

INVITATION FOR BIDS

Groundwork Preparation for New Track On NYSW Railway Northern Division Cortland County, NY

The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, New York 13326

March 2024

TABLE OF CONTENTS

Section

- 1. ADVERTISEMENT TO BID**
- 2. INFORMATION FOR BIDDERS**
- 3. BID DOCUMENTS**
- 4. NYS CIVIL RIGHTS MONITORING AND REPORT**
- 5. AGREEMENT**
- 6. REQUIREMENT TO BUY AMERICAN**
- 7. SCOPE OF WORK**
- 8. GENERAL CONDITIONS**
- 9. INFORMATION REQUIRED FOR WORK ON CNY/NYSW RIGHT-OF-WAY**

Section 1

ADVERTISEMENT TO BID

ADVERTISEMENT TO BID

Bids will be received by the undersigned for
**Groundwork Preparation for New Track
On NYSW Railway Northern Division
Cortland County, New York**

A SIGNED Bid Form must be delivered to said office via USPS, Overnight Service, or in-person delivery to The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, New York 13326 no later than May 3, 2024 at 4:00 pm. Bids may be received by US Mail, UPS or FedEx, or delivered in person.

There will be a mandatory pre-bid meeting on April 10, 2024 at 10:00 am at Little York Road, Town of Homer, NY at 42.695419, -76.154674. The closest address is 1813 Little York Crossing Road, Homer, NY 13087 (K&H Motor Sports)

This project is partially funded by the New York State Department of Transportation. Contract DR38937, Project Identification #3935.80.301. To bid on this project your company must have a valid and current business license issued by the State of New York. You will be required to provide a Performance and Payment Bond in an amount equal to the value of the contract.

To be eligible, Bidders must provide a copy of their FRA 219 Drug & Alcohol Testing Plan along with the acceptance of their plan by the Federal Railroad Administration with their bid form.

To be eligible, Bidders must provide proof of proper CFR 49 Part 243 training and qualifications. Training must include NORAC Electronic Device Rules. Bidder must provide a list of all employees certified for NYSW records. This will be required for all field employees working on NYSW tracks.

To be eligible, Bidders must provide proof of registration with New York State Equitable Business Opportunities (EBO) System. The contractor must have experience with either meeting Minority and Women's Business Enterprises Goals or acquiring a good faith exemption. This project is subject to the following goals: Minority Business Enterprise 8%, Women's Business Enterprise 15%.

Estimated notice to proceed is June 15, 2024. All Bidders shall submit their Bid based on completing the work by July 26, 2024. Submittal of a Bid is acknowledgment that the Bidder understands that the Bid is to complete all Work on time, including all construction, clean-up and demobilization, no later than July 26, 2024.

Within five (5) business days of notification of preliminary acceptance, the Bidder shall submit a Construction Schedule showing the dates the various work tasks will begin and be completed. The schedule shall show all applicable major work items, submittals, critical path items, and

milestones. Final award of the contract is subject to NYSW's acceptance of the Construction Schedule.

The right is reserved by The New York, Susquehanna and Western Railway Corporation to waive any informality and reject any or all bids.

Derek Winchester
VP - Engineering
The New York, Susquehanna and Western Railway
1 Railroad Avenue
Cooperstown, New York 13326
dwinchester@nysw.com
607-544-4108

Dated: March 1, 2024

Section 2

INFORMATION FOR BIDDERS

INFORMATION FOR BIDDERS

1.	SCOPE OF WORK	IFB-1
2.	RECEIPT AND OPENING OF BIDS	IFB-1
3.	PREPARATION OF BID	IFB-1
4.	SUBCONTRACT	IFB-1
5.	ADDENDA AND INTERPRETATIONS	IFB-2
6.	SALES AND COMPENSATING USE TAX	IFB-2
7.	QUALIFICATION OF BIDDER	IFB-2
8.	POST-BID INFORMATION	IFB-3
9.	AWARD OF CONTRACT	IFB-3
10.	REQUIRED BONDS	IFB-4
11.	REQUIRED CERTIFICATES	IFB-4
12.	NON-DISCRIMINATION IN EMPLOYMENT	IFB-4
13.	NON-COLLUSIVE BIDDING CERTIFICATE	IFB-4
14.	ESCALATION OF COST	IFB-4
15.	NOTICE OF SPECIAL AND SUPPLEMENTAL CONDITIONS	IFB-5
16.	LAWS AND REGULATIONS	IFB-5
17.	OBLIGATION OF BIDDER	IFB-5
18.	TIME OF COMPLETION	IFB-5
19.	CONDITION OF WORK	IFB-5
20.	SITE LOCATION	IFB-5
21.	NEW YORK STATE STANDARD SPECIFICATIONS	IFB-5
22.	PRE-BID CONFERENCE	IFB-6
23.	LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT	IFB-6
24.	IRAN DIVESTMENT ACT	IFB-6
25.	SUBCONTRACTORS	IFB-7
26.	VARIATIONS	IFB-7
27.	FEDERAL RAILROAD ADMINISTRATION PART 219	IFB-7
28.	FEDERAL RAILROAD ADMINISTRATION ROADWAY WORKER PROTECTION	IFB-8
29.	RECORDS AND DOCUMENTS/RIGHT TO AUDIT	IFB-8
30.	PREVAILING WAGE NOT REQUIRED	IFB-8

1. SCOPE OF WORK

The work to be performed under this Contract consists of furnishing all tools, materials, labor, bonds, insurance, supervision, and the performance of all work necessary to perform the scope of work as indicated in PART 7. SCOPE OF WORK of the Bid Package Documents.

2. RECEIPT AND OPENING OF BIDS

Bids will be received by the Railway on the date and time specified in the Advertisement of Bids. If delivered by USPS, delivery service, or in person, the envelope containing each bid must be sealed and addressed to:

Derek Winchester, VP-Engineering & Signals
Central New York Railroad Corporation
1 Railroad Avenue
Cooperstown, New York 13326

The Railway may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No Bidder may withdraw its bid within 45 days after the actual date of the opening thereof.

3. PREPARATION OF BID

- (A) Each bid must be submitted on the prescribed form.
- (C) Bids may be received by email, USPS/UPS/FedEx, any private delivery service, or in person. The sealed envelope containing the bid must be enclosed in another envelope and clearly marked with the name and address of the Bidder, the name of the project, and labeled "**Bid Proposal**".
- (D) Bids that are illegible or that contain omissions, alterations, additions, or items not called for in the Bidding Documents may be rejected as informal. In the event any Bidder modifies, limits, or restricts all or any part of the bid in a manner other than that expressly provided for in the Bidding Documents, that bid will be rejected as informal.
- (F) Permission will not be given to modify, explain, withdraw, or cancel any bid or part thereof after the time designated in the Bidding and Contract Documents for the opening of bids.

4. SUBCONTRACT

The Bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the Railway.

The Contractor shall submit for approval a list of subcontractors showing the work assigned to each, and no subcontract for any part of the work shall be awarded to any party not acceptable to the Engineer and approved by him. Such approval shall not release or relieve the Contractor from any of his obligations and liabilities under this contract. Upon written request of the Engineer, the Contractor shall terminate employment on this work of any subcontractor who shall, in the opinion of the Engineer, fail to perform the work undertaken by him in a satisfactory manner and appropriate provisions to this effect shall be incorporated, by reference in all subcontracts and the Contractor shall furnish to the Engineer a written

statement, properly endorsed by the subcontractor in question, that this has been done, before any subcontractor shall begin work.

5. ADDENDA AND INTERPRETATIONS

No interpretations of the meaning of the Scope of Work or Specification, or other pre-bid documents will be made to any Bidder orally. Every request for such interpretation should be sent by email to:

Derek Winchester, VP-Engineering & Signals
E-mail: dwinchester@nysw.com

and, to be given consideration, must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be emailed, not later than three (3) days prior to the date fixed for the opening of bids. Failure of any Bidder to receive any such Addenda or interpretation shall not relieve such Bidder from any obligation under its bid as submitted. All Addenda so issued shall become part of the Contract Documents.

6. SALES AND COMPENSATING USE TAX

(A) SALES AND COMPENSATING USE TAX EXEMPTION FOR MATERIALS SOLD TO RAILWAY

The Railway is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties on all supplies and materials sold to the Railway pursuant to this Contract. This exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to the Contractor or a subcontractor or to the supplies and materials not incorporated into the completed project. The Contractor and its subcontractors shall be responsible for any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment, and other property.

