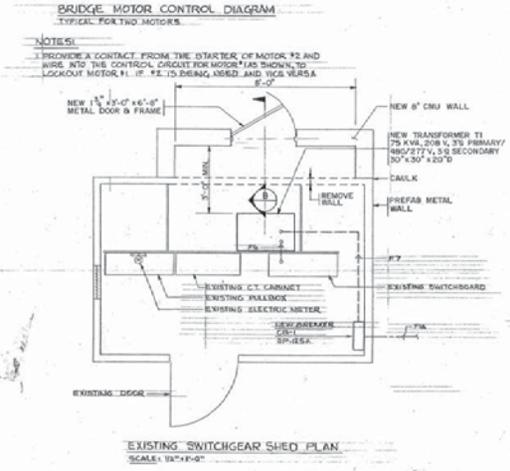
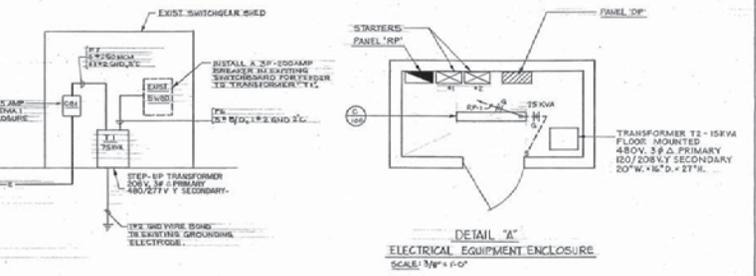
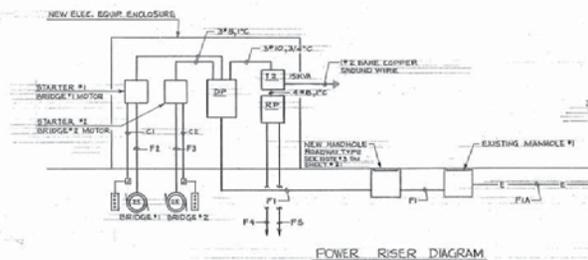
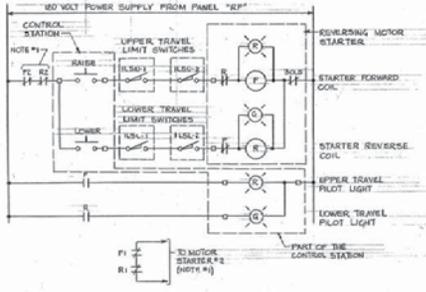
**GALLOWES FRAMES**  
**DETAILS II**

DRAWING NO. 20 SCALE AS SHOWN DATE 11-24-97 SHEET 20 OF 22



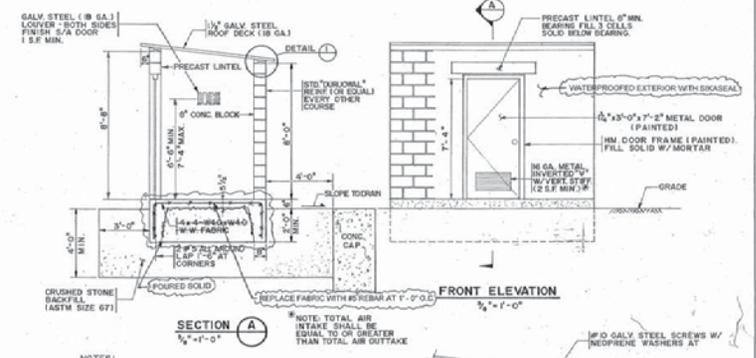
BOEY W. JOHNSON & ASSOC.  
INCORPORATED  
190 WEST 47TH STREET  
NEW YORK, NEW YORK 10036



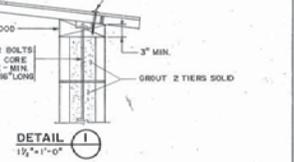


NO.	DESCRIPTION	FROM	TO	REMARKS
F1A	4" 250MCM, 1/2" GND, 3/4" C	EXISTING MANHOLE #1	EXIST. SWITCHGEAR SHED	NOTE # 2
F1	4" 250MCM, 1/2" GND, 2" C	EXISTING MANHOLE #1	NEW ENCLOSURE	
F2	3" 6, 1/2" GND, 1 1/2" C	STARTER #1	POLE #1	
F3	3" 6, 1/2" GND, 1 1/2" C	STARTER #2	POLE #2	
F4	3" 6, 1/2" GND, 1 1/2" C	PANEL RP	POLE #2	
F5	3" 6, 1/2" GND, 1 1/2" C	PANEL RP	TRANSFORMER T1	
F6	3" 6, 1/2" GND, 2" C	EXIST. SWITCHBOARD	TRANSFORMER T1	
F7	4" 250MCM, 1/2" GND, 3/4" C	TRANSFORMER T1	C.B. -1	
C1	4" 14, 1/4" GND	STARTER #1	POLE #1	CONTROL WIRES
C2	4" 14, 1/4" GND	STARTER #2	POLE #2	CONTROL WIRES
C3	3" 6, 1/2" GND	ELECT. EQ'T. ENCL.	POLE #1	COUNTERLIGHT CONTROL WIRE
C4	3" 6, 1/2" GND	ELECT. EQ'T. ENCL.	POLE #2	COUNTERLIGHT CONTROL WIRE

NOTES:  
 1. WIRES FOR BRIDGE MOTOR AND LIGHTS SHALL CONTINUE FROM THE JUNCTION BOX AT THE POLE OVERHEAD ACROSS TO THE WEATHERHEAD AT THE OTHERSIDE. REFER TO PLANS AND DETAILS ON THIS SHEET.  
 2. INSTALL WIRES IN EXISTING 2" CONDUIT IN THE EXISTING DUCTBANK THRU EXIST. MANHOLES 1, 2, 3, 4, 5, & 7. REFER TO SITE PLAN ON DWG. E-1 FOR LOCATION OF EXISTING DUCTBANK.



NOTES:  
 1. DOOR - SHOP PAINTED IN GALV. FULL FLUSH TYPE WITH RETURN MECHANISM - IN 20" TYPE 2.  
 2. FRAME IS GALV. WELDED WITH IS GALV. CORRUGATED ON TOP, STAIRS OR 1/2" WIRE ADJUSTABLE ON 1" SPACED GALV.  
 3. THRESHOLD - ALUMINUM WITH VINYL SEAL.  
 4. HINGES - MORTISE AND COMB LATCH AND A 5/16" CALUM PLATED AND A 5/16" CALUM PLATED.  
 5. LOCK SET - MORTISE CYLINDER TYPE LEGAL EJECT LOCK AND A 5/16" DEAD BOLT (1" THROW) OUTSIDE KEYS. ROSE KNOB SHALL RETRACT BOTH LATCH AND DEAD BOLT SIMULTANEOUSLY APPROX. 1/4" TURN. PROVIDE 4 KEYS TO 1" B.  
 6. FINISH - HOT DIP ZINC COATED AND FACTORY PRIME FINISH, ASTM A55 COATING 440 OR 660. AFTER PRIME APPLY 2 COATS LOW GLOSS ENAMEL, COLOR TO BE GRAY.  
 7. MASONRY - 8" x 8" NOMINAL LIGHTWEIGHT HOLLOW UNITS ASTM C 90 GRADE III OR III-B OR ASTM C 90 TYPE I OR II. MORTAR ASTM C 270 TYPE III-S.



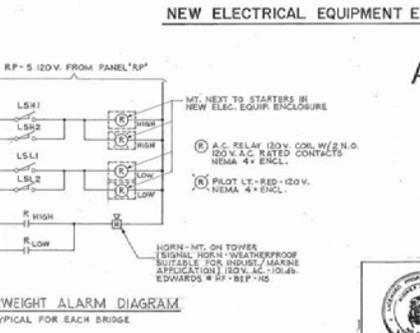
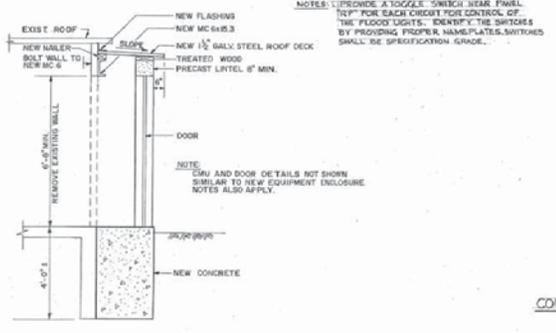
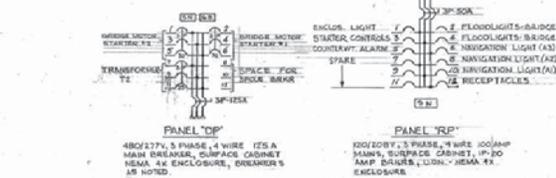
EXISTING SWITCHGEAR SHED PLAN SCALE: 1/4" = 1'-0"

LIGHTING FIXTURE SCHEDULE

A1, A2, A3. NAVIGATION LIGHT REFER TO SPECIFICATIONS FOR DESCRIPTION AUTOMATIC POWER INC. FA-143078 MARINE LANTERN.

B. FLOODLIGHT, ONE 400 WATT METAL HALIDE LAMP, CAST ALUMINUM BODY, GASSEED, HEAT AND IMPACT RESISTANT TEMPERED GLASS LENS, INTERNAL BALLAST, BAKED ACRYLIC ENAMEL FINISH, ALUMINUM MOUNTING BRACKET, SUITABLE FOR MARINE USE. PHOENIX CAT. # MSD-400MH-2V-4214.

C. CEILING SURFACE MOUNTED 4 FT. LONG FLUORESCENT FIXTURE, TWO 140W/425 MA LAMPS, LOW TEMPERATURE (18°C) BALLAST ALUMINUM HOUSING, HIGH IMPACT ACRYLIC DIFFUSER, GASSEED, WHITE BAKED ACRYLIC ENAMEL FINISH, 120 VOLTS, SUITABLE FOR INDOOR MARINE USE. PHOENIX CAT. # M40/120



NEW ELECTRICAL EQUIPMENT ENCLOSURE

AS-BUILT DRAWINGS

1. Contractor: ECCO III ENTERPRISES, INC. 201 Saw Mill River Road, Tonawanda, NY 14091  
 Prepared by: Dennis Pagan Date: 05/26/88  
 Contractor's Signature: [Signature] NEMA 4X ENCL.  
 2. NYC Economic Development Corporation  
 Checked by: [Signature] Date: 10/13/88

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
 CONTRACT NO. 4410007  
 65<sup>TH</sup> STREET RAIL YARD TRANSFER BRIDGES  
 BOROUGH OF BROOKLYN



ELECTRICAL DETAILS E-2  
 DRAWING NO. 22 SCALE AS SHOWN DATE 11-24-87 SHEET 22 OF 22

AS-BUILT CHANGES MARKED WITH [Symbol]

**THE PORT AUTHORITY OF NY & NJ**

**65TH STREET RAIL YARD  
CROSS HARBOR FREIGHT PROGRAM  
FENDER AND MOORING SYSTEM  
SLIP NO. 1 & 2**

**CONTRACT No. NYNJR-644.536**

**50% SUBMISSION**  
01/04/2013

No.	Date	Revision	Approved

ASSISTANT CHIEF ENGINEER/DESIGN \_\_\_\_\_

DATE \_\_\_\_\_

PROGRAM DIRECTOR XX \_\_\_\_\_

DATE \_\_\_\_\_

CHEF ENGINEER \_\_\_\_\_

DATE \_\_\_\_\_

Drawing  
Number

**S101**

PD# 11198000

**THE PORT AUTHORITY  
OF NY & NJ**

**50% SUBMISSION**  
01/04/2013

No.	Date	Revision	Approved

**ENGINEERING DEPARTMENT**

**NEW YORK AND  
NEW JERSEY  
RAILROAD, LLC**

Title

**CROSS HARBOR FREIGHT PROGRAM  
FENDER AND MOORING SYSTEM  
SLIP No. 182  
AT 66TH STREET RAIL YARD**

**VICINITY MAP  
LOCATION PLAN  
AND  
DRAWING INDEX**

This drawing is prepared in accordance with the provisions of the Contract Documents, including the General Conditions, and shall be used without further comment. The Engineer and those who are responsible for the design and construction of the project shall be responsible for the accuracy and appropriateness of the information contained in the documents. The Engineer and those who are responsible for the design and construction of the project shall be responsible for the accuracy and appropriateness of the information contained in the documents. The Engineer and those who are responsible for the design and construction of the project shall be responsible for the accuracy and appropriateness of the information contained in the documents.

It is a condition of use for any person to whom it is loaned to not make any changes, additions, deletions, or modifications to the drawing without the written consent of the Engineer. The Engineer and those who are responsible for the design and construction of the project shall be responsible for the accuracy and appropriateness of the information contained in the documents.

T. FISHER      C. MILLARD      R. LEE  
Designed by      Drawn by      Checked by

Date      01/04/13

Contract Number      **NYNJR-644.536**

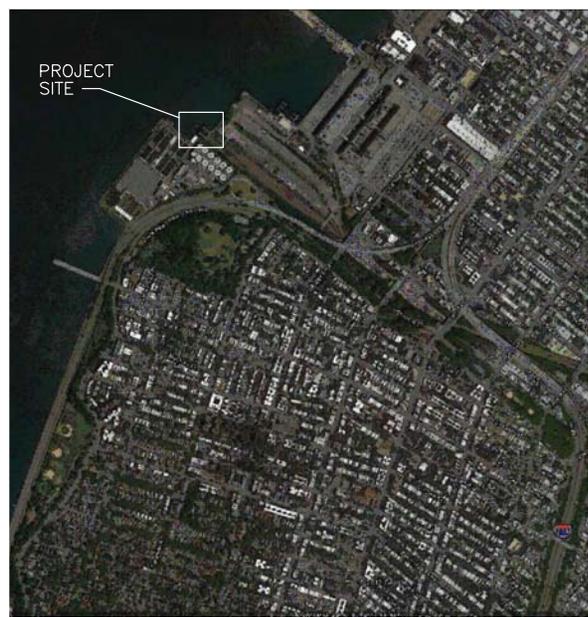
Drawing Number      **S102**

PID# 12189000

DRAWING INDEX	
DWG. NO.	DRAWING TITLE
S101	TITLE SHEET
S102	VICINITY MAP, LOCATION PLAN AND DRAWING INDEX
2 OF 22	BORING LOGS
S103	GENERAL NOTES
S104	DEMOLITION PLAN
S105	PROPOSED SITE PLAN
S106	NOT IN USE
S107	NOT IN USE
S108	NOT IN USE
S109	NOT IN USE
S110	MOORING ARRANGEMENT PLAN
S111	NOT IN USE
S112	NOT IN USE
S113	MONOPILE SECTIONS & DETAILS



**VICINITY MAP**  
N.T.S.



**LOCATION PLAN**  
N.T.S.







**50% SUBMISSION**  
01/04/2013

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

**NEW YORK AND  
NEW JERSEY  
RAILROAD, LLC**

Title  
**CROSS HARBOR FREIGHT PROGRAM  
FENDER AND MOORING SYSTEM  
SLIP No. 182  
AT 66TH STREET RAIL YARD**

**MOORING  
ARRANGEMENT PLAN**

This drawing is to be used in accordance with the contract documents, including but not limited to the specifications, drawings, and other documents. It is the responsibility of the contractor to verify the accuracy of the information shown on this drawing and to ensure that it is used in accordance with the contract documents. The contractor shall be responsible for any errors or omissions on this drawing. The contractor shall be responsible for any changes to this drawing. The contractor shall be responsible for any costs associated with this drawing. The contractor shall be responsible for any damages caused by this drawing. The contractor shall be responsible for any liabilities arising from this drawing. The contractor shall be responsible for any claims against this drawing. The contractor shall be responsible for any disputes arising from this drawing. The contractor shall be responsible for any litigation arising from this drawing. The contractor shall be responsible for any costs associated with this litigation. The contractor shall be responsible for any damages caused by this litigation. The contractor shall be responsible for any liabilities arising from this litigation. The contractor shall be responsible for any claims against this litigation. The contractor shall be responsible for any disputes arising from this litigation. The contractor shall be responsible for any litigation arising from this litigation.