(B) SALES AND COMPENSATING USE TAX FOR MATERIALS PURCHASED FOR RESALE

The purchase by the Contractor or by its subcontractors of supplies and materials sold hereunder will be a purchase for resale and therefore not subject to the New York State Sales and Compensating Use Taxes or any such taxes of cities or counties. The Contractor or its subcontractor, at the request of the Railway, shall furnish to the Railway such bills of sale and other instruments as may be required by the Railway, properly executed, acknowledged and delivered, assuring to the Railway title to such supplies and materials free of encumbrances. The Contractor or its subcontractor shall mark or otherwise identify all such supplies and materials as the property of the Railway. All subcontractor agreements shall provide for resale of such supplies and materials prior to and separated and apart from the incorporation of such supplies and materials into the permanent construction.

7. QUALIFICATION OF BIDDER

The Railway may make such investigations as is deemed necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Railway all such information and data for this purpose as the Railway may request. The Railway reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Railway that such a Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein. Conditional bids will not be accepted.

8. POST-BID INFORMATION

Within five (5) days of the bid opening, the apparent low Bidder acceptable to the Railway shall furnish, in writing, the following information to the Railway:

- (A) Statement that project can be completed within established time.
- (B) The proportion of the work to be performed by the Bidder with the Bidder's own forces.
- (C) A list of subcontractors (other than suppliers) with their qualifications to perform the work.
- (D) Preliminary progress schedule showing dates for major elements of construction and dates by which major sub-contracts will be awarded.

9. AWARD OF CONTRACT

- (A) The award of the Contract shall be made to the lowest bidder, who, in the opinion of the Railway, is qualified to perform the work required and is responsible and reliable. The lowest bid shall be determined by the Railway on the basis of the total amount bid per unit of the least number of dollars. In determining the lowest responsible Bidder - absent prequalification and assuming the existence of a responsive bid - the Railway and the Engineer will consider the Bidders' expertise, financial capacity, general reputation, past performance on similar jobs, and other comparable factors, all with a view to selecting the Contractor who will perform the work properly, at the lowest price and the least administrative cost to the Railway.
- (B) Subject to the right hereinafter reserved, the work will be awarded within forty-five (45) calendar days after the opening of bids to a single responsible Bidder or any combination of Bidders whose bid conforms to the requirements of the Bidding Documents.
- (C) The right is reserved, as the interest of the Railway may require, to reject any bid or all bids and to waive any informality in any bid received. Without limiting the generality of the foregoing:
 - 1. A bid may be rejected if the Bidder failed to furnish or to submit the data required with, or after, the bid.
 - 2. A bid may be rejected if the Bidder cannot show to the satisfaction of the Railway (a) that the Bidder has the necessary capital, skill, and experience; or (b) that the Bidder owns, controls, or can procure the necessary plant and equipment to commence the work at the time prescribed in the Contract and thereafter to prosecute and complete the work at the rate, or within the time, specified; or (c) that the Bidder is not already obligated by the performance of so much other work as would be likely to delay the commencement, prosecution, or completion of the work contemplated by the Contract.
 - 3. A bid, if it does not provide for the completion in the time specified, will be rejected.
- (D) The Railway also expressly reserves the right to reject any bid, if, in the Railway's opinion considering the work to be performed, the facts (as to the Bidder's business or technical organization, plant, financial, and other resources or business experience compared with the work bid upon) justify rejection.
- (E) The award of the Contract shall not be construed as a guarantee by the Railway that the personnel, equipment, and the general scheme of operations and other data submitted by the Bidder, with or after the bid, is either adequate or suitable for the satisfactory performance of the work.

10. REQUIRED BONDS

- (A) Within ten (10) calendar days after the receipt of Notice of Award, the Contractor shall procure, execute, and deliver to the Railway and maintain, at the Contractor's own cost and expense, a Performance Bond and a Labor and Material Bond - both of which bonds shall be on the form prescribed by the Railway and in an amount not less than 100% of the total amount of the Contract awarded to the Contractor by the Railway. Said bonds must be issued by a surety company, approved by the Railway and authorized to do business in the State of New York as a surety.
- (B) Attorneys-in-fact who execute said bonds on behalf of a surety must affix thereto a certified and effectively dated copy of the power of appointment.

11. REQUIRED CERTIFICATES

The Contractor and its subcontractors and material men are required to obtain all necessary exemption certifications from the Railway and to furnish a resale certificate to all persons, firms, or corporations from which they purchase supplies and materials in performance of work under this Contract.

12. NON-DISCRIMINATION IN EMPLOYMENT

Contracts for work under this proposal will obligate the Contractors and their subcontractors not to discriminate in employment practices.

Bidders must submit with their initial bid a signed statement as to whether they have previously performed work subject to the President's Executive Order Nos. 10925, 11114 or 11246.

Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the award of the Contract.

Successful Bidders must, if requested, submit a list of all subcontractors who will perform work on the project and written signed statements from authorized agents of the labor pools with which they will or may deal for employees on the work together with supporting information to the effect that said labor pools' practices and policies are in conformity with Executive Order No. 11246 and that said labor pools will affirmatively cooperate in or offer no hindrance to the recruitment, employment, or equal treatment of employees seeking employment and performing work under the Contract or a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same prior to the award of the Contract.

Successful Bidders must be prepared to comply in all respects with the non-discrimination provisions to be found on the reverse of the Labor Standards Contracts Provisions (January 1967).

13. NON-COLLUSIVE BIDDING CERTIFICATE

All Contractors bidding under the provisions of the Specifications are subject to provisions of Section 103-d of the General Municipal Law (GMU) of the State of New York. A signed non-collusive certification is required to be submitted with each bid in the form specified with the bid documents.

14. ESCALATION OF COST

The Contractor will not be entitled to extra reimbursement due to escalation of cost for inflation.

15. NOTICE OF SPECIAL AND SUPPLEMENTAL CONDITIONS

The Contractor's attention is particularly called to those parts of the Contract Documents and Specifications which deal with the following:

- (A) Insurance Requirements
- (B) Contract Requirements
- (C) Standard Clauses for all New York Contracts
- (D) Minority and Women Owned Business Utilization
- (E) Technical Specifications
- (F) Completion Date

16. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable State and Federal laws, OSHA Regulations, FRA Regulations, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout. They will be deemed to be included in the Contract the same as though herein written out in full.

17. OBLIGATION OF BIDDER

At the time of the opening of bids, each Bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Plans and Contract Documents (including all Addenda). The failure or omission of any Bidder to examine any form, instrument, or document shall in no way relieve any Bidder from any obligation in respect to its bid.

18. TIME OF COMPLETION

Bidder must agree to commence work on or before a date to be specified in a written "Contractor Schedule of Work" and to fully complete the project within the time specified in the Agreement.

19. CONDITIONS OF WORK

Each Bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve the successful Bidder of the obligation to furnish all materials and labor necessary to carry out the provisions of the Contract. Insofar as possible, the Contractor, in carrying out the work, must employ such methods and means as will not cause any interruption of or interference with the operation of the existing facilities.

20. SITE LOCATION

North of Little York Road, Town of Homer, NY at 42.695419, -76.154674, NYSW Railway MP 241.61.

21. NEW YORK STANDARD SPECIFICATIONS

The prospective Contractor's attention is called to the fact that portions of the New York Department of Transportation, Office of Engineering, New York State Standard Specifications dated May 1, 2008, as amended, may be referenced in the Technical Specification Section. Those sections referenced shall be considered an integral part of the Contract Documents. The Administrator and/or his agents shall be substituted for the Commissioner of Transportation and/or his agents wherever referenced in the NYSDOT Standard Specification. These specifications, and their addenda, are available on the NYSDOT web-site, <https://www.dot.ny.gov/main/business-center/engineering/specifications/2008-standard-specs-us>.

Where sections of the State Specification are referenced, they are for material specification, testing and where specifically referenced construction techniques only. Methods of measurement and payment shall be as described in the Technical Specification Section of these Contract Specifications. Where there is a conflict between the NYSDOT Standard Specification and the Technical Specification Section, the Technical Specification Section shall govern.

The American Railway Engineering & Maintenance-of Way Association (AREMA) specifications may also be referenced in the Technical Specification Section. Those sections referenced shall be considered an integral part of the Contract Documents. This "Manual for Railway Engineering" can be purchased from the American Railway Engineering & Maintenance-of Way Association, 50 F Street, NW, Washington, D.C. 20001 (202-639-2190). A downloadable PDF version is available for purchase at https://www.arema.org/AREMA_MBRR/AREMA_MBRR/AREMAStore/MRE.aspx.

The U.S. Department of Transportation's Track Safety Standards (FRA Title 49, Part 213) may be referred to in the specifications and those sections referenced shall be considered an integral part of the Contract Documents. This booklet can be purchased from The Railway Educational Bureau, 1809 Capitol Avenue, Omaha, Nebraska 68102 (402-346-4300) or on-line at the Electronic Code of Federal Regulations e-CFR at https://ecfr.io/Title-49/cfr213_main.