It is a condition of use for any person to whom it is loaned to not make any changes to the drawing without the written consent of the engineer/architect. The engineer/architect shall not be responsible for any errors or omissions on this drawing. The engineer/architect shall not be responsible for any changes to this drawing. The engineer/architect shall not be responsible for any costs associated with this drawing. The engineer/architect shall not be responsible for any damages caused by this drawing. The engineer/architect shall not be responsible for any liabilities arising from this drawing. The engineer/architect shall not be responsible for any claims against this drawing. The engineer/architect shall not be responsible for any disputes arising from this drawing. The engineer/architect shall not be responsible for any litigation arising from this drawing.

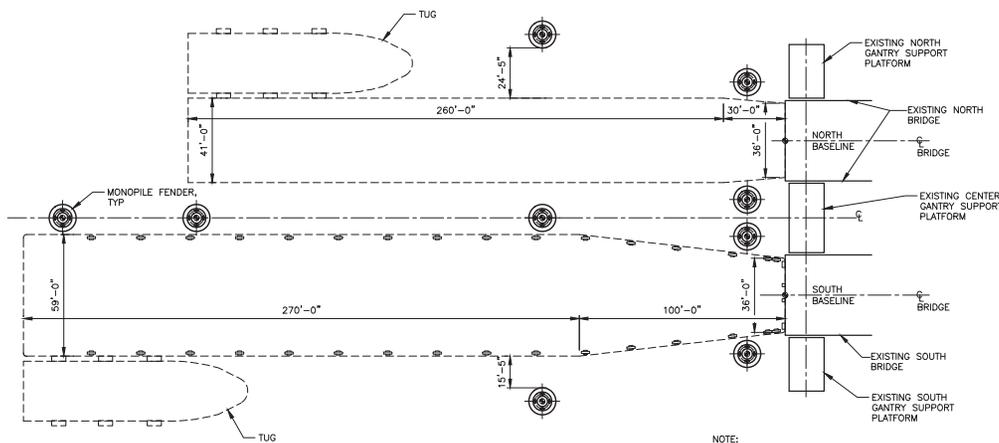
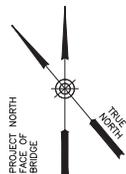
T. FISHER	M. WILTGEN	R. LEE
Designed by	Drawn by	Checked by

Date 01/04/13

Contract Number NYNJR-644.536

Drawing Number **S110**

PID# 12189000



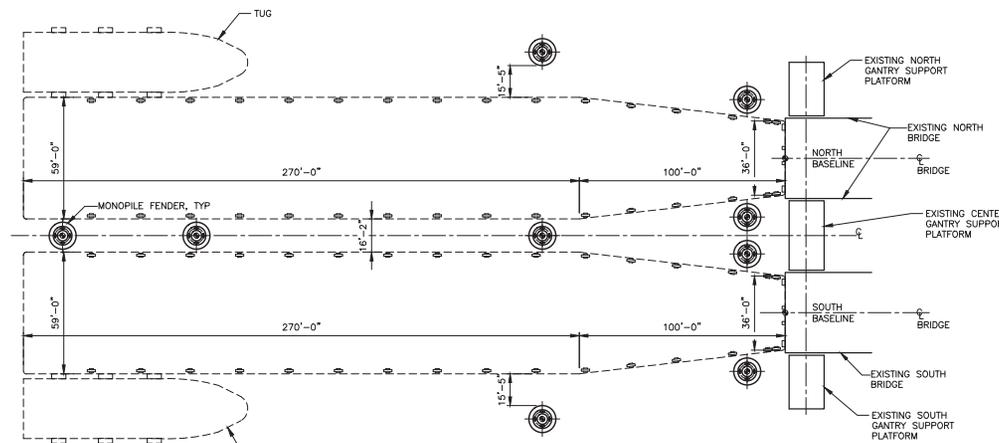
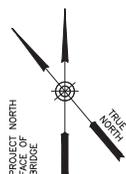
**PROPOSED CAR FLOAT CONFIGURATION 1**

SCALE 1" = 30'-0"

NOTE: EXISTING & PROPOSED CAR  
FLOAT MAY MIRROR ABOUT C  
FACILITY, NOT SHOWN

NOTE:

1. FOR GENERAL NOTES SEE DWG. S103.
2. PROCURED CAR FLOATS MAY BE UP TO 10'-0" SHORTER IN LOA AND UP TO 2'-0" NARROWER IN BEAM THAN SHOWN.
3. DESIGN CLEARANCE MAY VARY DEPENDING ON FENDER & MOORING STRUCTURE AS-BUILT LOCATIONS.



**PROPOSED CAR FLOAT CONFIGURATION 2**

SCALE 1" = 30'-0"

NOTE:

1. FOR GENERAL NOTES SEE DWG. S103.
2. PROCURED CAR FLOATS MAY BE UP TO 10'-0" SHORTER IN LOA AND UP TO 2'-0" NARROWER IN BEAM THAN SHOWN.
3. DESIGN CLEARANCE MAY VARY DEPENDING ON FENDER & MOORING STRUCTURE AS-BUILT LOCATIONS.

**80% SUBMISSION**  
01/04/2013

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

**NEW YORK AND  
NEW JERSEY  
RAILROAD, LLC**

Title  
**CROSS HARBOR FREIGHT PROGRAM  
FENDER AND MOORING SYSTEM  
SLIP No. 182  
AT 66TH STREET RAIL YARD**

**MONOPILE  
SECTIONS AND  
DETAILS**

This drawing is to be used in accordance with the provisions of the contract, and the drawings and specifications are to be used without the written consent of the Port Authority and may not be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the Port Authority. The Port Authority is not responsible for any errors or omissions in this drawing and the user assumes all liability for any use of this drawing in any project other than that for which it was prepared. The Port Authority is not responsible for any errors or omissions in this drawing and the user assumes all liability for any use of this drawing in any project other than that for which it was prepared.

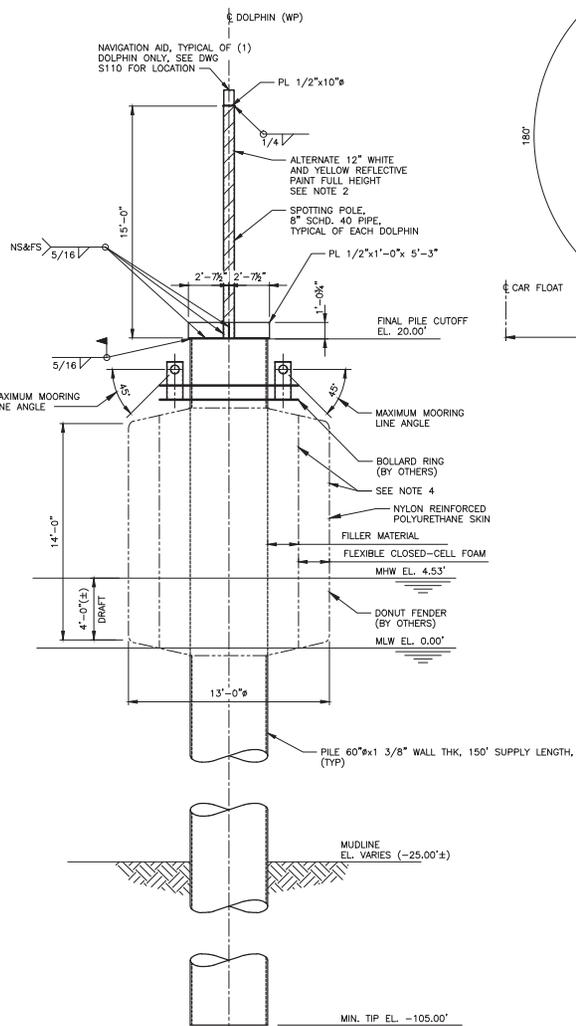
R.LEE D.SUND T.FISHER  
Designed by Drawn by Checked by

Date 01/04/13

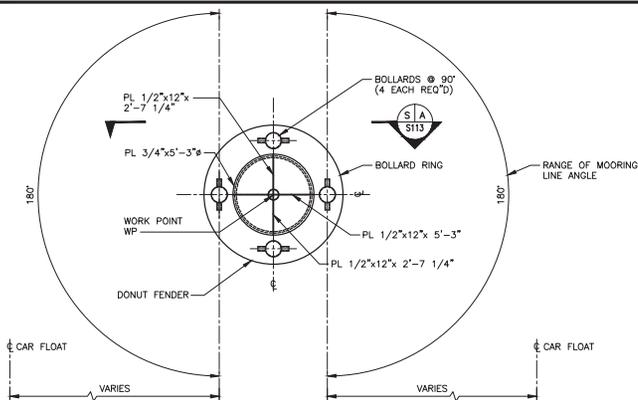
Contract Number **NYNJR-644.536**

Drawing Number **S113**

PI# 12189000



**SECTION  
S113 PROPOSED MONOPILE FENDER**  
SCALE: 1/4" = 1'-0"



**D1 DETAIL  
S106 SCALE: 1/4" = 1'-0"**

- NOTE:
1. PILING CONFIGURATION NUMBER AND SIZE SUBJECT TO CHANGE, PENDING GEOTECHNICAL RECOMMENDATIONS.
  2. REFLECTIVE PAINT SHALL HAVE 4 LB'S PER GALLON GLASS BEADS, MILL SPEC 10, AS SUPPLIED BY COLESMITH OR ENGINEER APPROVED EQUAL.
  3. FOR GENERAL NOTES, SEE DRAWING S103.
  4. DONUT FENDER AND BOLLARD RING DESIGN AND MANUFACTURING BY TRELLEBORG OR ENGINEER APPROVED EQUAL. BOLLARD RING SHALL ROTATE INDEPENDENT OF DONUT (TYP). MOORING LINES SHALL NOT RUB AGAINST ANY PART OF BOLLARD RING. CAR FLOAT SHALL BE MINIMUM 6" CLEAR OF BOLLARD RING WHEN DONUT FENDER IS FULLY COMPRESSED. FENDER SHALL ABSORB 7.9FT-KIP OF ENERGY PER FOOT OF FENDER HEIGHT AT 60% DEFLECTION.

**EXHIBIT D. COATING REFERENCE DOCUMENTS**

<b>Document Title</b>
Hempel Specification Sheets
Product Data - Hempthane HS 55610
Product Data - Hemptasil X3 87500
Product Data - Hemptasil Nexus 27302
Product Data - Hemptadur Multi-Strength 45751/ 45753



# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Underwater Area

**Surface preparation:**

Oil and grease etc. to be removed by emulsion cleaning. Salts and other contamination to be removed by high pressure fresh water hosing. When the surface is dry abrasive blasting to minimum SSPC-SP 10 with a surface profile corresponding to Rugotest No. 3 BN 10, Keane-Tator Comparator, min. 3.0 G/S or ISO Comparator Rough Medium (G). Dust off residues.

Product name (including quality number)	Treated area		Shade	Shade no.	Film thickness (mil)		Theoretical spreading rate (sq.ft/US gal)	Application methods			Recommended	
	%				Wet	Dry		Brush	Roller	Spray	Nozzle orifice	Nozzle pressure
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Red	50630	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Grey	11480	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPASIL NEXUS 27302	f/c	100	Light red	55001	7	4	237.6	(X)		X	.019"-.021"	2175 p.s.i.
HEMPASIL X3 87500	f/c	100	Red	59151	7	5	228.1	(X)		X	0.019	2175 p.s.i.
t/u: touch up f/c: full coat s/c: stripe coat			Total d.f.t.		21			X: Recommended (X): Possible				

Recoating intervals. Ample ventilation

Hrs=Hour(s) Mth=Month(s) N/R=Not Recommended

Quality no	D.F.T (mil)	Recoated with quality no	104°F		86°F		68°F		50°F		32°F		14°F	
			Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
45751	6	45751	80 Min	9 Day	2 Hrs	15 Day	4 Hrs	30 Day	11 Hrs	75 Day	N/R	N/R	N/R	N/R
45751	6	27302	105 Min	7 Hrs	3 Hrs	12 Hrs	6 Hrs	24 Hrs	14 Hrs	60 Hrs	N/R	N/R	N/R	N/R
27302	4	87500	1)	1)	1)	1)	1)	1)	1)	1)	N/R	N/R	N/R	N/R
Drying time before taking into use, before un-docking			19 Hrs	None	19 Hrs	None	19 Hrs	None	19 Hrs	None	N/R	N/R	N/R	N/R

Remarks and Product information see next page.

Hempel's PreSale System 2.6.17 (Build 758) User name: Arlan Caballero  
 Printed at: 05.10.2012 14:54 Department name: TSD  
 Created/Last modified: 05.10.2012 14:45 USACA0362L Page: 1

Quality Code:  
Environment: Immersion





# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Underwater Area

**Remarks:**

Normal good painting practice must be followed throughout the entire painting procedure.

HEMPASIL products contain silicone materials, which may contaminate other paint materials and surfaces. Any equipment used, e.g. brushes, rags or cans should either be disposed of or thoroughly cleaned after use. All efforts (including masking if necessary) should be made to ensure, that silicone contamination in the form of spray dust is kept to a minimum.

It is recommended that all other paint work is completed prior to application of HEMPASIL system and that special care is taken during both application and cleaning.

Note that the minimum application temperature for HEMPASIL is 50°F and if the temperature is below 59°F, then the temperature of the paint must be a minimum of 68°F, when applied.