22. PRE BID CONFERENCE

There will be a mandatory pre-bid meeting on April 10, 2024 at 10:00 am at Little York Road, Town of Homer, NY at 42.695419, -76.154674. The closest address is 1813 Little York Crossing Road, Homer, NY 13087. (K&H Motor Sports)

23. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Railway, as liquidated damages for such failure or refusal, the security deposited with his bid.

24. IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list.

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYS DOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or

declaring the Contractor in default.

NYSDOT reserves the right to reject any request for a contract for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

25. SUBCONTRACTORS

The Contractor shall submit for approval a list of subcontractors showing the work assigned to each, and no subcontract for any part of the work shall be awarded to any party not acceptable to the Engineer and approved by him. Such approval shall not release or relieve the Contractor from any of his obligations and liabilities under this contract. Upon written request of the Engineer, the Contractor shall terminate employment on this work of any subcontractor who shall, in the opinion of the Engineer, fail to perform the work undertaken by him in a satisfactory manner and appropriate provisions to this effect shall be incorporated, by reference in all subcontracts and the Contractor shall furnish to the Engineer a written statement, properly endorsed by the subcontractor in question, that this has been done, before any subcontractor shall begin work.

26. VARIATIONS

Undetermined conditions may require a variation. Minor variations in the lump-sum items of work shall not constitute extra work and no extra payment will be allowed therefore. If the actual quantity of any major item overruns or underruns the original bid quantity by more than 125% of such original bid quantity, an increase or decrease in the Contract unit price may be authorized by the Engineer in accordance with these provisions. (A major item shall be construed to be any item, the total cost of which is equal to or greater than 110% of the total Contract amount, computed on the basis of the Proposal quantity and the Contract unit price.) Revised Contract unit prices pertaining to overruns of Contract items will be applicable only to that portion of the overrun which is in excess of 125% of the original bid quantity. Revised Contract unit prices pertaining to underruns of Contract Items will be applicable to the entire quantity of the affected Contract item. Work under all items in the Contract must be carried out to meet the field conditions to the satisfaction of the Engineer and in accordance with his/her instructions and the Contract Specifications.

The Contractor assumes all risk of variance in any computation or statement of amounts or quantities necessary to complete the work required by the Contract by whomsoever made, and fully complete said work in accordance with the Contract Plans and Specifications for the price bid.

27. FEDERAL RAILROAD ADMINISTRATION PART 219

Any person performing work at the project site who is classified as a Railroad Roadway Worker will be considered to be performing **Part 219 “regulated service”** and is subject to “control of drug and alcohol abuse.” The regulation mandates testing as follows:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

Definition of Roadway Worker:

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery

on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section.

A contractor who must establish a random testing program for its regulated service employees must provide RAILWAY with a copy of the program and a copy of the approval from the Federal Railroad Administration.

28. FEDERAL RAILROAD ADMINISTRATION ROADWAY WORKER PROTECTION

Any person performing work at the project site must be trained in the rules of Roadway Worker Protection. (Title 49. Transportation Subtitle B. Other Regulations Relating to Transportation Chapter II. FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION Part 214. RAILROAD WORKPLACE SAFETY Subpart C. Roadway Worker Protection)

Bidders must provide proof of proper Roadway Worker Training (RWT) Certification. Bidder must provide a list of all employees certified for RAILWAY Records. This will be required for all field employees working on RAILWAY.

29. RECORDS AND DOCUMENTS/RIGHT TO AUDIT

Contractor shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to the Contract. For a period of ten (10) years from the date of submission of the final bill by the Contractor, the books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Contract shall be available to the New York State Department of Transportation Commission or the New York State Controller, or their authorized representatives, for inspection and audit. All costs charged under this Contract shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

30. PREVAILING WAGE RATES

NYS Prevailing Wage Rates are not required.

Section 3

BID DOCUMENTS

BID FORM

Date: _____

Proposal of:

to furnish labor, equipment, for

**Groundwork Preparation for New Track
On NYSW Railway Northern Division
Cortland County, New York**

**To: Derek Winchester, VP-Engineering
The New York, Susquehanna and Western Railway
1 Railroad Avenue
Cooperstown, New York 13326**

The undersigned Bidder has carefully examined the site of the work, is familiar with existing conditions, and has carefully examined the Scope of Work, Specifications, Contract Documents, and Addenda covering the Groundwork Preparation for New Track and will provide all necessary insurance, bonds, machinery, tools, apparatus, falsework, temporary service, and other means of construction, and do all the work and furnish all the materials called for by said Contract according to the bid. The price is to be shown in both words and figures. In the event of discrepancies, the amount shown in words shall govern. All items are to be furnished and installed in place complete.

The undersigned further understands the Contract will be awarded to the competent, qualified Bidder submitting the lowest bid for the Total Bid acceptable to the Owner, modified by such additive or deductive alternatives, if any, as are accepted.

ADDENDA ACKNOWLEDGMENT

Addenda No.

Date Received

The New York, Susquehanna and Western Railway Corporation

**BID FORM
Groundwork Preparation for New Track**

Item #	Cortland		Total Bid
1	Clear existing vegetation within the project limits and Railroad ROW as necessary to construct the proposed project.	Lump Sum	
2	Survey proposed project: for construction purposes. Must be approved by NYSW before construction. Guidelines in scope of work.	Lump Sum	
3	Place suitable excavation material generated within the project limits where required to construct the proposed roadbed to the lines and grades shown in the contract plans.	Lump Sum (300 Ton Estimate)	
4	Install 6" ballast layer.	Lump Sum (1,000 Ton Estimate)	
5	Equipment to install switches	Lump Sum	
6	Field Change Payment		\$75,000.00
7	Mobilization (4% Maximum)	Lump Sum	
		TOTAL	

The undersigned also agrees as follows:

1. The total contract price bid shall be accepted as full compensation for the complete work subject to additions or deductions in quantity or work performed or changes agreed upon.
2. Within ten (10) days from the date of "Notice of Acceptance" of the Proposal, to execute the contract and to furnish a satisfactory labor, material and performance bond in the amount of 100% of the contract price.
3. Within ten (10) days from the date of "Notice of Acceptance" of the Proposal, to execute the contract.
4. To complete the work in accordance of the Schedule of Project.
5. To comply with requirements as to the conditions of Minority and Women Owned Business Enterprise hiring.

Accompanying this proposal is a Certified Check or Bid Bond in the amount of

_____)
_____ (\$ _____)

payable to The New York, Susquehanna and Western Railway Corporation which is forfeited as liquidated damages if this proposal is accepted and the undersigned shall fail to execute the contract and furnish satisfactory contract bond under the conditions and within the time specified in the proposal, otherwise bid security will be returned to the undersigned.

Bidder: _____

By: _____

Address: _____

Dated: _____

CONR 391(8/94)
BID BOND
New York State Consolidated Laws
Hay – Highway, Article 3, Section 38

KNOW ALL MEN BY THESE PRESENTS, That
(Name of Contractor)
.....
(Address)

(hereinafter called the "Principal") and the
.....
a corporation created and existing under the laws and the State of....., having it's principal office in the city of.....(hereinafter called the "Surety") are held and firmly bound unto The New York, Susquehanna and Western Railway Corporation, in the full just sum of **Five (5%)*** of Attached Bid, good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal binds themselves (himself, itself), their (his, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:
Signed, sealed and dated this..... 20.....A.D.

WHEREAS, the said Principal has submitted to The New York, Susquehanna and Western Railway Corporation a proposal Groundwork Preparation for New Track.
AND

WHEREAS, under the terms of the Laws of the State of New York as above indicated, the said Principal has filed or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall promptly execute and submit, and The New York, Susquehanna and Western Railway Corporation shall accept, all required contract proposal documents including such faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal's said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her hand and seal and the said Surety has caused this instrument to be signed by its.....President and its.....Secretary, and its corporate seal to be hereunto affixed, the day and year first above written.
Signed, sealed and delivered in the presence of:

(Corporate seal of Principal if a corporation)(L.S.)
.....(L.S.)
.....(L.S.)
Principal

(Corporate seal of Surety Co.)Company of.....
By.....
(Title of Officer)
Attest.....
(Title of Officer)

*revised 9/12/08

NON-COLLUSION AFFIDAVIT
STATEMENT OF NON-COLLUSION IN BIDS OR PROPOSALS

Every bid or proposal hereafter made for work or services performed or to be performed, or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certifications:

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certified as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- “(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- “(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
- “(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

I further certify that I am authorized to sign and submit this bid and Non-Collusion Affidavit of this corporation for the following project:

Contractor

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me

this ____ day of _____, 2019

(SEAL OF CORPORATION)

(L.S.)

(Title)

Subscribed and sworn to before me this ____ day of _____, 2019

Seal of Notary

Notary Public

INSURANCE

The Contractor agrees, at his own cost and expense, to procure and maintain for a period of time until final acceptance by Railway of the work covered by this agreement, insurance coverage for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided with insurance companies acceptable to the Railway and authorized to do such business in the state(s) where the work is to be performed covering all operations under this contract.

Before commencing any work under this agreement, Contractor shall furnish to the Chief Engineer of the Railway the original and one copy of the Railway Protective Liability policy and the Owners' Protective Liability policy and in addition two (2) copies of certificate or certificates of insurance in form satisfactory to the Railway showing that Contractor has complied with this paragraph. All policies and certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the Chief Engineer of the Railway.

The kinds and amounts of insurance are as follows:

A. Workers Compensation and Employers' Liability

The Contractor shall procure and maintain (and assume the expense of) during the Contract time - in accordance with the provisions of the laws of the State of New York - Workers Compensation insurance, including the requirements of any Occupational Disease Law, Disability Benefits Law, and/or Employers' disability Law, for all of the Contractor's employees. In case any work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers Compensation insurance (including the requirements as stated above) for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees (engaged in hazardous work under this contract at the site of the project) is not protected under Workers Compensation statute, the Contractor shall provide - and shall cause each Subcontractor to provide - adequate and suitable insurance for the protection of those employees not otherwise protected. For purposes of the insurance policies enumerated above, employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

B. Statutory Disability Benefits – New York State

The Contractor shall procure and maintain (and assume the expense of) coverage which will pay the benefits to employees required under the Worker's Compensation Law of the State of New York, for off-the-job injury and for non-occupational disease.

C. Public Liability and Property Damage Insurance

A policy issued to and covering the liability for damages imposed by law upon the Contractor with respect to all work performed by him under this agreement which policy shall have minimum limits of \$2,000,000 combined single limit per occurrence and \$6,000,000 aggregate.

D. Automobile Liability Insurance

A policy covering all owned, non-owned and hired vehicles of Contractor engaged in or about the work with limits of not less than those in paragraph C above.

Note: For purposes of the insurance policies enumerated in paragraphs C and C employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

E. Protective Liability Insurance

Each policy shall have limits of not less than \$2,000,000 combined bodily injury and/or property damage liability for each occurrence with a \$6,000,000 aggregate limit for the term of the policy and shall be furnished in the following types:

(i) Railway Protective Liability Insurance

A policy issued to The New York, Susquehanna and Western Railway Corporation, covering the liability for damages imposed by law upon or incurred in any way by Railway or its affiliates or subsidiaries with respect to all operations under this agreement by the Contractor upon Railway's right-of-way.

(ii) Owner's Protective Liability Insurance

A policy issued to and covering liability for damages imposed by law upon The People of the State of New York, the Commissioner of Transportation and employees of the Commissioner of Transportation, both officially and personally, with respect to all work under this agreement by the Contractor, including omissions and supervisory acts of the State.

Note: For purposes of the insurance policies enumerated in paragraphs A, B, C and D, E(i) employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

F. It is understood and agreed by Contractor that the furnishing by it of the above insurance and the acceptance of same by Railway is not intended to and shall not limit, affect or modify the obligations of Contractor under any provisions of this agreement.

FEDERAL RAILROAD ADMINISTRATION PART 219

Any person performing work at the project site who is classified as a Railroad Roadway Worker will be considered to be performing **Part 219 “regulated service”** and is subject to “control of drug and alcohol abuse.” The regulation mandates testing as follows:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

Definition of Roadway Worker:

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section.

A contractor who must establish a random testing program for its regulated service employees must provide RAILWAY with a copy of the program and a copy of the approval from the Federal Railroad Administration.

Section 4

MINORITY AND WOMEN OWNED BUSINESS UTILIZATION

Minority and Women Owned Business Utilization

To be a responsible and/or responsive Bidder, your firm must meet the Minority Owned Business Enterprise (MBE) and Women Owned Business Enterprise (WBE) goal(s) on the contract or provide documentation to support **Good Faith Efforts** taken to meet these goal(s). Actions to meet the goal(s) should begin immediately upon a firm's intent to work for the NYS&W Railway on a project.

YOU MUST SIGN AND INCLUDE THIS NOTICE WITH YOUR BID PACKAGE.

MBE GOAL: 8% of the total project value.

WBE GOAL: 15% of the total project value.

The Bidder can meet this requirement during the pre-award stage in two ways:

1. The Bidder can document commitments that meet the goal(s).
2. If the Bidder does not document enough commitments toward meeting the goal(s), the Bidder can provide documentation showing detailed, tangible, result oriented efforts that show the Bidder's attempts to fulfill the goal(s).

All Good Faith Effort documentation will be evaluated prior to the actual award of the contract to your firm.

THE GUIDANCE PROVIDED BELOW OUTLINES WHAT CONSTITUTES SUFFICIENT AND COMPREHENSIVE GOOD FAITH EFFORTS.

Once you have made the decision to entertain bidding on a project you should, at a minimum:

1. Analyze each item in the scope of work for a project and determine what items of work will provide subcontracting opportunities.
2. Search the appropriate registry for certified firms:
 - a. For New York State funded projects: MBE and WBE search ESD Directory
<https://ny.newnycontracts.com>
3. Notify those firms of your intent to bid via email and telephone, requesting written feedback on their interest in participation on your contract.
4. Ensure adequate time is given to the MBE/WBE firms to offer responses.
5. For more information regarding NAICS, go to the NAICS web site at:
<https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2012>

Any shortfall in goal commitment requires supporting documentation to be provided to show all efforts taken. These Good Faith Efforts should include, at a minimum:

1. Complete AAP-10 Solicitation log: This log should list only those firms that were directly solicited. Do not list mass emailing's performed. Outreach should be narrowly focused, targeted and result oriented. NOTE: For the AAP10 to be accepted it must be completed according to instructions provided
 - a. Link to AAP 10 Log: https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/AAP_10.pdf
 - i. Log must be downloaded to a computer.

2. Copies of ads placed for solicitation.
3. Copies of all registry searches performed including those searches that resulted in no certified firms for a specific scope of work.
4. Copies of emails and/or faxes that show "direct" scope of what you solicited the subcontractor/supplier, fabricator, etc. to do or provide and their responses.
5. Evidence that off-site firms and services were entertained (e.g., material suppliers, trucking, fabricator, manufacturer, etc.).
6. Copies of documentation showing negotiations took place between low bidder and prospective subcontractor or other firms (supplier, manufacturer, fabricator, etc.).
7. Quotes from the selected firms and quotes received when a specific scope of work was given to a non-certified firm versus a certified firm (when certified firm's quote was deemed unreasonable or excessive).
8. Detailed explanation for any scope of work deemed "self-performing" without intent to split the work.

Examples of insufficient/unacceptable documentation includes:

- "In-house" generated lists that do not include MBE/WBE targeted firms.
- "In-house" generated lists that do not identify firms for specific work items or description being solicited.
- Copies of redundant emails to MBE/WBE firms containing identical language.
- Unsubstantiated response of non-interest from MBE/WBE
- Numerous copies of the entire contract sent to each firm to attempt to provide quantity in lieu of quality.

Bidder Acknowledgement:

Signature & Date

Printed Name & Title

New York State 105-21 CIVIL RIGHTS MONITORING AND REPORTING.

The Department approved civil rights reporting software is *Equitable Business Opportunity Solution* (EBO). The EBO software is a web-based system owned and maintained by the Department, and provided to the Contractor at no cost. The Contractor shall use the Department approved civil rights reporting software on all contracts. The Contractor shall enter complete and accurate electronic data to the Department for each month, not later than the 15th of the following month, using EBO. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the Engineer to coordinate with contract payment submittals.

A. Civil Rights Officer(s). The Contractor shall designate a Corporate Civil Rights Officer, a Corporate D/M/WBE Representative, and a contract site Equal Employment Opportunity (EEO) Representative; and each Subcontractor shall designate a Corporate Civil Rights Officer, and a contract site Equal Employment Opportunity (EEO) Representative on AAP15 *Designation of Affirmative Action Representatives by Contractors/Subcontractors* in the Department approved civil rights reporting software. The designated individuals shall have the responsibility to and shall be capable of effectively administering and promoting an active program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so. A single individual may fulfill multiple roles. The Contractor shall update the Department approved civil rights reporting software within 10 calendar days of any changes in these roles.

B. Workforce Participation Plan. At the pre-construction meeting, the Contractor shall submit a *Workforce Participation Plan* covering the Contractor's workforce and the workforce of its Subcontractors with subcontracts over \$10,000, together and coordinated with the contract progress schedule, that addresses the Equal Employment Opportunity goals.