All hoses used must be extremely clean and, if possible, should be either new or dedicated for silicone use. It is recommended that the same paint hoses are used for both HEMPASIL NEXUS and HEMPASIL X3 87500, with thorough cleaning between the two operations.

All equipment that is not new must be cleaned using HEMPEL'S TOOL CLEANER 99610 by recirculation or immersion (stirrers) for several hours before use to remove all traces of paint and then rinsed with HEMPEL'S THINNER 08080 prior to use.

It is recommended that extra equipment is available and ready in the event of a failure of the equipment in use.

Any masking should be secured carefully; the topsides area and any other area not to be coated with HEMPASIL X3 87500 should be covered with plastic. This plastic should be properly secured using double width tape so that it does not fall or blow into any freshly applied paint. The masking must be checked and if necessary repaired prior to every application to make sure that it is secure.

All sharp edges or areas that are difficult to paint should receive a stripe coat prior to full coat application.

Application of HEMPASIL products are only permitted during daylight hours.

The specified high film thickness for HEMPASIL X3 87500 can best be obtained by airless spray application. If another application method is used more applications are necessary to achieve the specified dry film thickness. Use of an application method other than spray may affect the fouling release performance of the system.

A minimum of 24 hours should be allowed before undocking, irrespective of temperature (above 50°F). If the temperature falls below 50°F then 48 hours must be allowed before undocking.

1) Overcoating intervals between HEMPASIL NEXUS 27302 and HEMPASIL X3 87500

(in hours)

27302 to 87500 at: 104°F Min. Max. 86°F Min. Max. 68°F Min. Max. 50°F Min. Max.

80-90% RH	3	12	4	18	6	24	18	30
60-80% RH	4	12	5	18	7	24	20	30
40-60% RH	5	12	6	18	9	24	22	30

The data, specifications, directions and recommendations (hereinafter "Information") given in this painting specification are based upon test results obtained under controlled or specifically defined conditions and said Information is correct to the best of our knowledge. The User must satisfy itself that it is appropriate to use the Product in accordance with the Information in the actual conditions under which the Product is intended to be used, and the Manufacturer and Seller do not guarantee the accuracy, completeness or appropriateness of the Information when the Product is used in those conditions. The provisions of Clause 8 of the GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE shall apply to any and all claims arising out of or in connection with the use of the Product as recommended above, overleaf or otherwise.

Hempel's PreSale System 2.6.17 (Build 758)

User name: Arlan Caballero

Quality Code:

Printed at: 05.10.2012 14:54

Department name: TSD

Environment : Immersion

Created/Last modified: 05.10.2012 14:45

USACA0362L Page: 2

# HEMPEL



# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

## Area:

Underwater Area

Product information:		Volume solids %	Curing agent	Mixing ratio volume	Pot life 68 °F	Dry to touch 68 °F	Flash point °F	Thinner	Application restrictions	
Shade no.									Min. Temp. °F	Max. RH%
HEMPADUR MULTI-STRENGTH 45751	50630	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPADUR MULTI-STRENGTH 45751	11480	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPASIL NEXUS 27302	55001	70	98100	14.8 : 4.2 : 1	1 h	2 h	86	08080	50	
HEMPASIL X3 87500	59151	70	98950	17.8 : 2.2	2 h	3 h	82	08080	32	85

The data, specifications, directions and recommendations (hereinafter "Information") given in this painting specification are based upon test results obtained under controlled or specifically defined conditions and said Information is correct to the best of our knowledge. The User must satisfy itself that it is appropriate to use the Product in accordance with the Information in the actual conditions under which the Product is intended to be used, and the Manufacturer and Seller do not guarantee the accuracy, completeness or appropriateness of the Information when the Product is used in those conditions. The provisions of Clause 8 of the GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE shall apply to any and all claims arising out of or in connection with the use of the Product as recommended above, overleaf or otherwise.

Hempel's PreSale System 2.6.17 (Build 758)

User name: Arlan Caballero

Quality Code:

Printed at: 05.10.2012 14:54

Department name: TSD

Environment : Immersion

Created/Last modified:

05.10.2012 14:45

USACA0362L Page: 3

# HEMPEL



# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Above Water Area

**Surface preparation:**

Oil and grease etc. to be removed by emulsion cleaning. Salts and other contamination to be removed by high pressure fresh water hosing. When the surface is dry abrasive blasting to minimum SSPC-SP 10 with a surface profile corresponding to Rugotest No. 3 BN 10, Keane-Tator Comparator, min. 3.0 G/S or ISO Comparator Rough Medium (G). Dust off residues.

Product name (including quality number)	Treated area		Shade	Shade no.	Film thickness (mil)		Theoretical spreading rate (sq.ft/US gal)	Application methods			Recommended	
	%				Wet	Dry		Brush	Roller	Spray	Nozzle orifice	Nozzle pressure
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Red	50630	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Grey	11480	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPATHANE HS 55610	f/c	100	To Be Advised	T.B.A	5	3	353.0	X	(X)	X	.017"-.021"	2538 p.s.i.
t/u: touch up f/c: full coat s/c: stripe coat			Total d.f.t.			15				X: Recommended (X): Possible		

Recoating intervals. Ample ventilation

Hrs=Hour(s) Mth=Month(s) N/R=Not Recommended

Quality no	D.F.T (mil)	Recoated with quality no	104°F		86°F		68°F		50°F		32°F		14°F	
			Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
45751	6	45751	80 Min	9 Day	2 Hrs	15 Day	4 Hrs	30 Day	11 Hrs	75 Day	N/R	N/R	N/R	N/R
45751	6	55610	65 Min	22 Hrs	110 Min	36 Hrs	4 Hrs	72 Hrs	9 Hrs	7½ Day	N/R	N/R	N/R	N/R

Remarks and Product information see next page.

Hempel's PreSale System 2.6.17 (Build 758)  
 Printed at: 05.10.2012 14:54  
 Created/Last modified: 05.10.2012 14:45

User name: Arlan Caballero  
 Department name: TSD  
 USACA0362L Page: 4

Quality Code:  
 Environment: Severe





# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Above Water Area

**Remarks:**

Normal good painting practice must be followed throughout the entire painting procedure.

Consult the separate APPLICATION INSTRUCTIONS for HEMPADUR MULTI-STRENGTH 45751.

The surface must be completely clean and dry with a temperature 5°F above the dew point to avoid condensation.

The specified high film thickness can best be obtained by airless spray application. If another application method is used more applications are necessary to achieve the specified dry film thickness.

Stripe coating with brush before or after spray application of each coat is to be carried out on areas difficult to cover properly by spray as eg edges, corners, flanges, cutouts, handwelds and other rough surfaces.

Before recoating after exposure in contaminated environments, clean the surface thoroughly by (high pressure) fresh water hosing and allow to dry.

If the maximum recoating interval is exceeded, roughening of the surface is necessary to ensure intercoat adhesion.

Product information:		Volume solids %	Curing agent	Mixing ratio volume	Pot life 68°F	Dry to touch 68°F	Flash point °F	Thinner	Application restrictions	
Shade no.									Min. Temp. °F	Max. RH%
HEMPADUR MULTI-STRENGTH 45751	50630	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPADUR MULTI-STRENGTH 45751	11480	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPATHANE HS 55610	T.B.A	65	97050	7 : 1	2 h	5 h	88	08080	14	85

The data, specifications, directions and recommendations (hereinafter "Information") given in this painting specification are based upon test results obtained under controlled or specifically defined conditions and said Information is correct to the best of our knowledge. The User must satisfy itself that it is appropriate to use the Product in accordance with the Information in the actual conditions under which the Product is intended to be used, and the Manufacturer and Seller do not guarantee the accuracy, completeness or appropriateness of the Information when the Product is used in those conditions. The provisions of Clause 8 of the GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE shall apply to any and all claims arising out of or in connection with the use of the Product as recommended above, overleaf or otherwise.

Hempel's PreSale System 2.6.17 (Build 758)

User name: Arlan Caballero

Quality Code:

Printed at: 05.10.2012 14:54

Department name: TSD

Environment : Severe

Created/Last modified: 05.10.2012 14:45

USACA0362L Page: 5





# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Main Deck

**Surface preparation:**

Oil and grease etc. to be removed by emulsion cleaning. Salts and other contamination to be removed by high pressure fresh water hosing. When the surface is dry abrasive blasting to minimum SSPC-SP 10 with a surface profile corresponding to Rugotest No. 3 BN 10, Keane-Tator Comparator, min. 3.0 G/S or ISO Comparator Rough Medium (G). Dust off residues.

Product name (including quality number)	Treated area		Shade	Shade no.	Film thickness (mil)		Theoretical spreading rate (sq.ft/US gal)	Application methods			Recommended	
	%				Wet	Dry		Brush	Roller	Spray	Nozzle orifice	Nozzle pressure
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Red	50630	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPADUR MULTI-STRENGTH 45751	f/c	100	Grey	11480	8	6	214.5	X	(X)	X	.021"-.023"	3625 p.s.i.
HEMPATHANE HS 55610	f/c	100	To Be Advised	T.B.A	5	3	353.0	X	(X)	X	.017"-.021"	2538 p.s.i.
t/u: touch up f/c: full coat s/c: stripe coat			Total d.f.t.		15			X: Recommended (X): Possible				

Recoating intervals. Ample ventilation

Hrs=Hour(s) Mth=Month(s) N/R=Not Recommended

Quality no	D.F.T (mil)	Recoated with quality no	104°F		86°F		68°F		50°F		32°F		14°F	
			Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
45751	6	45751	80 Min	9 Day	2 Hrs	15 Day	4 Hrs	30 Day	11 Hrs	75 Day	N/R	N/R	N/R	N/R
45751	6	55610	65 Min	22 Hrs	110 Min	36 Hrs	4 Hrs	72 Hrs	9 Hrs	7½ Day	N/R	N/R	N/R	N/R

Remarks and Product information see next page.

Hempel's PreSale System 2.6.17 (Build 758)

User name: Arlan Caballero

Quality Code:

Printed at: 05.10.2012 14:54

Department name: TSD

Environment: Severe

Created/Last modified:

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USACA0362L Page: 6





# Specification sheet

Hempel (USA) Inc.

**Project:** CAR FLOAT SPECIFICATION

**Area:**

Main Deck

**Remarks:**

Normal good painting practice must be followed throughout the entire painting procedure.

Consult the separate APPLICATION INSTRUCTIONS for HEMPADUR MULTI-STRENGTH 45751.

The surface must be completely clean and dry with a temperature 5°F above the dew point to avoid condensation.

The specified high film thickness can best be obtained by airless spray application. If another application method is used more applications are necessary to achieve the specified dry film thickness.

Stripe coating with brush before or after spray application of each coat is to be carried out on areas difficult to cover properly by spray as eg edges, corners, flanges, cutouts, handwelds and other rough surfaces.

HEMPEL'S ANTI-SLINT 67500 should be sprinkled evenly on the surface immediately upon application of the penultimate coat of HEMPADUR MULTI-STRENGTH 45751 while the paint is still wet. Consumption approximately 5.5 lbs per 270 sq-ft. When the paint is dry, sweep up surplus grit and apply the final coat of HEMPATHANE HS 55610.

Before recoating after exposure in contaminated environments, clean the surface thoroughly by (high pressure) fresh water hosing and allow to dry.

If the maximum recoating interval is exceeded, roughening of the surface is necessary to ensure intercoat adhesion.

Product information:		Volume solids %	Curing agent	Mixing ratio volume	Pot life 68 °F	Dry to touch 68 °F	Flash point °F	Thinner	Application restrictions	
Shade no.									Min. Temp. °F	Max. RH%
HEMPADUR MULTI-STRENGTH 45751	50630	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPADUR MULTI-STRENGTH 45751	11480	79	97652	3 : 1	1 h	7 h	81	08450	50	90
HEMPATHANE HS 55610	T.B.A	65	97050	7 : 1	2 h	5 h	88	08080	14	85

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Hempel's PreSale System 2.6.17 (Build 758)

User name: Arlan Caballero

Quality Code:

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Department name: TSD

Environment : Severe

Created/Last modified:

05.10.2012 14:45

USACA0362L Page: 7





# Product Data

## HEMPATHANE HS 55610

BASE 55619 with CURING AGENT 97050

**Description:** HEMPATHANE HS 55610 is a two-component polyurethane topcoat, cured with aliphatic isocyanate, with good gloss and colour retention. Contains zinc phosphate.

**Recommended use:** As a VOC-compliant, high-build finishing coat for protection of structural steel in corrosive environment.  
May be specified as a one coat "Direct To Metal" system in environments classified as C2 and C3.

**Service temperatures:** Maximum, dry exposure only: 120°C/248°F (see REMARKS overleaf)

**Availability:** Part of Group Assortment. Local availability subject to confirmation.

### PHYSICAL CONSTANTS:

Colours/Shade nos:	White/10000*
Finish:	Glossy
Volume solids, %:	65 ± 1
Theoretical spreading rate:	6.5 m <sup>2</sup> /litre - 100 micron 261 sq.ft./US gallon - 4 mils
Flash point:	31°C/88°F
Specific gravity:	1.4 kg/litre - 11.7 lbs/US gallon
Surface dry:	3 (approx.) hours at 20°C/68°F (ISO 1517)
Dry to touch:	5 (approx.) hours at 20°C/68°F
Fully cured:	7 days at 20°C/68°F
V.O.C.:	330 g/litre - 2.7 lbs/US gallon

\*Wide range of colours available via Hempel's MULTI-TINT system.

The physical constants stated are nominal data according to the HEMPEL Group's approved formulas. They are subject to normal manufacturing tolerances and where stated, being standard deviation according to ISO 3534-1.

### APPLICATION DETAILS:

Mixing ratio for 55610:	Base 55619 : Curing agent 97050 7 : 1 by volume
Application method:	Airless spray (see REMARKS overleaf)      Brush (see REMARKS overleaf)
Thinner (max.vol.):	08080 (5%)      08080 (5%)
Pot life:	2 hours (20°C/68°F)
Nozzle orifice:	.017"-.021"
Nozzle pressure:	175 bar/2540 psi (Airless spray data are indicative and subject to adjustment)
Cleaning of tools:	THINNER 08080/08880
Indicated film thickness, dry:	100 micron/4 mils (see REMARKS overleaf)
Indicated film thickness, wet:	150 micron/6 mils
Recoat interval, min:	16 hours (20°C/68°F)
Recoat interval, max:	None (see REMARKS overleaf)

**Safety:** Handle with care. Before and during use, observe all safety labels on packaging and paint containers, consult HEMPEL Material Safety Data Sheets and follow all local or national safety regulations. Avoid inhalation, avoid contact with skin and eyes, and do not swallow. Take precautions against possible risks of fire or explosions as well as protection of the environment. Apply only in well ventilated areas.