The Contractor shall not start work until the Department has reviewed and accepted the *Workforce Participation Plan*. The Contractor shall submit a revised plan when a significant work force build-up or reduction will substantially affect goal attainment, or when a revised schedule is requested by the Department. Such revised *Workforce Participation Plan* must be agreed upon by the Department or the original will remain in effect.

C. Equal Employment Opportunity (EEO) Monitoring and Reporting. The Contractor's compliance with the EEO Requirements will be based on its Employment Utilization, affirmative action steps and its good faith efforts to meet the goals.

The Department, in evaluating the Contractor's good faith efforts to meet the EEO goal(s), will first analyze the Contractor's goal attainment on an individual contract. If the Contractor is not meeting the goal(s) for a single trade or contract, the Department will analyze, progressively, the Contractor's goal attainment on all contracts held by the Contractor within the county, the Region, and/or the State. This method of analysis shall be applied primarily but not solely to contracts with small population numbers. Other factors to be considered include, but are not limited to; the location of the contracts, the relative proximity of the contracts to each other, and the nature of the work.

1. Employee Utilization Data. The Contractor shall submit employee utilization data for its workforce and for each Subcontractor with a subcontract exceeding \$10,000 to the Department on a monthly basis, not later than the 15th of the following month. Data shall be submitted showing the total hours for each payroll week, separately through the end of the last full payroll week for that month. A payroll week only partially in a month shall be submitted for the next month. Payroll weeks are determined based on the firm's established payroll end date. Data shall include employee name, gender, ethnicity, and hours worked by trade(s) and classification. Employment utilization percentages are determined using data from the start of work up to and including the month being reported. For the purpose of determining utilization percentages, the hours of female

and minority employment are tabulated separately and attainment percentages are calculated separately.

2. Federal-Aid Highway Construction Contractors Annual EEO Report. The Contractor shall submit all required employee utilization data to produce a Form FHWA 1391 *Federal-Aid Highway Construction Contractors Annual EEO Report* to the Department annually not later than August 15th, reflecting the work force during all or any part of the last payroll period worked in July, for all ongoing Federal-Aid contracts. The data shall indicate the number of minority men, minority women, non-minority men, and non-minority women employees currently engaged in each trade.

3. Monthly Training Progress Report. When training is required under §102-11 *Equal Employment Opportunity Requirements* and/or Training Special Provisions, the Contractor shall submit a monthly training progress report to the Engineer not later than the 15th of each month. In addition to each Monthly Training Progress Report, the Contractor shall provide the Engineer a summary of hours required to complete the various work elements of the training program, hours completed this period, and hours completed to date. This summary shall be provided in sufficient detail to allow the Engineer to determine whether the hours in the previous period are qualified hours under this pay item.

4. Contractor Compliance with EEO Requirements. If the Contractor fails to meet the EEO goal(s) for minorities or women, or demonstrate good faith efforts, the Department may require training of minorities and women to satisfy the employment goals. If the Contractor fails to meet the EEO goal(s), to demonstrate good faith efforts, or is in noncompliance with the nondiscrimination clauses, the Department may suspend additional contract payments in accordance with Article 8 *No Payment on Contractor's Non-Compliance* of the contract agreement, the Contractor may be directed to attend a hearing before the Contract Review Unit, or the Department may follow any other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part in accordance with Article 11 *Right to Suspend Work and Cancel Contract* of the contract agreement.

The Contractor may also be referred to the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), which has the sole authority to determine compliance with Executive Order 11246 and its implementing regulations. OFCCP may declare the Contractor ineligible for further Federal-Aid contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.

D. D/M/WBE Monitoring and Reporting. The Contractor shall utilize the D/M/WBEs committed to at pre-award to perform the work or supply materials for which each is listed. The Engineer will monitor the work to ensure that the identified D/M/WBEs perform the work as identified in the Contractor's commitments. Attainments will be measured based on payments made to D/M/WBEs.

If the Contractor has not executed a subcontract with a D/M/WBE before the D/M/WBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may not make commitments to use the firm on the contract as a D/M/WBE, and attainments will not be credited toward the contract goal.

If the Contractor has executed a subcontract with a D/M/WBE before the D/M/WBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may continue to use the D/M/WBE on the contract in accordance with the executed subcontract, and attainments will be credited toward the contract goal. Any new or extra work

performed by the ineligible D/M/WBE not covered under the scope of the original executed subcontract will not be credited toward the contract goal.

When a contract is awarded with D/M/WBE commitment(s) that is less than the contract goal(s), the Contractor shall continue good faith efforts. The Contractor shall periodically review items that are available for D/M/WBE participation, typically before the beginning of a new construction season and when significant new items of work are added to the contract, and conduct additional D/M/WBE solicitation.

If a Contractor, in order to meet the DBE contract goal or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, a DBE that does meet the eligibility criteria of 49 CFR Subpart D, the U.S. Department of Transportation may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

1. Report of Payments to Subcontractors and D/M/WBEs. The Contractor shall enter payment data into EBO for all Subcontractors and for all D/M/WBEs that are due a payment or have received a payment, within 14 days of receipt of payment from the Department, in order to measure D/M/WBE goal attainment and to monitor Contractor compliance with the requirements of §109-07 *Prompt Payments by the Contractor*.

The Subcontractor or D/M/WBE shall acknowledge receipt of payment not later than 7 calendar days after receipt. The date of receipt is: (1) the date the payment was made by electronic transfer to an account identified and agreed to by both parties; (2) the date the envelope containing the payment was date stamped by the U.S. Postal Service; or (3) the date the payment was physically provided to a previously authorized representative of the Subcontractor or D/M/WBE, either by the Contractor or by a delivery service.

The Contractor shall enter the final payment to each Subcontractor or D/M/WBE and designate it as such when the final payment is made, or as a separate \$0.00 entry indicating final payment has been made, prior to contract final acceptance, excepting those payments due from work contained in a change order(s) that have not been approved. The Subcontractor or D/M/WBE shall acknowledge receipt of final payment not later than 7 calendar days after receipt or by notification by the Contractor that a separate \$0.00 entry indicating final payment was entered in the civil rights reporting software.

2. Monitoring Commercially Useful Function (CUF) by D/M/WBEs. The Contractor shall monitor the work of the D/M/WBEs to ensure each performs a Commercially Useful Function and can be properly counted towards the Contractor's D/M/WBE commitments.

The Department will review the work, services or products provided by each D/M/WBE to verify the performance of a Commercially Useful Function in accordance with §102-12E *Commercially Useful Function*. To determine whether a D/M/WBE has performed a Commercially Useful Function, the Department may also examine similar transactions, particularly those in which D/M/WBEs do not participate.

If the Department determines that some or all of a D/M/WBEs work does not constitute a commercially useful function in accordance with §102-12E. *Commercially Useful Function*, only the portion of the work considered to be a commercially useful function will be credited toward the goal(s).

Upon request, each D/M/WBE Subcontractor shall provide additional documentation to the Engineer for the purposes of monitoring Commercially Useful Function. Such documentation may include, but not be limited to: confirmation that the workforce provided meets the requirements of §102-12E.1. *Work Force*; a copy of purchase order(s) for all material incorporated into the work in order to confirm that the D/M/WBE has met the requirements of §102-12E.3. *Materials*; and a copy of a rental agreement for all non-owned equipment used to

perform the work to the Engineer in order to confirm that the D/M/WBE has met the requirements of §102-12E.4. *Equipment*.

Upon request, the Contractor shall provide a copy of a purchase order(s) for all material, supplies, articles, or equipment provided by a D/M/WBE Manufacturer, Fabricator, or Material Supplier and a copy of a purchase order(s) that details the work product(s) provided from each D/M/WBE Professional Service to the Engineer.

A D/M/WBE may present evidence to rebut a determination by the Department that the D/M/WBE is not performing a commercially useful function. For DBEs, commercially useful function determinations by the Department are subject to review by the Federal Highway Administration (FHWA) but the determination may not be administratively appealed to USDOT. An M/WBE may rebut a determination by the Department that the M/WBE is not performing a commercially useful function to the NYS Department of Economic Development.

3. Revisions to D/M/WBE Participation. The Contractor shall obtain Department approval for substantial revisions in D/M/WBE participation prior to implementing any proposed change through submission of a revised AAP19 *D/M/WBE Schedule of Participation* using the Department approved civil rights reporting software. Unless approval for revision is granted, the Contractor will not be entitled to any payment for work or material committed to a D/M/WBE unless it is performed or supplied by the approved D/M/WBE.