## HEMPATHANE HS 55610

**SURFACE PREPARATION:** For one coat, direct to metal: as per relevant painting specification.

**APPLICATION CONDITIONS:** The surface must be completely clean and dry at the time of application, and its temperature must be above the dew point to avoid condensation. Minimum temperature for curing is -10°C/ 14°F.

At the freezing point and below, be aware of the risk of ice on the surface which will hinder the adhesion. High humidity and/or condensation during application and the following 24 hours (20°C/68°F) may adversely affect the film formation. In confined spaces provide adequate ventilation during application and drying.

**PRECEDING COAT:** HEMPADUR FAST DRY 15560, HEMPADUR MASTIC 45880/45881 or according to specification.

**SUBSEQUENT COAT:** None.

**REMARKS:**  
Service temperatures: At service temperatures above 100°C/212°F HEMPATHANE HS 55610 will become more soft. Furthermore, discolouration may occur.

**VOC - EU directive 2004/42/EC:**

	As supplied	5 vol. % thinning	Limit phase, 2010
VOC in g/l	330	360	500

**VOC:** For VOC of other shades, please refer to Safety Data Sheet.

**Colours:** Certain lead-free red and yellow colours may discolour when exposed to chlorine-containing atmosphere. To obtain full opacity, an extra coat may be necessary, especially for certain lead-free colours in eg red, orange, yellow and green.

**Stripe coating:** When specified as a one coat "Direct to Metal"-system 100 micron/4 mils must be applied. In addition follow "Good Painting Practise" and apply stripe coating before the spray application on areas difficult to cover properly by spray application.

**Film thicknesses:** May be specified in another film thickness than indicated depending on purpose and area of use. Normal range dry is minimum 50 micron/2 mils (diluted) and minimum 75 micron/3 mils (undiluted), maximum 125 micron/5 mils. This will alter spreading rate and may influence drying time and recoat interval.

**Recoat interval:** **Maximum recoating interval: A completely clean surface is mandatory to ensure intercoat adhesion, especially at long recoat intervals. Any dirt, oil, and grease have to be removed. e.g. with suitable detergent followed by (high pressure) fresh water cleaning. Salts to be removed by fresh water hosing.**  
To check an adequate quality of the surface cleaning a test patch is recommended before actual recoating.

**Notes:** CURING AGENT 97050 is sensitive to moisture. Store in a dry place and keep the can tightly closed until use. Open curing agent cans with caution as overpressure might exist. Even small traces of water in the mixed paint will reduce the pot life and result in film defects.

**HEMPATHANE HS 55610 is for professional use only.**

**ISSUED BY:** HEMPEL A/S - 5561010000CR002

*This Product Data Sheet supersedes those previously issued.*

*For explanations, definitions and scope, see "Explanatory Notes" in the HEMPEL Book.*

*Data, specifications, directions and recommendations given in this data sheet represent only test results or experience obtained under controlled or specially defined circumstances. Their accuracy, completeness or appropriateness under the actual conditions of any intended use of the Products herein must be determined exclusively by the Buyer and/or User.*

*The Products are supplied and all technical assistance is given subject to HEMPEL's GENERAL CONDITIONS OF SALES, DELIVERY AND SERVICE, unless otherwise expressly agreed in writing. The Manufacturer and Seller disclaim, and Buyer and/or User waive all claims involving, any liability, including but not limited to negligence, except as expressed in said GENERAL CONDITIONS for all results, injury or direct or consequential losses or damages arising from the use of the Products as recommended above, on the overleaf or otherwise.*

*Product data are subject to change without notice and become void five years from the date of issue.*



# Product Data

## HEMPASIL X3 87500

BASE 87509 - HEMPASIL CROSSLINKER 98950  
FOULING RELEASE COATING

**Description:** HEMPASIL X3 is a third generation fouling release coating with high solids content. The product is based on silicone, is biocide free and cures after addition of HEMPASIL CROSSLINKER 98950. It provides a smooth, low surface energy repellent surface with unique fouling release properties. A hydro gel micro layer prevents fouling organisms firmly adhering while the silicone polymers facilitate self-cleaning. HEMPASIL X3 therefore possess a high fuel saving potential. Under extended static conditions (idle periods) the coating may accumulate some fouling.

**Recommended use:** For vessels with service speeds above 8 knots.

**Availability:** Part of Group Assortment. Local availability subject to confirmation.

### PHYSICAL CONSTANTS:

Colour/Shade nos.:	Red/59151 , Blue/30170, Black/19990
Finish:	Glossy
Volume solids, %:	71±1
Theoretical spreading rate:	4.7 m <sup>2</sup> /litre - 150 micron 192 sq.ft./US gallon - 6 mils
Flash point:	28°C/82°F
Specific gravity:	1.0 kg/litre - 8.3 lbs/US gallon
Dry to touch:	3 hours at 20°C/68°F
Fully cured:	7 days at 20°C/68°F
V.O.C.:	265 g/litre - 2.2 lbs/US gallon
Shelf life:	1½ years (25°C/77°F) from time of production. Depending on storage conditions, mechanical stirring may be necessary before usage. If the shelf life is exceeded please contact HEMPEL for further advice.

*The physical constants stated are nominal data according to the HEMPEL Group's approved formulas. They are subject to normal manufacturing tolerances and where stated, being standard deviation according to ISO 3534-1.*

### APPLICATION DETAILS:

Mixing ratio for 87500:	Base 87509 : CROSSLINKER 98950 17.8:2.2 by volume
Application method:	Airless spray                      Brush ( <i>touch-up</i> ) ( <i>see REMARKS overleaf</i> )
Thinner (max. vol.):	No thinning ( <i>see REMARKS overleaf</i> )
Nozzle orifice:	.019"-.021"
Nozzle pressure:	150 bar/2200 psi ( <i>Airless spray data are indicative and subject to adjustment</i> )
Cleaning of tools:	THINNER 08080
Pot life:	2 hours (20°C/68°F) after addition of HEMPASIL CROSSLINKER 98950, clear 00000
Indicated film thickness, dry:	150 micron/ 6 mils
Indicated film thickness, wet:	225 micron/ 9 mils
Recoat interval, min:	6 hours (20°C/68°F)
Recoat interval, max:	None

**Safety:** Handle with care. Before and during use, observe all safety labels on packaging and paint containers, consult HEMPEL Material Safety Data Sheets and follow all local or national safety regulations. Avoid inhalation, avoid contact with skin and eyes, and do not swallow. Take precautions against possible risks of fire or explosions as well as protection of the environment. Apply only in well ventilated areas.



## HEMPASIL 87500

APPLICATION CONDITIONS:	Use only where application can proceed at temperatures above 10°C/50°F. The temperature of the surface and that of the paint itself must also be above this limit. Apply only on a surface with a temperature above the dew point to avoid condensation. Relative humidity of the air between min. 30% and max. 85%. The surface should be clean and dry. The special application properties do furthermore necessitate extra consideration as to possible windy weather. The on-site representative from Hempel is to be consulted. In confined spaces provide adequate ventilation during application and drying.
PRECEDING COAT:	HEMPASIL NEXUS 27302 in light red 55001 or according to specification.
SUBSEQUENT COAT:	None.
REMARKS:	It is of the utmost importance that thorough protection and cleaning procedures are followed before and after application respectively. It is advisable to apply HEMPASIL SYSTEM after all other exterior painting is complete. This is to avoid silicone contamination of other painted surfaces. <b>Before</b> application cover all surfaces surrounding the areas to be applied with plastic sheeting to avoid overspray. <b>After</b> application clean all equipment very thoroughly. See below.
Application method:	A well executed spray application is necessary. This paint material has special application properties and it is recommended first to make a small-scale application to get familiar with the properties.
Thinning:	Not recommended. In exceptional cases use THINNER 08080 (max. 5 vol%).
Recommended number of coats:	One coat normally recommended.
Cleaning of tools:	Very thorough cleaning with THINNER 08080 is necessary. DISPOSE OF CLEANING SOLVENTS AFTER USE. DO NOT RE-USE SOLVENTS AFTER CLEANING.
Detailed instructions:	Will be available in connection with separate painting specifications.
Undocking:	Minimum 24 hours (20°C/68°F). At temperatures below 15°C/59°F minimum 48 hours.
Storage of cans:	Must be stored under absolutely dry conditions, protect against seeping humidity.
Note:	<b>HEMPASIL X3 87500 is for professional use only.</b>
ISSUED BY:	HEMPEL A/S - 8750059151CR001

***This Product Data Sheet supersedes those previously issued.***

***For explanations, definitions and scope, see "Explanatory Notes" in the HEMPEL Book.***

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***Product data are subject to change without notice and become void five years from the date of issue.***



# Product Data

## HEMPASIL NEXUS 27302

**FOULING RELEASE TIECOAT**  
BASE 27309 with CURING AGENT 98100 and ADDITIVE 99701

**Description:** HEMPASIL NEXUS 27302 is a high solid three component silicone based product.

**Recommended use:** As a tiecoat for the HEMPASIL FOULING RELEASE System, securing adhesion between the anticorrosive system and the Hempasil Fouling Release topcoat.

**Availability:** Part of Group Assortment. Local availability subject to confirmation.

### PHYSICAL CONSTANTS:

Colour/Shade nos: Light red 55001  
Finish: Semi-gloss  
Volume solids, %: 70 (see REMARKS overleaf)  
Theoretical spreading rate: 5.8 m<sup>2</sup>/litre - 120 micron  
234 sq.ft./US gallon - 4.8 mils  
Flash point: 30°C/86°F  
Specific gravity: 1.3 kg/litre - 10.8 lbs/US gallon  
Dry to touch: 2 hours at 20°C/68°F  
Fully cured: 7 days at 20°C/68°F  
V.O.C.: 265 g/litre - 2.3 lbs/US gallon  
Shelf life: 1 year (25°C/77°F) from time of production. Depending on storage conditions, mechanical stirring may be necessary before usage.  
If the shelf life is exceeded please contact HEMPEL for further advice.

*The physical constants stated are nominal data according to the HEMPEL Group's approved formulas. They are subject to normal manufacturing tolerances and where stated, being standard deviation according to ISO 3534-1.*

### APPLICATION DETAILS:

Mixing ratio: Shade 55001:  
Base 27309: Curing Agent 98100: Additive 99701  
14,8 : 4,2 : 1 by volume (See REMARKS overleaf)

Application method: Airless spray      Brush/roller (touch-up) (see REMARKS overleaf)

Thinner: No thinning (see REMARKS overleaf)

Nozzle orifice: .019"-.021"

Nozzle pressure: 150 bar/2200 psi  
(Airless spray data are indicative and subject to adjustment)

Cleaning of tools: THINNER 08080 (see REMARKS overleaf)

"Pot life": 1 hour (20°C/68°F) (see REMARKS overleaf)

Indicated film thickness, dry: 120 micron/4.8 mils

Indicated film thickness, wet: 175 micron/7 mils

Recoat interval, min: 6 hours (20°C/68°F) (see REMARKS overleaf)

Recoat interval, max: 24 hours (20°C/68°F)

**Safety:** Handle with care. Before and during use, observe all safety labels on packaging and paint containers, consult HEMPEL Material Safety Data Sheets and follow all local or national safety regulations. Avoid inhalation, avoid contact with skin and eyes, and do not swallow. Take precautions against possible risks of fire or explosions as well as protection of the environment. Apply only in well ventilated areas.



## HEMPASIL NEXUS 27302

SURFACE PREPARATION:	<b>New construction:</b> According to painting specification/product data sheet for the specified HEMPADUR system. <b>Maintenance, old F/R systems:</b> Possible spot repair with specified HEMPADUR system followed by spot application of HEMPASIL NEXUS 27302. In any of the above-mentioned cases, a detailed working specification is available upon request.
APPLICATION CONDITIONS:	Use only where application can proceed at temperatures above 10°C/50°F. The temperature of the surface and that of the paint itself must also be above this limit. Apply only on a surface with a temperature above the dew point to avoid condensation. The surface should be clean and dry. In confined spaces provide adequate ventilation during application and drying.
PRECEDING COAT:	HEMPADUR according to specification.
SUBSEQUENT COAT:	HEMPASIL FOULING RELEASE COATING according to specification.
REMARKS:	It is of the utmost importance that thorough protection and cleaning procedures are followed before and after application respectively. It is advisable to apply HEMPASIL system after all other exterior painting is complete. This is to avoid silicone contamination of other painted surfaces. <b>Before</b> application cover all surfaces surrounding the areas to be applied with plastic sheeting to avoid overspray. <b>After</b> application clean all equipment thoroughly, before re-using equipment. See below.
Volume solids:	The stated value is the theoretical volume solids: solid content of the mixed product. Due to the chemical reaction in the mixture the practical volume solid will be approx. 5% lower than indicated.
Mixing:	Add ADDITIVE 99701 to BASE 27309 while stirring. Immediately after add CURING AGENT 98100 and mix.
“Pot life”:	The pot life is 1 hour at 20°C/68°F. No change in the paints physical properties (e.g. viscosity increase) is apparent when this time is exceeded. It is important that the paint is no longer used as its adhesion properties to the preceding coat are dramatically reduced after that time.
Application method:	A well executed spray application is necessary. This paint material has special application properties and it is recommended first to make a small-scale application to get familiar with the properties.
Thinning:	Not recommended. In exceptional cases use THINNER 08080 (max 5 vol.%).
Recoating by itself:	HEMPASIL NEXUS 27302 must be applied in one coat. In case HEMPASIL NEXUS 27302 has to be recoated by itself, application must be wet in wet.
Weather conditions:	Please refer to application manual.
Cleaning of tools:	Very thorough cleaning with THINNER 08080 is necessary. DISPOSE OF CLEANING SOLVENTS AFTER USE. DO NOT RE-USE SOLVENTS AFTER CLEANING.
Storage of cans:	Must be stored under absolutely dry conditions, protect against seeping humidity.
Note:	<b>HEMPASIL NEXUS 27302 is for professional use only.</b>
ISSUED BY:	HEMPEL A/S - 2730255001CR001

***This Product Data Sheet supersedes those previously issued.***

***For explanations, definitions and scope, see “Explanatory Notes” in the HEMPEL Book.***

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# Product Data

## HEMPADUR MULTI-STRENGTH 45751/ HEMPADUR MULTI-STRENGTH 45753

Medium to high temperatures: 45751: BASE 45755 with CURING AGENT 97652  
Low to medium temperatures: 45753: BASE 45755 with CURING AGENT 98750

<b>Description:</b>	HEMPADUR MULTI-STRENGTH 45751/45753 is a self-priming, two-component, high-build, epoxy-polyamide/amine paint which cures to an abrasion and corrosion resistant coating. Applicable by standard heavy duty airless spray equipment.	
<b>Recommended use:</b>	As a heavy duty coating for areas exposed to abrasion and aggressive corrosive climate such as ramps, ship hulls and holds of bulk carriers. As a ballast tank coating for special purposes such as chemical carriers carrying hot cargoes and other purposes where "pure epoxy coating" is requested. As a finishing coat where a cosmetic appearance is of less importance. HEMPADUR MULTI-STRENGTH 45751 is intended for use in warm climates. HEMPADUR MULTI-STRENGTH 45753 is intended for use in cold climates - see APPLICATION CONDITIONS overleaf.	
<b>Service temperatures:</b>	Dry exposure only: Maximum 140°C/284°F (See REMARKS overleaf) Ballast water service: Resists normal ambient temperatures at sea* Other water service: 50°C/122°F (no temperature gradient) Other liquids: Contact HEMPEL *Avoid long-term exposure to negative temperature gradients.	
<b>Certificates/Approvals:</b>	Tested for non-contamination of grain cargo at the Newcastle Occupational Health, Great Britain. Approved by Lloyd's Register of Shipping as a recognized corrosion control coating. Approved as a ballast tank coating by Germanischer Lloyd, Germany. HEMPADUR MULTI-STRENGTH 45753 has been classified B1 by DNV, Norway. Recognized by Lloyd's Register of Shipping as a low friction surface coating for ships navigating in first year ice conditions. Conforms with Norsok M-501, system no. 7. HEMPADUR MULTI-STRENGTH 45753 has been tested by Teknologisk Institutt AS, Norway, and approved for internal use in pipe lines for water power generation according to NS 5417. Complies with EU Directive 2004/42/EC, subcategory j (see REMARKS overleaf). Part of Group Assortment. Local availability subject to confirmation.	
<b>Availability:</b>		
<b>PHYSICAL CONSTANTS:</b>		
Version; mixed product:	<b>45751</b>	<b>45753</b>
Colours/Shade nos:	Grey/12340 - Red/50630	Grey/12340 - Red/50630
Finish:	Semi-gloss	Semi-gloss
Volume solids, %:	79 ± 1	79 ± 1
Theoretical spreading rate:	4.0 m <sup>2</sup> /litre - 200 micron 158 sq.ft./US gallon - 8 mils	4.0 m <sup>2</sup> /litre - 200 micron 158 sq.ft./US gallon - 8 mils
Flash point:	27°C/81°F	27°C/81°F
Specific gravity:	1.6 kg/litre - 13.4 lbs/US gallon	1.6 kg/litre - 13.4 lbs/US gallon
Dry to touch:	7-8 hours at 20°C/68°F	8-10 hours at 10°C/50°F
Fully cured:	7 days at 20°C/68°F	14 days at 10°C/50°F
V.O.C.:	260 g/litre - 2.2 lbs/US gallon	245 g/litre - 2.0 lbs/US gallon
<small>The physical constants stated are nominal data according to the HEMPEL Group's approved formulas. They are subject to normal manufacturing tolerances and where stated, being standard deviation according to ISO 3534-1.</small>		
<b>APPLICATION DETAILS:</b>		
Mixing ratio:	<b>45751</b> Base 45755 : Curing agent 97652 3 : 1 by volume	<b>45753</b> Base 45755 : Curing agent 98750 3 : 1 by volume
Application method:	Airless spray	
Thinner (max.vol.):	08450 (5%)(See PRECEDING COAT overleaf and separate APPLICATION INSTRUCTIONS)	
Pot life:	1 hour (20°C/68°F)	1 hour (20°C/68°F)
Nozzle orifice:	.021"-.023"	.021"-.023"
Nozzle pressure:	250 bar/3600 psi (Airless spray data are indicative and subject to adjustment)	250 bar/3600 psi
Cleaning of tools:	HEMPEL'S TOOL CLEANER 99610	
Indicated film thickness, dry:	200 micron/8 mils	200 micron/8 mils
Indicated film thickness, wet:	250 micron/10 mils	250 micron/10 mils
Recoat interval, min:	6 hours (20°C/68°F)	12 hours (10°C/50°F)
Recoat interval, max:	See REMARKS overleaf	See REMARKS overleaf
<b>Safety:</b>	Handle with care. Before and during use, observe all safety labels on packaging and paint containers, consult HEMPEL Material Safety Data Sheets and follow all local or national safety regulations. Avoid inhalation, avoid contact with skin and eyes, and do not swallow. Take precautions against possible risks of fire or explosions as well as protection of the environment. Apply only in well ventilated areas.	



**HEMPADUR MULTI-STRENGTH 45751/45753**

**SURFACE PREPARATION:** **New steel:** "Heavy duty use": Abrasive blasting to min. Sa 2½ with a surface profile corresponding to Rugotest No. 3, min. BN10, Keane-Tator Comparator 3.0 G/S, or ISO Comparator Rough Medium (G). Oil and grease must be removed with suitable detergent, salts and other contaminants by (high pressure) fresh water hosing prior to blasting. After blasting, clean the surface carefully from abrasive and dust.  
**Ballast tanks:** For PSPC type approved coating, consult separate APPLICATION INSTRUCTIONS - BALLAST TANKS for HEMPADUR MULTI-STRENGTH 45753.  
**Stainless steel:** (Ballast tanks in chemical carriers) to be abrasive blasted to a uniform, sharp, dense profile, ISO Comparator Medium (G), corresponding to Rz minimum 50 micron. Any salts, grease, oil, etc. to be removed before abrasive blasting is commenced.  
**Repair and maintenance:** The actual purpose and conditions may make other types and degrees of surface preparation than the above described relevant. Reference is made to separate application instructions.

**APPLICATION CONDITIONS:** Use only where application and curing can proceed at temperatures above -10°C/14°F for HEMPADUR MULTI-STRENGTH 45753 and above 10°C/50°F for HEMPADUR MULTI-STRENGTH 45751. The temperature of the paint itself should be above 15°C/59°F, preferably above 20°C/68°F for HEMPADUR MULTI-STRENGTH 45751, for proper application. Apply only on a dry and clean surface with a temperature above the dew point to avoid condensation. Relative humidity max. 90%. In confined spaces provide adequate ventilation during application and drying.

**PRECEDING COAT:** None, but HEMPADUR 15590 can be used as a "blast primer" for HEMPADUR MULTI-STRENGTH 45751. HEMPADUR MULTI-STRENGTH 45753 can be used as a "blast primer" for HEMPADUR MULTI-STRENGTH 45753 when diluted 25-30% with HEMPEL'S THINNER 08450.

**SUBSEQUENT COAT:** None, HEMPADUR or HEMPADUR-paint as per specification, depending on area of use.

**REMARKS:**  
 VOC - EU directive 2004/42/EC:

<b>45751</b>				
	As supplied	5 vol. % thinning	Limit phase I, 2007	Limit phase II, 2010
VOC in g/l	260	290	550	500
<b>45753</b>				
	As supplied	5 vol. % thinning	Limit phase I, 2007	Limit phase II, 2010
VOC in g/l	245	275	550	500

**VOC:** For VOC of other shades, please refer to Safety Data Sheet.

**Colour of curing agent:** The curing agent 98750 has a tendency to become darker at storage. This has no influence on performance, but may influence the shade of the mixed product.  
 Some **certificates** have been issued under the former quality numbers 45750 or 4575. HEMPADUR MULTI-STRENGTH 45751 is identical with the former 45750 except that mixing ratio and thixotropy properties have been adjusted to specific demands of application, for instance dual feed two component spray equipment and supply in 1000 litres paint containers.

**Weathering/ service temperatures:** The natural tendency of epoxy coatings to chalk in outdoor exposure and to become more sensitive to mechanical damage and chemical exposure at elevated temperatures is also reflected in this product.

**Film thicknesses:** May be specified in another film thickness than indicated depending on purpose and area of use. This will alter spreading rate and may influence drying time and recoating interval. Normal range dry is 150-250 micron/6-10 mils. It is recommended to use heavy airless spray equipment with a pump transmission rate of 60:1 (approximately), and a theoretical output of min. 12 litres per minute.

**Curing agent:** Curing agents 97652 and 98750 are hazy. This is intended and has no negative influence on the performance.



**HEMPADUR MULTI-STRENGTH 45751/45753**

Recoating: Recoating intervals related to later conditions of exposure:  
(200 micron/8 mils dry film thickness of HEMPADUR MULTI-STRENGTH 45751/45753)

	Curing agent 97652						Curing agent 98750					
	Minimum			Maximum			Minimum			Maximum		
Surface temp.	20°C/68°F						10°C/50°F					
Recoated with	Atmospheric		Immer- sion *	Atmospheric		Immer- sion *	Atmospheric		Immer- sion *	Atmospheric		Immer- sion *
	Medium	Severe		Medium	Severe		Medium	Severe		Medium	Severe	
HEMPADUR	4 hours	5 hours	6 hours	None	None	30 days	8 hours	10 hours	12 hours	None	None	60 days
HEMPATHANE Topcoat	4 hours	5 hours	N/R	10 days	3 days	N/R	8 hours	10 hours	N/R	20 days	6 days	N/R

\* and heavy wear - eg bulk cargo holds and fender areas. If such areas are to be topcoated with HEMPADUR, same max as for atmospheric/severe apply. The long maximum recoating interval for HEMPADUR will be reduced if the coating is more than just scarcely exposed to direct sunshine before recoating. If the interval is exceeded, roughening of surface is necessary to ensure intercoat adhesion.

Thinning: Normally not to be diluted.

Note: **HEMPADUR MULTI-STRENGTH 45751/45753 is for professional use only.**

ISSUED BY: HEMPEL A/S - 4575112340C0007/4575312340C0005

***This Product Data Sheet supersedes those previously issued. For explanations, definitions and scope, see "Explanatory Notes" in the HEMPEL Book. Data, specifications, directions and recommendations given in this data sheet represent only test results or experience obtained under controlled or specially defined circumstances. Their accuracy, completeness or appropriateness under the actual conditions of any intended use of the Products herein must be determined exclusively by the Buyer and/or User. The Products are supplied and all technical assistance is given subject to HEMPEL's GENERAL CONDITIONS OF SALES, DELIVERY AND SERVICE, unless otherwise expressly agreed in writing. The Manufacturer and Seller disclaim, and Buyer and/or User waive all claims involving, any liability, including but not limited to negligence, except as expressed in said GENERAL CONDITIONS for all results, injury or direct or consequential losses or damages arising from the use of the Products as recommended above, on the overleaf or otherwise. Product data are subject to change without notice and become void five years from the date of issue.***

**ATTACHMENT A – TITLE 23 AND FEDERAL GRANT RECIPIENTS**

# Title 23 and Federal Grants: Direct Recipient Requirements

## EXECUTIVE SUMMARY

A number of Federal requirements applicable to direct recipients of title 23 funding involve procedures, FHWA approvals, or administrative systems that must be in place before the Federal funding can be used. Other requirements affect how a direct recipient conducts project development, construction, operation, procurement, and financial administrative activities. This document outlines some of the key requirements applicable to title 23-funded projects that non-traditional direct recipients (also referred to as grantees) of title 23 funding will need to consider as they plan their resources and lead times.<sup>1</sup> A summary of the main categories of applicable requirements appears below, followed by more detailed information in Attachment A.

*Financial and administrative requirements* govern such areas as authorization of Federal cost participation; required financial management systems including measures for fiscal control, accounting systems and procedures; recordkeeping and reporting; allowable costs; audit requirements; direct recipient responsibilities for compliance and monitoring; and records retention and access.

*Federal-aid contract and contract administration requirements* cover areas such as

- *Preauthorization measures*: Project management and financial plan requirements for certain major projects; value engineering; FHWA oversight, design, and design build; direct recipient quality assurance/quality control measures; required agreements for projects involving railroads or utility relocation/removal work; bridge inspection and size and weight controls; direct recipient's DBE program and related requirements; direct recipient's capacity to carry out title 23 requirements; project review and oversight requirements; and engineering services contract and procurement requirements such as conflict of interest provisions.
- *Authorization requirements*: FHWA approval of the plans, specifications and estimates for a project, and requirements affecting the project agreement.
- *Property and services procurement*: Competitive procurement, audit, and direct recipient procedures.
- *Construction services*: Procurement requirements.
- *Construction contracts*: Advertising and bid opening, negotiation and award of contracts, force account work, direct recipient supervision of the federally-funded work; minimum wage and Buy America; subcontracting and contractor responsibilities; limitations on the use of convict labor and materials; general labor; contractor licensing and qualification; FHWA

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<sup>1</sup> General assumption: Notwithstanding terminology such as "State Department of Transportation," FHWA interprets a provision as applicable to all direct recipients if the provision is intended to govern direct recipients as a class, and the provision has a substantive purpose that is relevant to the type of program/project at issue (i.e., application of the provision furthers a Federal interest regardless of the size of the program/project the direct recipient is carrying out with Federal-aid funding).

approval for major changes in plans and contract provisions; liquidated damages; limitations on favoring proprietary products; and limitations on materials provisions.

***Tolling requirements*** relate to the limited situations under which a facility constructed under title 23 may charge tolls.

***Interstate system requirements*** affect projects involving interstate highways.

***Planning, environment, and right-of-way requirements*** such as inclusion of the project in a fiscally-constrained metropolitan long range transportation plan and TIP/STIP; compliance with NEPA, section 4(f), the Clean Air Act and amendments, and other environmental laws; public hearing/public involvement requirements; and compliance with FHWA and Uniform Act requirements governing the acquisition, management, and disposal of real property and the relocation of persons and businesses (including pre-work certification requirements and FHWA approval of procedures).

# ATTACHMENT A

## SUMMARY OF KEY TITLE 23 and FEDERAL GRANT PROVISIONS

### FINANCIAL AND ADMINISTRATIVE REQUIREMENTS

#### 1. Authorization

- A. Federal-aid highway funds will only participate in costs which are reasonable and necessary, and have been incurred in accordance with applicable Federal and State law, regulations, and policies issued. After the project has been authorized Federal funds may be reimbursed. (23 CFR 1.9)

#### 2. Standards for financial management systems (49 CFR § 18.20)

- A. Fiscal control and accounting procedures must be sufficient to:
  - i. Permit preparation of reports required by this part and the statutes authorizing the grant, and
  - ii. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
- B. Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- C. Accounting records. Must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. Must ensure that all transactions can be traced directly to source documentation.
- D. Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Direct recipient must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- E. Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant.
- F. Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability

of costs. Reimbursement requests will require supporting documentation. Division will review and approve each reimbursement request.

- G. Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- H. Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement.
- I. FHWA may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

**3. Allowable costs (49 CFR 18.22(b)).**

- A. Limitation on use of funds. Grant funds may be used only for:
  - i. The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
  - ii. Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
- B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs as set forth in the table under 49 CFR 18.22(b): OMB Circular A-87 (2 CFR 225); A-122 (2 CFR 230); A-21 (2 CFR 220); and 48 CFR Part 31.
- C. If the direct recipient seeks to charge indirect costs, FHWA must review and approve the recipient's latest approved indirect cost allocation plan.