If the reduction of the D/M/WBE's work or the removal of the D/M/WBE, including for reasons of commercially useful function violations, causes the D/M/WBE participation to fall below the goal(s), the Contractor shall make good faith efforts in accordance with §102-12H. *Good Faith* Efforts to find another D/M/WBE to substitute for the original D/M/WBE to perform at least the remaining amount of work as the D/M/WBE that was terminated, to the extent needed to meet the contract goal(s). Upon request, the Contractor shall provide documentation of good faith efforts within 7 days, which may be extended for an additional 7 days if necessary, at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

A D/M/WBE may be substituted if the work committed to the D/M/WBE is deleted or reduced by the Department and enough work remains to substitute an equal commitment amount to the affected D/M/WBE. If not enough work remains, the Department may relieve the Contractor from attaining that portion of the commitments.

The following modifications will be considered a substantial revision in D/M/WBE participation:

- Adding, removing or substituting a D/M/WBE.
- Adding new item(s) of work to a D/M/WBE within a core (3 digit) contract pay item number (i.e. 606 – Guide Railing) not currently approved.
- Significantly reducing the dollar value of or eliminating the D/M/WBE's item(s) of work. Significant reduction will be determined by comparison to the total D/M/WBE contract goal.
- Changes in participation due to major differences between estimated quantities and actual work performed.

The following modifications will not be considered a substantial revision in D/M/WBE participation:

- Increasing the dollar value of an item(s) of work or adding new item(s) of work within the same core (3 digit) contract pay item number (i.e. 606 – Guide Railing) to a D/M/WBE.
- Substituting similar dollar values of work within a currently approved core (3 digit) contract pay item number (i.e. 606 – Guide Railing).

- Changes in participation due to minor differences between estimated quantities and actual work performed.

a. DBE Program. In accordance with 49 CFR 26.53(f)(1), the Contractor shall not terminate a DBE listed on the approved DBE Participation plan without the prior written consent of the Department. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Department will consent only if the prime contractor has good cause to terminate the DBE firm. Good cause includes, at a minimum, one the following circumstances:

- The listed DBE fails or refuses to execute a written contract;
- The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
- The listed DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The Department has determined that the listed DBE is not a responsible contractor;
- The listed DBE voluntarily withdraws from the project and provides to the Department written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract;
- Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

Before submitting its request to terminate and/or substitute a DBE to the Department, the Contractor shall give notice in writing to the DBE subcontractor, with a copy to the Engineer, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor shall give the DBE five days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Department may approve a response period shorter than five days.

b. M/WBE Program. In the cases of substantial reduction, removal or substitution, the Contractor shall provide written justification with a substantive basis for the change. A Contractor's ability to negotiate a more advantageous contract with another Subcontractor will not be considered a valid basis for change.

4. Contractor's Compliance with DBE Program Requirements. If the Contractor fails to meet the DBE participation commitment(s), to exert a good faith effort, or otherwise fails to comply with the DBE Program requirements, the Department will take appropriate actions. Such actions may include, but not be limited to: suspension of contract payments in accordance with

Article 8 *No Payment on Contractor's Non-Compliance* of the contract agreement; direction to the Contractor to attend a hearing before the Department's Contract Review Unit; or any other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part in accordance with Article 11 *Right to Suspend Work and Cancel Contract* of the contract agreement.

Where the Department determines that the Contractor is not in compliance with the requirements of the contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the DBE participation goal, the Contractor will be obligated to pay to the Department Liquidated Damages.

Such Liquidated Damages for failure to meet the DBE requirements shall be calculated as an amount equaling the difference between the amount committed to the DBEs by the Contractor at award and the amount actually paid to the DBEs for work performed or materials supplied under the Contract, not including any amount for work deleted by the Department or work which a DBE declined or failed to reasonably perform.

If a determination has been made which requires the payment of Liquidated Damages and such identified sums have not been withheld by the Department, the Contractor shall pay such Liquidated Damages to the Department within sixty (60) days after they are assessed.

The Contractor may also be referred to the USDOT for possible suspension or debarment as provided in 49 CFR 26 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

5. Contractor's Compliance with M/WBE Program Requirements. If the Contractor fails to meet the M/WBE participation commitments, to exert a good faith effort, or otherwise fails to comply with the M/WBE Program requirements, the Department will take further actions.

Such actions may include, but not be limited to, suspension of contract payments in accordance with Article 8 *No Payment on Contractor's Non-Compliance* of the contract agreement; the Contractor may be directed to attend a hearing before the Department's Contract Review Unit; or any other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part in accordance with Article 11 *Right to Suspend Work and Cancel Contract* of the contract agreement.

If the Contractor does not meet the M/WBE participation goals, the Contractor will submit to the Engineer a request for a partial or total waiver in accordance with 5 NYCRR 142.7.

- a. The Contractor will submit a waiver request documenting such good faith efforts and providing sufficient justification as to why the M/WBE goals should be waived or reduced based upon the following factors: The number and types of certified M/WBEs available to perform on any subcontractable scopes of the contract;
- b. The total dollar value of the contract;
- c. The contract scope of work to be performed;
- d. The project size;
- e. The project term;
- f. The availability of other business enterprises located in the region qualified to do the work to be performed;
- g. The ability of certified M/WBEs located outside the region to perform the contract; and
- h. The extent to which the Contractor's own actions, including but not limited to, any failure by the Contractor to discharge the Contractor's duties pursuant to this Part or Article 15-A of the Executive Law, contributed to the Contractor's inability to meet the maximum feasible portion of the contract goals.

Where the Department determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the M/WBE

participation goals, the Contractor shall be obligated to pay to the Department Liquidated Damages.

Such Liquidated Damages for failure to meet the M/WBE requirements shall be calculated as an amount equaling the difference between the amount committed to the M/WBEs by the Contractor at award; and the amount actually paid to the M/WBEs for work performed or materials supplied under the Contract, not including any amount for work deleted by the Department.

If a determination has been made which requires the payment of Liquidated Damages and such identified sums have not been withheld by the Department, the Contractor shall pay such Liquidated Damages to the Department within sixty (60) days after they are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the Liquidated Damages shall be payable if Director renders a decision in favor of the Department.

The Department may file a complaint with the NYS Department of Economic Development, Division of Minority and Women's Business Development pursuant to Executive Law Article 15-A, or other sanctions may also be imposed and remedies invoked as provided under the authority of Executive Law Article 15A, 5 NYCRR 140-145, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

E. Compliance Reviews. The Department conducts annual civil rights contract compliance reviews of selected Federal-Aid contracts in accordance with 23 CFR 230.409. A compliance review consists of a thorough review of all civil rights contract requirements, including Nondiscrimination in Labor/Employment, EEO, Training, and DBE requirements. A Contractor will typically not be selected for more than one compliance review per year statewide. Based on contract monitoring and/or the results of compliance review(s), the Department may conduct a review of some or all ongoing contracts with a single Contractor, regardless of funding source.

Section 5

AGREEMENT

The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326
607-547-2555

DATED:

WITH:

FOR:

Note: All correspondence or communications in any matter relating to, or affecting, the obligations of either the Contractor or the Railway under the following agreement and specifications, **MUST** be addressed **DIRECTLY** to the VICE PRESIDENT-Engineering, and not to any other representative of his department.

THIS AGREEMENT, made this ____ day of _____, 2024, by and between **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**, a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 1 Railroad Avenue, Cooperstown, New York 13326 (hereinafter called the RAILWAY) and _____ (hereinafter called the CONTRACTOR).

WITNESSETH:

That, in consideration of the covenants and agreements herein contained, to be performed by the parties hereto, and of the payments hereinafter provided, it is mutually agreed as followed:

1. Description of Work:

The CONTRACTOR shall furnish all the labor, equipment, tools, supplies, and transportation, except as hereinafter specified, and execute, construct and finish, in an expeditious and workmanlike manner, satisfactory to the VICE PRESIDENT-ENGINEERING, the following described work:

**Groundwork Preparation for New Track
On NYSW Railway Northern Division
Cortland County, New York**

in accordance with the Scope of Work and Contract Documents.

2. Definitions and Abbreviations:

When the following terms and abbreviations are used in this agreement or in the attached specifications and plans, the following definitions or terms are understood:

- a) VICE PRESIDENT-ENGINEERING shall mean the VICE PRESIDENT-Engineering of the RAILWAY COMPANY personally.
- b) ENGINEER shall mean the VICE PRESIDENT-Engineering of the RAILWAY either personally or his authorized representative.
- c) RAILWAY or RAILWAY COMPANY shall mean The New York, Susquehanna and Western Railway Corporation.
- d) CONTRACTOR shall mean the individual or firm who is the party obligated to perform the work required in this agreement in accordance with the plans and specifications.
- e) AREMA MANUAL shall mean the MANUAL FOR RAILWAY ENGINEERING with latest revisions of the American Railway Engineering and

- Maintenance-of-Way Association.
- f) MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) shall mean the MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES published by the United States Department of Transportation Federal Highway Administration 2009 Edition with Revision Numbers 1 and 2 incorporated, dated May 2012.
 - g) AASHO OR AASHTO: American Association of State Highway and Transportation Officials.
 - h) A.I.S.I.: American Iron and Steel Institute.
 - i) A.R.E.A.: American Railway Engineering Association.
 - j) A.S.T.M.: American Society for Testing Materials.
 - k) A.W.P.A.: American Wood Preservers Association.