**4. Non-Federal audits (49 CFR § 18.26)**

- A. Grantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor, in accordance with generally accepted government auditing standards covering financial audits.

**5. Monitoring and reporting program performance (49 CFR § 18.40)**

- A. Grantees must monitor grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being

achieved. Grantee monitoring must cover each program, function or activity.

- B. Nonconstruction performance reports -- Grantees shall submit annual performance reports such performance information as set forth in 49 CFR 18.40(b)(2).
- C. Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants. [The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly].
- D. FHWA may make site visits as warranted by program needs.

**6. Financial reporting (49 CFR § 18.41)**

- A. Financial Status Report—
  - i. Grantees will report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 18.41(e)(2)(iii).
  - ii. Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency.
  - iii. Grantees will report reimbursement or outlay information when requested by FHWA in accordance with § 18.41(c).
- B. Accounting basis. The accounting basis for Outlay Reports and Requests for Reimbursement for Construction Programs shall be governed by § 18.41(b)(2). Accrual basis applies.

**7. Retention and access requirements for records (49 CFR § 18.42).**

- A. Length of retention period—Generally three years from the date of the last grant supported expenditure.
  - i. Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.
  - ii. Indirect cost rate proposals, cost allocations plans, etc (generally three years from the date of submission).
- B. Access to records—
  - i. FHWA, the DOT Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents,

- papers, or other records which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.
- ii. Expiration of right of access. The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

## **FEDERAL-AID CONTRACT ADMINISTRATION REQUIREMENTS**

### **1. Preconstruction Preauthorization Issues**

- A. Major Projects (23 USC 106(h) and implementing guidance)
  - i. Projects with an estimated total cost of \$500 million or more, and other projects as may be identified by the Secretary must submit to the Secretary a project management plan and annual financial plan for approval
  - ii. Cost Estimate reviews are required for Major Projects
  - iii. Projects with an estimated total cost of \$100 million or more must prepare an annual financial plan and submit upon request
- B. Value Engineering (23 USC 106(e); 23 CFR Part 627)
  - i. State must provide a VE analysis for each Federal-aid highway project on the Federal-aid system with an estimated total cost of \$25 million or more; for each bridge project located on or off the Federal-aid system with an estimated total cost of \$20 million or more; and other projects as deemed appropriate by the Secretary
- C. Oversight (23 USC 106(c)(3) and (g); 23 CFR 1.36)
  - i. Secretary must establish an oversight program to monitor the effective and efficient use of funds addressing financial integrity and project delivery
  - ii. Secretary shall perform annual reviews addressing elements of the direct recipient's project delivery systems
  - iii. FHWA may withhold payment of Federal funds for the project, or other projects, if the local authority has violated or failed to comply with Federal laws or regulations.
  - iv. The direct recipient and the Secretary must enter into an agreement relating to the extent to which the direct recipient will assume the responsibilities of the Secretary with respect to design, plans, specifications, estimates, contract awards, and inspections.
  - v. The direct recipient shall be responsible for determining whether any subrecipients have adequate project delivery systems and sufficient controls to properly manage Federal-aid funds and ensuring compliance with Federal-aid requirements.
  - vi. The direct recipient must establish a stewardship and oversight agreement in partnership with FHWA detailing the monitoring, assessment, quality control, oversight, and responsibilities for

ensuring all projects that utilize Federal-aid highway program funding are developed, designed and constructed in a manner that complies with adopted Federal standards.

**D. Design**

- i. Design and construction standards and specifications for projects on the National Highway System must meet established standards
  - a. Bridge manual
  - b. Adoption of the MUTCD
  - c. Materials manual
  - d. Design manual
  - e. Construction manual
- ii. The direct recipient shall establish the design standards, policies, controls, and specifications to be used when designing projects that use Federal-aid highway program funding (23 CFR 625.3).
- iii. The Secretary shall ensure that the plans and specifications will adequately serve existing and planned future traffic in manner that is conducive to safety, durability, and economy of maintenance and is designed and constructed to accomplish these objectives and conform to the particular needs of the locality.
- iv. Exceptions must be approved by FHWA. It is suggested that an agreement be executed with FHWA regarding the applicable standards and the justification needed to support an exception.
- v. 23 USC 109 (a) and (c); 23 CFR Part 625
- vi. Intelligent Transportation Systems must conform to 23 CFR part 940

**E. QA/QC Program (23 CFR Part 637)**

- i. Each direct recipient must establish quality assurance and independent assurance program assuring that materials incorporated into each Federal-aid highway project on the National Highway System (NHS) are in conformity with approved plans and specifications.
- ii. Inclusive of a Quality Assurance Program will be:
  - a. Established frequency of sampling & testing of materials
  - b. Acceptance decisions will be made by qualified sampling & testing personnel (i.e. nationally recognized certification such as ACI, PCI, NPCA, NICET, NETTCP, NYSCMA-HMA QC/QA, AGC, etc.)
  - c. If the Federal Aid direct recipient uses the contractor's quality control test results for acceptance, then it is FHWA's policy that the process will require validation of all data not generated by the recipient or

its assigned agent(s) if used in the acceptance decisions. [FHWA Technical Advisory T6120.3]

- d. Use of Qualified Laboratories: both Central Laboratory and satellite laboratories shall be accredited in the testing to be performed by the AASHTO Accreditation Program or comparable laboratory accreditation program approved by FHWA.
  - e. In order to avoid any appearance of a conflict of interest, any qualified non-Federal-aid recipient laboratory shall perform only one of the following types of testing on the same project: Verification testing, Quality Control testing, Independent Assurance testing, or Dispute Resolution testing.
  - ii. Recipient must submit a materials conformance certification with respect to each construction project
- F. Railroads (23 CFR Part 646, Subpart B)
- i. Each project involving the use or adjustment of property owned by a railroad must involve a written agreement between the recipient and railroad concerning the project.
  - ii. The agreement is subject to the approval of the FHWA.
  - iii. Ensure compliance with railroad standards.
- G. Utilities (23 USC 123; 23 CFR Part 645)
- i. Direct recipient must submit a policy statement for FHWA to approve identifying the authority of utilities to relate or to use and occupy the right-of-way of highways, the State Transportation Departments laws and controls to regulate such use, and the laws and controls of the local authority employs or proposes for relocating or accommodating utilities (23 CFR 645.215)
  - ii. Direct recipient must submit certifications to the FHWA regarding the eligibility of utility relocation or removal work (23 CFR 645.107)
  - iii. Direct recipient and utility must execute a written agreement incorporating all Federal-aid utility relocation and removal standards and providing for the financing and accomplishment of the work (23 CFR 645.113)
- H. Bridge Inspection Program (23 USC 151; 23 CFR Part 650, Subpart C)
- i. Each direct recipient must implement a National Bridge Inspection Program incorporating Federal standards and requirements if it has any bridge on a public road
- I. Certification of Size and Weight Enforcement (23 USC 127; 23 CFR Part 657; 23 CFR Part 658)

- i. A direct recipient responsible for any federally-assisted roadway must enforce vehicle size and weight laws conforming to Federal requirements and certify each year as to such enforcement
  - ii. The direct recipient must ensure reasonable access is provided to commercial vehicles between the National Network and facilities for food, fuel, repairs, rest, and points of loading and unloading.
  
- J. DBE Program (Section 1101(b) of SAFETEA-LU; 49 CFR Part 26 (49 CFR § 26.21))
  - i. Each FHWA direct recipient receiving funds authorized under ISTEA, TEA-21, or SAFETEA-LU must have an approved DBE program meeting Federal requirements
  
- K. Civil Rights Program (23 U.S.C. § 140; 23 CFR Part 230; 49 CFR Part 21; 49 CFR Part 25; 49 CFR Part 27; 49 CFR Part 28)
  - i. Title VI of the Civil Rights Act
  - ii. ADA/504
  - i. Internal EEO
  - ii. OJT
  
- L. Direct Recipient Capacity (23 U.S.C. § 302; 23 CFR § 1.3)
  - i. The recipient shall have adequate powers and be suitably equipped and organized to discharge, to the satisfaction of the Secretary, the duties required under title 23.
  
- M. Project reviews, oversight & limitation on Federal participation (23 U.S.C. § 106(g) and 23 CFR § 1.9)
  - i. Develop a project management and oversight plan with the FHWA Division Office identifying the reviews, approvals and responsibilities of the direct recipient and FHWA (23 USC 106(g)(1)). This plan will establish the controls, procedures, and monitoring to ensure the effective and efficient development of the project and the financial integrity with the use of funds.
  - ii. Financial integrity
  - iii. Project oversight
  - iv. Federal-aid funds shall not participate in any costs that are not incurred in conformity with applicable Federal and State laws (23 CFR § 1.9).
  
- N. Engineering services (23 CFR § 1.11 and 23 CFR § 1.33)
  - i. Costs for engineering services performed by the direct recipient may be eligible for Federal participation only to the extent such costs are directly attributable and properly allocable to specific projects.
  - ii. Indirect costs for services which are not specific to a design related service or construction project and cannot be billed to a single

Federal-aid project are not eligible for Federal-aid funding unless the direct recipient has an approved indirect cost allocation plan for distribution to all benefiting cost objectives (49 CFR § 18.22(b): OMB Circular A-87 (2 CFR part 225)).

- iii. No official or employee who is authorized to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving, any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.
- iv. No engineer, attorney, appraiser, inspector or other person performing services in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention, in any contract or subcontract in connection with such project.
- v. No officer or employee of such person retained shall have any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the direct recipient or other government instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the direct recipient.

**O. Work Zone Safety and Mobility (23 CFR Part 630, Subpart J)**

- i. The direct recipient shall implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects

**P. Conflicts of Interest (23 CFR § 1.33)**

- i. The direct recipient shall enforce the prohibition against conflicts of interest contained in 23 CFR § 1.33

**2. PS&E and Authorization**

**A. Plans, Specifications, & Estimates (PS&E) (23 U.S.C. § 106(a)(1) and (c)(2); 23 CFR Part 630, Subpart B; 23 CFR Part 635, Subpart C)**

- i. Plans, Specifications and Estimates for each project must be submitted to the FHWA for approval.
- ii. For projects not located on the NHS, the direct recipient shall assume the responsibilities of the Secretary for design, plans, specifications, estimates, contract awards, and inspection unless the direct recipient determines that such assumption is not appropriate.

**B. Project Agreement (23 USC 106(b); 23 CFR Part 630, Subpart A; 23 CFR Part 635, Subpart C; 49 CFR Part 32; 49 CFR Part 20; 2 CFR Part 1200)**

- i. Upon approval of the PS&E, a project agreement shall be executed with the Secretary formalizing the conditions of project approval.

- ii. Project agreement must be executed prior to incurring any costs.
- iii. Project agreement must make provision for the payment of the non-Federal share of the project.
- iv. Project agreement must make provisions for the continued maintenance of the project after project completion as per Title 23, USC 116 and 23 CFR 1.27.
- v. Project agreement will provide for the compliance with all applicable terms and conditions set forth in title 23, USC; title 23, CFR; the policies and procedures promulgated by FHWA relative to the project; and all other applicable Federal laws and regulations.
- vi. Project agreement will provide for the reimbursement to FHWA of any Federal-aid participation in right-of-way acquisition if actual construction is not commenced by end of the 20<sup>th</sup> fiscal year following the year of project authorization, and for reimbursement of Federal-aid participation in preliminary engineering if right-of-way acquisition or actual construction is not undertaken in not commenced by the end of the 10<sup>th</sup> fiscal year following the of project authorization.
- vii. Project agreement will contain the required drug-free workplace certification unless an annual certification is provided.
- viii. Project agreement will provide for the required suspension and debarment certification.
- ix. Project agreement will provide for the required anti-lobbying certification.

### **3. Procuring Property and Services**

- A. Method of Procurement of Consulting Services (23 U.S.C. § 112(b)(2); 23 CFR § 172.5; 49 CFR § 18.36 (b through j))
  - i. The procurement of engineering and design related services shall evaluate and rank firms based on qualifications utilizing competitive negotiation in the same manner as required under 40 U.S.C. §§ 1101-1104 (Brooks Act). Each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project are subject to the provisions shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Act (23 U.S.C. § 112(b)(2) and 23 CFR part 172).
  - ii. For engineering and design service procurements meeting the Federal small purchase threshold (41 USC 403(11)), recipients may use small purchase procedures that comply with the law of their State.
  - iii. Noncompetitive negotiation may be used only in limited circumstances when it is not feasible to award the contract using

competitive negotiation or small purchase procedures that comply with State law. Contracting agencies shall submit justification and receive approval from FHWA prior to using this form of contracting for engineering and design related services.

- B. Audits (23 U.S.C. § 112(b)(2); 23 CFR § 172.7; 49 CFR § 18.36 (b through j))
  - i. Any engineering and design service contract shall be audited in compliance with cost principles contained in 48 CFR part 31.
  - ii. Recipients shall use the indirect cost rate established by a cognizant agency audit for conformance with 48 CFR part 31.
  
- C. Use of Consulting Services and Written Procedures (23 CFR § 172.9 and 49 CFR § 18.36 (b through j))
  - i. The direct recipient shall prepare written procedures for the method of procurement it wishes to utilize for the procurement of engineering and design services and submit such procedures to FHWA for approval.
  - ii. FHWA shall review and approve before procuring and hiring a consultant to act in a management role for the contracting agency when Federal-aid highway funding participates in the project (23 CFR 172.9(d))
  - iii. The procurement of property and services that involve Federal-aid highway program funding shall comply with Federal laws and regulations (23 USC 112(b)(2) and 23 CFR 172) and the grantee's own policies and procedures which reflect the applicable State and local laws and regulations as specified in the provisions of the Common Rule (49 CFR 18.36(b through i)). Procurements that do not involve Federal-aid highway program funding shall comply with the grantee's own policies and procedures which reflect the applicable State and local laws and regulations as specified in the provisions of the Common Rule.
  - iv. Procurements and contracts which do not comply with applicable State and local laws in conjunction with Federal laws and regulations would not be eligible for Federal-aid funding. Additionally, all state and/or local funds expended on these procurements or contracts that do comply with state and local laws and regulations will not be eligible to be used as a match on a future Federal-aid project.

#### **4. Construction Services**

- A. Competition (23 U.S.C. § 112)
  - i. "The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition." 23 U.S.C. § 112(a).