3. **Contract Documents**

The Specifications, Plans, and General Conditions, together with this Agreement, form the Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated. The following is an enumeration of the Specifications, drawings, and controls:

- 1. Information for Bidders
- 2. Bid Form and Insurance Requirements
- 3. Contract Agreement
- 4. Schedule of Project
- 5. Scope of Work
- 6. Standard Clauses for NY State Contracts, NYSDOT Title VI-Assurance
- 7. General Conditions
- 8. Information required for Work on NYSW/ Right of Way
- 9. Requirement to Buy American
- 10. NYS Civil Rights, M/WBE owned hiring

4. **Scheduling of Work:**

The work covered by this contract must complete the work required by as indicated in Appendix C – Schedule of Project unless such dates shall be changed in writing by the VICE PRESIDENT-Engineering. In default thereof, the Contractor shall be liable for liquidated damages in accordance with the conditions of Section 108 – Prosecution and Progress of the New York State Standard Specifications dated May 1, 2008.

5. **Extra Work:**

Extra work may be performed under this contract if authorized in writing by the RAILWAY'S VICE PRESIDENT-Engineering, payment for which may be made in lump sums, at unit prices or at cost plus terms as mutually agreed upon between the RAILWAY'S VICE PRESIDENT-Engineering and the CONTRACTOR.

6. Independent Contractor:

CONTRACTOR shall perform the work under this agreement in the capacity of an independent contractor and nothing contained in this contract shall be construed to be inconsistent with such status.

7. CONTRACTOR'S Understanding:

It is understood and agreed that CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can or may in any way affect the work under this contract. No verbal understanding, agreement or conversation with any officer, agent or employee of the RAILWAY, either before or after the execution of this contract, shall affect, alter or modify any of the terms or obligations herein contained.

CONTRACTOR shall assume all risk of loss or damage from whatever cause to the tools, implements, machinery or materials owned by CONTRACTOR, or in his possession while the same shall be on or near the premises where the said work is to be undertaken and performed by CONTRACTOR, and CONTRACTOR shall protect, indemnify and save RAILWAY, its successors and assigns harmless from any and all claims, demands or suits on account of or arising from any such loss or damage.

8. Assignment of Contract:

The CONTRACTOR shall not assign this contract or any part thereof or subcontract any of the work to be done under this contract without the written consent of the VICE PRESIDENT-Engineering. Such consent shall not release or relieve CONTRACTOR from any of his obligations and liabilities under this agreement.

If CONTRACTOR receives consent to subcontract any of the work to be performed from VICE PRESIDENT-Engineering, then CONTRACTOR shall not subcontract any work to an entity that is debarred by the State of New York, its agencies, or any of its political subdivisions.

9. Changes:

RAILWAY shall have the right to make any changes that it may deem necessary or desirable in the work to be undertaken, either before or after its commencement, and such changes shall in no way affect or void the obligations of this contract. If such changes result in any change in the cost of the work, an equitable adjustment shall be made by the VICE PRESIDENT-Engineering to cover the same, but CONTRACTOR shall not claim nor be entitled to, and hereby waives, compensation for anticipated profits.

10. Inspection and Status of the VICE PRESIDENT-Engineering:

The work shall be subject at all times to the inspection, acceptance or rejection of the VICE PRESIDENT-Engineering or his duly authorized agents. It is mutually agreed that the VICE PRESIDENT-Engineering shall in all cases determine the amount or quantity of the various kinds of work and the quality of materials and workmanship to be paid for under this contract, and he shall decide all questions which may arise relative to the work covered by this contract. Any doubt as to the meaning of the specifications and the drawings and any obscurity or discrepancy as to their wording and intent will be determined by the VICE PRESIDENT-Engineering and his determination shall be final and binding on both parties to this contract. The VICE PRESIDENT-Engineering may amend or correct any errors or omissions in the plans and specifications when such amendments or corrections are necessary to make definite the intent indicated by a reasonable interpretation of the requirements of the contract.

11. Permits:

CONTRACTOR shall, at his own expense, secure and keep in effect, all permits, licenses and authorizations required by Federal, State, County, or Municipal authorities.

12. Unemployment, Social Security and Retirement Insurance:

CONTRACTOR agrees to pay the contributions measured by the wages of his employees required to be made under the Unemployment Compensation Insurance, Social Security and Retirement Laws or similar laws, State and Federal, applicable to the work undertaken by CONTRACTOR or his subcontractors, and to accept exclusive liability for said contributions. CONTRACTOR further agrees to protect, indemnify and save harmless the RAILWAY, its successors or assigns, from any and all liability arising therefrom.

13. Liability:

CONTRACTOR shall assume all liability for, and indemnify and save the RAILWAY and its subsidiaries and their successors or assigns, harmless from any and all claims, demands, and suits arising out of state or federal statutes, or at common law in connection with any injury to persons including death resulting therefrom or loss of any damage to property, sustained by the parties to this contract or any of their officers, agents or employees, or by third parties, arising out of, or occurring in connection with, or in any way relating to, the work hereby undertaken by CONTRACTOR.

14. Bond

CONTRACTOR, at his own cost and expense, shall procure and deliver to the RAILWAY a performance bond and a labor and material payment bond, each in an amount equal to the contract price for the work performed, underwritten by such Corporate Surety and in such form as shall be satisfactory to the RAILWAY (Appendix D).

15. Insurance:

The Contractor agrees, at his own cost and expense, to procure and maintain for a period of time until final acceptance by Railway of the work covered by this agreement, insurance coverage for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided with insurance companies acceptable to the Railway and authorized to do such business in the state(s) where the work is to be performed covering all operations under this contract.

Before commencing any work under this agreement, Contractor shall furnish to the VICE PRESIDENT-Engineering of the Railway the original and one copy of the Railway Protective Liability policy and the Owners' Protective Liability policy and in addition two (2) copies of certificate or certificates of insurance in form satisfactory to the Railway showing that Contractor has complied with this paragraph. All policies and certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the VICE PRESIDENT-Engineering of the Railway.

The kinds and amounts of insurance are as follows:

A. Workers Compensation and Employers' Liability

The Contractor shall procure and maintain (and assume the expense of) during the Contract time - in accordance with the provisions of the laws of the State of New York - Workers Compensation insurance, including the requirements of any Occupational Disease Law, Disability Benefits Law, and/or Employers' disability Law, for all of the Contractor's employees. In case any work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers Compensation insurance (including the requirements as stated above) for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees (engaged in hazardous work under this contract at the site of the project) is not protected under Workers Compensation statute, the Contractor shall provide - and shall cause each Subcontractor to provide - adequate and suitable insurance for the protection of those employees not otherwise protected. For purposes of the insurance policies enumerated above, employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

B. Statutory Disability Benefits – New York State

The Contractor shall procure and maintain (and assume the expense of) coverage which will pay the benefits to employees required under the Worker's Compensation Law of the State of New York, for off-the-job injury and for non-occupational disease.

C. Public Liability and Property Damage Insurance

A policy issued to and covering the liability for damages imposed by law upon the Contractor with respect to all work performed by him under this agreement which policy shall have minimum limits of \$2,000,000 combined single limit per occurrence and \$6,000,000 aggregate.

D. Automobile Liability Insurance

A policy covering all owned, non-owned and hired vehicles of Contractor engaged in or about the work with limits of not less than those in paragraph C above.

Note: For purposes of the insurance policies enumerated in paragraphs C and C employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

E. Protective Liability Insurance

Each policy shall have limits of not less than \$2,000,000 combined bodily injury and/or property damage liability for each occurrence with a \$6,000,000 aggregate limit for the term of the policy and shall be furnished in the following types:

(i) Railway Protective Liability Insurance

A policy issued to The New York, Susquehanna and Western Railway Corporation, covering the liability for damages imposed by law upon or incurred in any way by Railway or its affiliates or subsidiaries with respect to all operations under this agreement by the Contractor upon Railway's right-of-way.

(ii) Owner's Protective Liability Insurance

A policy issued to and covering liability for damages imposed by law upon The People of the State of New York, the Commissioner of Transportation and employees of the Commissioner of Transportation, both officially and personally, with respect to all work under this agreement by the Contractor, including omissions and supervisory acts of the State.