- ii. The construction of each project shall be performed by contract awarded by competitive bidding unless the direct recipient demonstrates to the satisfaction of the Secretary that some other method is more cost effective or an emergency exists. 23 U.S.C. § 112(b).
- iii. "No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or the Secretary's concurrence in the award of a contract to such bidder, unless the requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications." 23 U.S.C. § 112(b).
- iv. "The [direct recipient] shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids." 23 CFR § 635.104.

## **5. Advertisement and Bid Opening**

- A. "In all cases where the construction is to be performed by the recipient or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary." 23 U.S.C. § 112(a).
- B. "No work shall be undertaken on a Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator." 23 CFR § 635.112(a).
- C. The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening bids. 23 CFR § 635.112(b).
- D. Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries, and without regard to race, color, religion, sex, national origin, age, or handicap. 23 CFR § 635.112(d).
- E. All bids shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading it aloud shall be publicly announced at the letting. 23 CFR § 635.113(a).
- F. Negotiation with contractors, during the period following the opening of bids and before award shall not be permitted. 23 CFR § 635.113(a).
- G. The direct recipient shall prepare and forward tabulations of bids to the Division Administrator. 23 CFR § 635.113(b).

## **6. Award of Contract**

- A. "Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility." 23 U.S.C. §112(b); 23 CFR § 635.114(a).
- B. The recipient shall formally request the concurrence by the Division Administrator in the award of all Federal-aid contracts. 23 U.S.C. § 112(d); 23 CFR § 635.114(b).
- C. A copy of the executed contract should be furnished to the Division Administrator as soon as practicable after execution. 23 CFR § 635.114(j).
- D. Following the award of the contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the recipients and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. 23 CFR § 635.115(a).

## **7. Force Account**

- A. Actual construction shall be performed by contract awarded by competitive bidding unless the direct recipient demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. 23 CFR § 635.104(a).
- B. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the direct recipient in accordance with 23 CFR part 635, subpart B. Before such finding is made, the direct recipient shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively. 23 CFR § 635.104(b).
- C. It may be found cost effective for a direct recipient to undertake a project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situation where there is a lack of bids or the bids received are unreasonable. 23 CFR § 635.205(a).

## **8. Supervising Agency**

- A. The direct recipient has the responsibility for the construction of Federal-aid projects and is not relieved of such responsibility by authorizing performance of the work by a State, local or other Federal agency. The

direct recipient shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications. 23 CFR § 635.105(a).

- B. Although the recipient may employ a consultant to provide construction engineering services, such as inspection or survey work, the direct recipient shall provide a full time engineer employed by the direct recipient, to be in responsible charge of the project. 23 CFR § 635.105(b).

## 9. Design-Build

- A. Recipients using design build should be aware of applicable requirements, especially those contained in 23 CFR § 635.112(i)(1); 23 CFR § 636.109(c); 23 CFR §§ 636.201 and 203; 23 CFR § 636.302(a); 23 CFR § 636.302(b); 23 CFR § 636.505; 23 CFR § 636.509; and 23 CFR § 636.512.

## 10. Federal-aid Contract Requirements

- A. Payment of Predetermined Minimum Wage and Submission of Certified Payrolls
  - i. The Secretary shall insure that all laborers and mechanics employed by contractors and subcontractors on the construction work performed on the Federal-aid highways shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality. 23 U.S.C. § 113(a); 23 CFR § 635.117(f).
  - ii. For all projects, copies of payrolls and statements of wages paid are to be retained by the recipient for a period of 3 years after the completion of the project. 23 CFR § 635.118; 29 CFR § 5.5(a)(3)(i).
- B. Buy America
  - i. All steel and iron permanently incorporated into a project shall be produced in the United States. 23 U.S.C. § 313(a); 23 CFR § 635.410(b)(1).
  - ii. The direct recipient must have standard contract provisions requiring the use of domestic materials and products to the same or greater extent as provided in 23 CFR § 635.410. 23 CFR § 635.410(b)(2).
  - iii. The direct recipient may request a waiver if the application of Buy America would be inconsistent with the public interest or the steel and iron products are not produced in sufficient and reasonably available quantities which are of a satisfactory quality. The waiver must be approved by the FHWA. 23 CFR § 635.410(c)(1).

- C. Subcontracting and Contractor Responsibilities
- i. Contracts for all projects shall specify the minimum percentage (not less than 30 percent of the original contract price) of work that a contractor must perform with its own forces. 23 CFR § 635.116(a).
  - ii. The direct recipient shall not permit any of the contract work to be performed under a subcontract unless such arrangement has been authorized by the recipient in writing. 23 CFR § 635.116(b).
  - iii. The contractor shall be required to furnish a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work, and is in charge of all construction operations. 23 CFR § 635.116(c).
  - iv. The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of payment. 49 CFR § 26.29.
- D. Convict Labor and Materials
- i. No construction work shall be performed by convict labor unless the convict is on parole, supervised release or probation. 23 U.S.C. § 114(b)(1); 23 CFR § 635.117(a).
  - ii. Materials produced by convict labor may not be used unless the materials are produced by convicts on parole, supervised release, or probation, or produced in a qualified prison facility and the amount of such materials does not exceed the amount produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987. 23 U.S.C. § 114(b)(2); 23 CFR § 635.417.
- E. Labor Generally
- i. No procedure or requirement shall be imposed which will operate to discriminate against the employment of labor from any other State, possession or territory of the US. 23 CFR § 635.117(b).
  - ii. The selection of labor to be employed on any Federal-aid highway project employed by the contractor shall be b the contractor without regard to race, color, religion, sex, national origin, age, or handicap. 23 CFR § 635.117(c).
- F. Licensing and Qualification
- i. The procedures and requirements a direct recipient proposes to use for qualifying and licensing contractors shall be submitted to the Division Administrator for approval. 23 CFR § 635.110(a).
  - ii. No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing shall be approved which may operate to restrict competition, to prevent submission

of a bid, or prohibit the consideration of a bid by a responsible contractor, whether resident or nonresident of the State. 23 CFR § 635.110(b).

iii. No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. 23 CFR § 635.110(c).

G. Contract Changes

i. Following authorization to proceed with a project, all major changes in the plans and contract provisions shall have formal approval of the Division Administrator. 23 CFR § 635.120(a).

H. Agreement Provisions Regarding Overruns in Contract Time

i. Each direct recipient shall establish specific liquidated damages rates applicable to its projects. Such rates shall be subject to FHWA approval. 23 CFR § 635.127(a)&(b).

I. Use of Materials

- i. Contracts for projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. The direct recipient may require the contractor to use material furnished by the direct recipient only where the direct recipient determines, and the Division Administrator concurs, that it is in the public interest to do so. 23 CFR § 635.407(a).
- ii. No requirement shall be imposed and no procedure shall be enforced which may require the use of, or provide a price differential in favor of articles produced within the State or otherwise discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the US. 23 CFR § 635.409.

J. Proprietary Products

i. Federal funds shall not participate directly or indirectly in payment for any premium or royalty on any patented or proprietary material, specification or process. 23 CFR § 635.411(a).

K. Disadvantaged Business Enterprises (DBE)

- i. The direct recipient shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. 23 CFR § 635.107(a).
- ii. The direct recipient must meet its overall DBE goal by using race-neutral means of facilitating DBE participation. 49 CFR § 26.51(a).

- iii. The direct recipient must establish contract goals to meet any portion of the overall goal that the direct recipient does not project being met using race-neutral means. 49 CFR § 26.51(d).
- L. FHWA Form 1273
  - i. FHWA Form 1273 must be physically incorporated into every prime contract and subcontract. 23 CFR § 633.102.
- M. Standardized Changed Conditions Clauses
  - i. Each Federal-aid contract must include standardized change conditions clauses addressing site conditions, suspensions of work ordered by the direct recipient, and material changes in the scope of work.
  - ii. 23 U.S.C. § 112(e); 23 CFR § 635.109.

## **INTERSTATE SYSTEM REQUIREMENTS**

- A. 23 U.S.C. § 111, 23 U.S.C. § 131, 23 CFR § 625.4(a)(2), 23 CFR § 710.405, 23 CFR part 752, 23 CFR part 771
- B. Direct recipient will not add any points of access to, or exit from, the project in addition to those approved by FHWA in the plans for such project, without prior approval by FHWA. (23 U.S.C. § 111).
- C. Direct recipient will not permit automotive service stations or other commercial establishments for serving motor vehicle users. (23 U.S.C. § 111).
- D. Prior to allowing any change in access control or other use or occupancy or other use or occupancy of acquired property along the Interstate, the direct recipient shall secure approval from FHWA for such changes or use. 23 CFR § 710.401.
- E. The direct recipient must assure that all real property within the boundaries of a federally funded facility is devoted exclusively to the purpose of that facility and is preserved free of all other public or private alternative uses, including advertising. (23 CFR § 1.23).
- F. For property it owns, the direct recipient, upon prior FHWA approval may grant rights for temporary or permanent occupancy or use of Interstate system airspace, if the direct recipient has acquired sufficient legal right, title and interest in the right-of-way; where such air space is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. (23 CFR § 710.405(c)).

- G. The direct recipient may permit the placement of vending machines in rest areas located on the right-of-way of Interstate system for the purpose of dispensing such food, drink, or other articles. No charge to the public may be made for goods and services at safety rest areas except for telephones and articles dispensed by vending machines. (23 USC § 131(c)(5) and 23 CFR § 752.5).

## **TOLLING**

- A. All highways, bridges and tunnels constructed under the provisions of title 23, United States Code, must be free from tolls of all kinds unless the project fits the statutory criteria for an exception in one of the 6 federal toll programs.
- B. The toll exceptions generally require the execution of a toll agreement between the Secretary and the direct recipient limiting the use of toll revenues to debt service, reasonable return on investment to a private party financing the project, and operations and maintenance. If there are any revenues collected in excess of these uses, then a provision may be included in the toll agreements under all but 2 of the toll programs (Interstate Reconstruction and Interstate Construction) allowing the direct recipient to use excess toll revenues for any other title 23, U.S.C., eligible purpose.
- C. All programs, except the Express Lanes Demonstration Program (ELDP) and the Value Pricing Pilot Program (VPPP), expressly require the State DOT to be a signatory to the agreement and this would apply even if another entity is the direct recipient. FHWA practice under the ELDP has been to require the State DOT to be a signatory since the Federal funds for the project were made available to the public authority through the State DOT; a non-State direct recipient in the ELDP would substitute for the State. States have been signatories to all agreements under the VPPP involving tolling since VPPP slots have been allocated to the State DOTs (Federal law limits the VPPP to 15 slots); States would continue to be required signatories where there is a non-State direct recipient unless that direct recipient also holds its own VPPP slot.

## **PLANNING, ENVIRONMENT, AND RIGHT-OF-WAY**

### **1. Metropolitan and Statewide Transportation Planning**

- A. 23 U.S.C. §§ 134-135 and 23 CFR Part 450
  - i. The direct recipient coordinates with FHWA, MPO, State DOTs and others to ensure inclusion of the project(s) in a fiscally-constrained long range transportation plan and TIP/STIP; and to meet all applicable Clean Air Act requirements for the plan and

TIP in air quality nonattainment and maintenance areas (see Clean Air Act requirements below.)

## 2. Environment

- A. National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. § 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982 and implementing regulations at 40 CFR Part 1500 *et seq.* and 23 CFR Part 771), 23 U.S.C. § 139, and 23 U.S.C. § 109(h).
- i. Entities that are the project sponsor and direct recipient of Title 23 funds serve with FHWA as mandatory joint lead agencies (note that if other entities contribute Federal-aid funding to the project, it may result in joint lead agency status for that entity as well). The non-Federal mandatory joint lead entity may prepare the required environmental documents in cooperation with, and under the independent oversight of, the FHWA. Environmental review process decision-making is consensus-based, but the FHWA is ultimately responsible for the NEPA process and Federal decisions arising out of that process. For example, FHWA makes decisions on the adequacy of the environmental documents and selection/approval of alternatives evaluated in the environmental documents.
  - ii. Front-end administrative requirements include determining roles and responsibilities of FHWA and the non-State DOT direct recipient; among the issues to be addressed are the direct recipient's capability to prepare environmental documents and the level of participation/oversight needed from FHWA.
  - iii. Roles for the cooperating agencies shall be developed in accordance with the provisions of 40 CFR § 1501.6 (Cooperating Agencies).
  - iv. Requires FHWA approval of direct recipient's public hearing/public involvement program (23 U.S.C. § 128 and 139, 23 CFR § 771.111(h)(1)).
  - v. For general technical assistance, see FHWA's *SAFETEA-LU Environmental Review Process (Public law 109-59) – Final Guidance* (November 15, 2006), <http://www.fhwa.dot.gov/hep/section6002/index.htm>.
- B. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) (23 U.S.C. § 138 and 49 U.S.C. § 303; 23 CFR Part 774)
- i. As the project applicant, the direct recipient will develop any required 4(f) documentation in cooperation with the FHWA (23 CFR 774.7(f)).

- ii. For general technical assistance, see FHWA's Section 4(f) guidance and Legislation website, <http://environment.fhwa.dot.gov/4f/4fguidance.asp>.
- C. Clean Air Act requirements -- General conformity and/or transportation conformity (depending on nature of projects)
- i. Clean Air Act § 176(c) (42 U.S.C. § 7506(c)) and implementing regulations: transportation conformity regulations at 40 CFR Parts 51 and 93; general conformity regulations at 40 CFR Parts 6, 51 and 93.
  - ii. The direct recipient is responsible for preparation of any required conformity analysis, and, in cooperation with FHWA and other transportation and air agencies, ensures all applicable Clean Air Act requirements are met. This includes, if applicable, a Federal conformity determination before the completion of the NEPA process and all the requirements specifically apply to transportation plan, program, and projects.
  - iii. For general technical assistance, legislation, and policy guidance on transportation conformity, see *FHWA Transportation Conformity website*:  
<http://www.fhwa.dot.gov/environment/conform.htm>

### **3. Property Acquisition, Relocation, Management, and Disposal of Excess or Surplus Properties**

- A. Uniform Relocation and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act) and related statutes and regulations (42 U.S.C. § 4601 et seq., 23 U.S.C. s. 108, 23 U.S.C. § 156, 23 CFR Part 201, 23 CFR Part 635, 23 CFR Part 710).
- B. The direct recipient is responsible for ensuring all project activities comply with Uniform Act and title 23 requirements, including pre-acquisition environmental review requirements.
- C. Front-end administrative requirements include assurances and certifications (42 U.S.C. § 4604, § 4630, and § 4655; 49 CFR § 24.4); ; procurement of any consultant services in conformity with 49 CFR § 18.36 (23 CFR § 710.201(g); and recordkeeping (23 CFR 710.201(f)). These include:
  - i. Providing information demonstrating that the organization is adequately staffed, equipped and organized to undertake right-of-way requirements in compliance with applicable laws and regulations; and
  - ii. Developing and submitting for FHWA approval a right-of-way operations manual describing the direct recipient's right-of-way organization, polices, and procedures (23 CFR 710.201).

- D. Advance acquisitions -- Particular consideration should be given to the limitations on the use of hardship and protective acquisitions (limitation on the number of parcels acquired, requirement for either an imminent development threat that would limit future transportation choices or the undue hardship on a particular property owner as compared to other owners based on health, safety, or financial reasons (23 CFR § 710.503(a) – (d)). Direct recipients may utilize early acquisition provisions, under which acquisitions are funded by the direct recipient and are potentially eligible for future Federal-aid reimbursement or credit, if all criteria are satisfied (23 U.S.C. § 108(c) and 23 CFR § 710.501).
- E. For general technical assistance, see *Office of Real Estate Services - Project Development Guide*, <http://www.fhwa.dot.gov/realestate/pdg.htm>.

**ATTACHMENT B – FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS**

## FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

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**1. INCORPORATION OF FEDERAL HIGHWAY ADMINISTRATION TERMS**

As used herein, the term “Agreement” shall also mean “Contract” and “Contractor” shall also mean “Consultant”. This Agreement is to be partially or wholly funded by the Federal Highway Administration (FHWA). As a result, this contract is subject to the provisions of these FHWA Requirements, and those set forth in Form FHWA-1273, attached and incorporated herein. In the event of any conflict between the provisions of these FHWA Requirements set forth below and Form FHWA-1273, the provision(s) of Form FHWA-1273 shall prevail.

Anything to the contrary herein notwithstanding, all FHWA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FHWA terms and conditions.

Each and every provision required by the FHWA 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 herein. If any provision of this Contract shall be such as to effect non-compliance with any FHWA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

**2. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FHWA issues a written determination otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by the FHWA.

**3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**4. ORGANIZATIONAL CONFLICT OF INTEREST**

## **FHWA Requirements**

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
  - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

## **5. CERTIFICATION - DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR

## FHWA Requirements

180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 C FR 180, S ubpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FHWA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.

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- E. The originals of any Certifications or correspondence relating hereto, that are not submitted with the bid, shall be sent by the Contractor to the Director of Procurement, Two Montgomery Street, Jersey City, NJ 07302.
- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FHWA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

### 6. **CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**

- A. Definitions as used in this Clause:
  - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
  - 2.) "Covered Federal action" means any of the following Federal actions:
    - a. The awarding of any Federal contract;
    - b. The making of any Federal grant;
    - c. The making of any Federal loan;
    - d. The entering into of any cooperative agreement; and
    - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
  - 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
  - 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
  - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
  - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
  - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

**B. Prohibition**

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
  - a. Agency and legislative liaison by own employees.
    - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
    - (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.

## FHWA Requirements

- (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
    - (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
    - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
  - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
    - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
    - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
    - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
  - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

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- (ii) For purposes of subparagraph B. 2.) b. ( i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
  - (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
  - (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.
- c. Reporting for Own Employees.
- No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- d. Professional and Technical Services by Other than Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the

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preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. ( i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

### C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled

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"Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
  - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

### D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

### E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

**7. ACCESS TO RECORDS AND REPORTS**

The Contractor agrees to provide the Authority, the FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FHWA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

**8. CIVIL RIGHTS**

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
  - 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
  - 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

**9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FHWA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 U SC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

- A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.  
Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
  
- 2.)
  - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry;

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- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
  - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(i) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**B. Withholding**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.) a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Highway Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the

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Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
  - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Highway Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  
- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the

provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Highway Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000**

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 U SC 3701(b)(1)(B)(iii) and (b)(2), 29 C FR 5.2(h), 49 C FR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including

watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- C. Withholding for unpaid wages and liquidated damages  
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

## **12. SEISMIC SAFETY**

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C FR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

## **13. ENERGY CONSERVATION**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

## **14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

**15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

**16. FLY AMERICA**

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

**17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

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

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FHWA.

**18. PREFERENCE FOR RECYCLED PRODUCTS**

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

**19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C FR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**20. ADA ACCESS REQUIREMENTS**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

## 21. STANDARD CHANGED CONDITIONS CLAUSE

Notwithstanding the Extra Work provisions of this Contract, the following applies to all construction projects.

A. **Differing Site Conditions Clause** - This clause provides for the adjustment of the contract terms if the contractor encounters:

1. Type I Condition - subsurface or latent physical conditions that differ materially from those indicated in the contract, or
2. Type II Condition - unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work.
3. Some examples of potential Type I conditions include encountering the following: more rock than indicated in the contract, larger rock, rock that is harder to drill, permafrost when the boring had given no indication of its general extent, or unexpected quantities of underground water not indicated on the boring logs.
4. While these are potential Type I conditions, in order to receive compensation, the contractor must prove the following by a preponderance of evidence:
  - a. *"(1) the contract documents must have affirmatively indicated or represented the subsurface or latent physical conditions which form the basis of plaintiff's claim; (2) the contractor must have acted as a reasonably prudent contractor in interpreting the contract documents; (3) the contractor must have reasonably relied on the indications of subsurface or latent physical conditions in the contract; (4) the subsurface or latent physical conditions actually encountered within the contract area must have differed materially from the conditions indicated in the same contract area; (5) the actual subsurface conditions or latent physical conditions encountered must have been reasonably unforeseeable; and (6) the contractor's claimed excess costs must be shown to be solely attributable to the materially different subsurface or latent physical conditions within the contract site. To prove these six elements, the contractor is only required to use a simple logical process in evaluating the information in the contract documents to determine the expected subsurface or latent physical conditions..."* (Source: NCHRP, "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)
5. Some examples of a potential Type II conditions include unanticipated hazardous waste deposits or unanticipated archaeological sites.
6. To recover costs under a Type II condition, the contractor must prove:
  - a. *"(1) that it did not know about the condition; (2) that it could not have reasonably anticipated the condition after a review of the contract*

*documents, a site inspection, and the contractor's general experience in that area; and (3) that the condition was unusual because it varied from the norm in similar construction work."*  
(Source: NCHRP "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)

7. Further guidance for design and construction engineers on Differing Site Conditions can be found in FHWA's Geotechnical Engineering Notebook, Geotechnical Guidelines No. 15, dated April 30, 1996. (See <http://www.fhwa.dot.gov/bridge/gt-15.pdf>).

**B. Suspensions of Work Ordered by the Engineer** - This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the Engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the Engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

1. This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. These are delays caused by the owner's instructions that are not in writing. The contractor may receive verbal orders from the engineer, or be delayed by the owners' lengthy review of submittals. Some states recognized constructive delays in their specifications prior to the FHWA regulation. The preamble to the regulation indicates that states may continue to recognize construction delays if this is provided in their standard specifications and contract administration procedures.
2. To qualify for an adjustment, suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

**C. Material Changes in the Scope of the Work** - This clause provides for the adjustment of the contract terms if the Engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term "significant change" shall be construed to apply only to the following circumstances:

1. the altered character of the work differs materially from that of the original contract, or
2. a major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed).

3. This clause provides for adjustments resulting from formal change orders by the Engineer, in writing, to the extent that the impacted work is part of the contract. Either party may initiate an adjustment and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

## **22. BUY AMERICA**

By submitting a proposal, or executing a contract, hereunder, Contractor certifies compliance with 23 U.S.C. 313, which sets forth the FHWA Buy America requirements: all steel and iron used in Federally funded construction projects must be domestic. All foreign steel and iron materials and products are covered by Buy America regardless of the percentage they comprise in a manufactured product or the form they may take.

See the regulations at 23 CFR 635.410 for more information on compliance, including the some latitude through minimum use, waivers, and alternate bids.

**CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352**

The undersigned

\_\_\_\_\_  
(name of authorized officer)  
certifies, to the best of my knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 2012

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

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



## FHWA REQUIREMENTS

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

\_\_\_\_\_, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 2009 \_\_\_\_\_.

\_\_\_\_\_  
**BY SIGNATURE OF AUTHORIZED OFFICIAL**

\_\_\_\_\_  
**NAME AND TITLE OF AUTHORIZED OFFICIAL**

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -  
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

**ATTACHMENT C – FORM FHWA-1273 – REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

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

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

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## STANDARD CONTRACT TERMS AND CONDITIONS

### PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted, "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

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

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

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

Director - shall mean the Director of the Department which operates the facility of the Port Authority 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.

Manager - shall mean the Manager of the Facility for the time being or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority's Manager, Purchasing Services Division. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

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.

"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.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

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

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

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.

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.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

## **PART II GENERAL PROVISIONS**

### **1. Facility Rules and Regulations of The Port Authority**

- 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 facility Rules and Regulations of the Port Authority 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 the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority 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 facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

### **2. Contractor Not An Agent**

This Agreement does not constitute the Contractor the agent or representative of the Port Authority 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 the Port Authority.

### 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 Commissioner, officer, agent or employee of the Port Authority 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, its 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, 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, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority 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 the Port Authority 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 the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

#### **4. Personal Non-Liability**

Neither the Commissioners of the Port Authority 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, this Contract may be cancelled, terminated or suspended in whole or in part.

#### **6. Rights and Remedies of the Port Authority**

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- 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, 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 statement by the Contractor to any representative of the Port Authority indicating that the Contractor 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 the Port Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop 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 the Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority 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 Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, 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 the Port Authority, 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 the Port Authority 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 the Port Authority (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 best 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 the Port Authority, 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 the Port Authority, 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, the Port Authority 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 the Port Authority 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 the Port Authority deems necessary and without cost to the Port Authority. 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 the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority 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 the Port Authority 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.

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 the Port Authority and the public as may be directed by the Port Authority.

## **10. Claims of Third Persons**

The Contractor undertakes to pay all 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 the Port Authority, 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 the Port Authority 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 the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

### **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 the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation 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 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. 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. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, 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 Port Authority 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 promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (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 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, the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority 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 the Port Authority and the Contractor (including its obligation to 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 the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between 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 the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority 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, the Port

Authority 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 the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority 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 the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If the Port Authority 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 the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority 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**

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. 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 the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

#### **16. No Estoppel or Waiver**

The Port Authority 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 the Port Authority 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 the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority 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.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

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 general manager or the Facility 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 the Port Authority of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority 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. General Obligations**

- a. 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 Manager at the Facility.

- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.
- c. 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.
- d. 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 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 Manager.
- e. 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.

The Contractor shall not do or permit to be done any act which:

- 1. 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
  - 2. 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
  - 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
  - 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
  - 5. 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
  - 6. 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.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority 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 the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
  - g. 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 the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe

manner.

- h. 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.

## **19. Assignments and Subcontracting**

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

## **20. Indemnification and Risks Assumed By The Contractor**

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, the Port Authority, third persons (including Contractor's employees, employees, officers, and agents of the Port Authority), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority 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. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority 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 the Port Authority, 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, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

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 the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority 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 or environmental impairment arising out of its operations.

## **21. Approval of Methods**

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority 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.

## **22. 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 Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

## **23. Accident Reports**

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority 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 the Port Authority 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 the Port Authority.

#### **24. 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 Facility 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 the Port Authority. No equipment or facilities of the Port Authority 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.

#### **25. 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 the Port Authority and a receipt will be issued therefor.

#### **26. 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 the Port Authority 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 the Port Authority; 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 the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

#### **27. Modification of Contract**

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

#### **28. 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.

#### **29. Approval of Materials, Supplies and Equipment**

Only Port Authority 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 Port Authority Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Manager of the Facility.

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 the Port Authority. Any alternate product so approved by the Port Authority 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.

### **30. Intellectual Property**

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor’s or Port Authority’s use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

### **31. Contract Records and Documents – Passwords and Codes**

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 the Port Authority, and the Port Authority 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

the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

### **32. Designated Secure Areas**

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Manager during the term of the Contract.

### **33. Notification of Security Requirements**

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise poses a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Contractor/ Subcontractor identity checks and background screening

The Port Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like.

The Contractor may be required to have its staff, and any subcontractor's staff, material-men, visitors or others over whom the Contractor/subcontractor has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Contractor and subcontractors may also be required to use an organization designated by the Authority to perform the background checks.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense

as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person will be permitted on or about the Authority construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the authority requires facility-specific identification credential for the Contractor's and the subcontractor's staff, the Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractor to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor shall be billed for the cost of the replacement identification credential. Contractor's and subcontractor's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identify and SSN verification. Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractors shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority information considered Confidential Information ("CI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of February, 2009, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of CI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to CI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

- (1) require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to CI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

- (3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;
- (4) specific guidelines and requirements for the handling of CI to ensure that the storage and protection of CI;
- (5) restrictions on the transfer, shipping, and mailing of CI information;
- (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing CI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to CI, from viewing such information;
- (7) require that CI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
- (8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority awarded contract.
- (9) prohibit the publication, exchange or dissemination of CI developed from the project or contained in reports, except between Contractors and subcontractors, without prior approval of the Port Authority;
- (10) require that CI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- Audits for Compliance with Security Requirements

The Port Authority may conduct random or scheduled examinations of business practices under this section entitled "NOTIFICATION OF SECURITY REQUIREMENTS" and the Handbook in order to assess the extent of compliance with security requirements, Confidential Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

### **34. 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.

### **35. Permit-Required Confined Space Work**

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority 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 Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority 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 the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

### **36. Signs**

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

### **37. Vending Machines, Food Preparation**

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. 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 the Port Authority for such purpose.

### **38. Confidential Information/Non-Publication**

a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Contractor's Services under this Contract.

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract."

d. The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority 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 the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

**39. 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.

**40. 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             | Veterans Day           |
| Memorial Day               | Thanksgiving Day       |
| Independence Day           | Day After Thanksgiving |
| Christmas Day              |                        |

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the 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.

**41. 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 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 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 Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

**42. 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 Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The 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.

#### **43. 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.

The Port Authority 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 the Port Authority 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.

#### **44. Contractor's Vehicles – Parking - Licenses**

At the discretion of the Manager, the Port Authority 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 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 the Port Authority 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 Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

#### **45. Manager's Authority**

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the 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 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 Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

## **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 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 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 employee or former Authority 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.

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 which 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. As a result of such disclosure, the Port Authority 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 the Authority 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 the Authority and that the Authority will rely on their truth and accuracy in awarding this Contract. In the event that the Authority 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, the Authority 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 Authority 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 the Authority 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 the Port Authority, 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 the Port Authority.

### **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 the Authority 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 the Authority'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 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 of duties involving transactions with the Contractor on behalf of the Port Authority, 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 contract), etc. which might tend to obligate the Port Authority 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 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 the Authority) to which it is contemplated the Port Authority 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 the Port Authority 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 the Authority, 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 in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, 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 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 to be no longer appropriate because of such preclusion, then the Director 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 the Authority 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.