Note: For purposes of the insurance policies enumerated in paragraphs A, B, C and D, E(i) employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

F. It is understood and agreed by Contractor that the furnishing by it of the above insurance and the acceptance of same by Railway is not intended to and shall not limit, affect or modify the obligations of Contractor under any provisions of this agreement.

16. Watchmen:

The RAILWAY will, without cost to the CONTRACTOR, furnish all flagmen which, in the RAILWAY'S opinion, are required to protect the operation of its facilities.

17. Monthly Payments:

The RAILWAY, upon presentation of bill(s) computed at the agreed to quantities and unit prices for work done by the CONTRACTOR, will make or cause to be made monthly payments on account of the contract for all work completed. Such payments shall in no case be taken as an acceptance of the work or a release of the CONTRACTOR from responsibility therefore.

18. Compensation:

The items and unit prices billed by CONTRACTOR shall be those shown on the proposal form submitted by CONTRACTOR and accepted by RAILWAY which is appended to this agreement as Appendix B.

19. Final Payment:

Before final payment is made, CONTRACTOR shall submit evidence satisfactory to the VICE PRESIDENT-Engineering that all payrolls, material bills, and other indebtedness of the CONTRACTOR connected with the work have been paid. After completion of the work and acceptance by the RAILWAY and upon presentation of bill by the CONTRACTOR, the RAILWAY will pay or cause to be paid all monies due and owing to the CONTRACTOR for work done under this contract.

20. Limitation on Contract:

Payments made to CONTRACTOR under this agreement shall not exceed the sum of _____ Dollars (\$ _____) unless this amount shall be increased in writing by the VICE PRESIDENT-Engineering.

21. Suspension of Work:

The RAILWAY may at any time suspend the work, or any part thereof, by giving not less than five (5) days' written notice to CONTRACTOR, and if such suspension appreciably affects the cost of the work to CONTRACTOR, the difference shall be equitably adjusted by the VICE PRESIDENT-Engineering. CONTRACTOR shall not suspend the work, or any part thereof, without written authority of the Engineer. The work shall be resumed by the CONTRACTOR within five (5) days after written notice from the RAILWAY to the CONTRACTOR so to do. The RAILWAY shall not be liable for any damages or loss of anticipated profits on account of the work being suspended, or for any work done during the interval of suspension.

22. Required State of New York State Contract Clauses:

In recognition of the use of New York State monies in funding this project, the CONTRACTOR and the RAILWAY agree to observe and be bound by the required New York State Requirements annexed to this agreement as Appendix A and A-1.

23. Prohibited Interests:

No member, officer, or employee of the RAILWAY or CONTRACTOR during their tenure with the RAILWAY or CONTRACTOR for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

The above statement must be inserted into any subcontracts approved by VICE PRESIDENT-Engineering.

24. Effective date of Agreement:

The effective date of this agreement shall be the date on which The New York, Susquehanna and Western Railway shall give its approval to this agreement.

25. Successors and Assigns:

This Agreement shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the parties respectively.

IN WITNESS WHEREOF, the CONTRACTOR and the RAILWAY have caused this Agreement to be signed as of the day and year first above written.

**THE NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION**

By: _____

(Contractor)

By: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Appendix B – Bid Form

Original Bid Form to be Attached Here

Appendix C – Schedule of Project

CONTRACTOR SCHEDULE OF PROJECT

Project to be completed by July 26, 2024.

Appendix D

LABOR AND MATERIAL PAYMENT BOND

(Note: This bond is issued simultaneously with Performance Bond in favor of the Railroad conditioned on the full and faithful performance of the Contract.)

KNOW ALL PERSONS BY THESE PRESENTS: that _____

as Contractor, hereinafter called "Principal", and _____

as Surety, hereinafter called "Surety," are held and firmly bound unto the _____

as Obligee, hereinafter called "Railroad" for the use and benefit of claimants as hereinbelow defined, in the amount of _____

_____ Dollars (\$ _____),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 20____,

entered into a contract with Railroad for:

in accordance with Plans and Specifications (Contract Documents) prepared by **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**, which is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Railroad that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimants, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Railroad shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two (2) of the following: the Principal, the Railroad or the Surety above named, within ninety (90) calendar days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Railroad or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

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

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

(Principal)

(Seal)

(Witness)

(Title)

(Title)

(Surety)

(Seal)

(Witness)

(Title)

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that _____

as Principal, hereinafter called "Contractor", and _____

as Surety, hereinafter called "Surety", are held and firmly bound unto the _____

as Obligee, hereinafter called "Railroad", in the amount of _____ Dollars

(\$ _____), lawful money of the United States of America for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20____, entered into an Agreement with Railroad for the:

in accordance with Plans and Specifications (Contract Documents) prepared by **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION** which by reference is made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Railroad.

The Surety hereby stipulates and agrees, if requested to do so by the Railroad to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause the Contractor fails or neglects to so fully perform and complete such work.

Whenever Contractor shall be, and declared by Railroad to be, in default under the Contract, the Surety may promptly remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder or, if the Railroad elects, upon determination by the Railroad and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Railroad and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding; including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Railroad to Contractor under the Contract and any amendments thereto, less the amount properly paid by Railroad to Contractor.

The Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or - the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any moneys due or to become due thereunder; and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety as though done or omitted to be done by or in relation to said Contractor.

The said Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said Contract, or in or to the Plans and Specifications (Contract Documents), shall in any wise affect the obligations of said Surety on its bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Railroad named herein or the heirs, executors, administrators or successors of the Railroad.

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

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

_____ (Principal)

_____ (Seal)

_____ (Witness)

_____ (Title)

_____ (Title)

_____ (Surety)

_____ (Seal)

_____ (Witness)

_____ (Title)

REQUIREMENT TO BUY AMERICA

Requirement to Buy America

All steel and iron materials used in the performance of this Agreement must be manufactured and fabricated in the United States of America.

Conforms to the requirements of NYSDOT Standard Specifications §106-11 Buy America.”

DATE _____

SIGNATURE _____

COMPANY NAME _____

TITLE _____

Does not conform to the requirements of NYSDOT Standard Specifications §106-11 Buy America.

DATE _____

SIGNATURE _____

COMPANY NAME _____

TITLE _____

Section 7

SCOPE OF WORK

Cortland Serving Track Siding

Scope of Work

The work to be performed is the preparation of a compacted track bed surface for NYSW personnel to construct a siding track. Work involves cleaning up an existing abandoned roadbed. Work will include the following activities:

1. Clear existing vegetation within the project limits and railroad ROW as necessary to construct the proposed project. All trees under 6" diameter to be chipped on property. All trees over 6" in diameter to be cut into 8" long lengths and stacked on property.
2. Survey proposed project using the following guidelines:
 - A. Centerline of new track is 12'8" from near rail on parallel main line.
 - B. Shoulder should be 18'8" to outside shoulder from near rail on parallel main line.
 - C. Minimal material should be needed that is not already there. Any new material needed will be compactable crushed material (QP).
 - D. Establish drainage ditch the length of the project.
3. Excavate existing ground where required within the project limits to construct the proposed roadbed.
4. Place suitable excavation material generated within the project limits or sourced from a local quarry, where required to construct the proposed roadbed.
5. Above final subgrade will be roller compacted.
6. Provide and place 6" level base of DOT spec 3A crushed stone.
7. Railroad to provide flagging.
8. Access will be from Little York Road MP 241.61. Any additional access from local landowners will need to be arranged privately between landowner and contractor.
9. Railroad training requirements are listed in the bid package.
10. Included in the project will be equipment support for the installation of switches on each end of the project. The equipment needed will be 2 excavators with a minimum weight of 44,000 pounds, each with operators. Plan for 5 days of work total. This will be coordinated concurrent with the roadbed work.

Map of Project Area



Section 8

GENERAL CONDITIONS

GENERAL CONDITIONS

1.01	CONTRACT AND CONTRACT DOCUMENTS	GC - 3
1.02	DEFINITIONS	GC - 3
1.03	GENERAL AND CONTRACTOR'S OBLIGATION	GC - 5
1.04	MUTUAL RESPONSIBILITY OF CONTRACTORS	GC - 5
1.05	ENGINEER'S AUTHORITY (OR DESIGNATE)	GC - 5
1.06	LAND AND RIGHTS-OF-WAY	GC - 6
1.07	DETAILS, DRAWINGS AND INSTRUCTIONS	GC - 6
1.08	SHOP DRAWINGS	GC - 6
1.09	AMBIGUITY IN PLANS	GC - 6
1.10	ACCURACY OF PLANS AND SPECIFICATIONS	GC - 6
1.11	EXISTING CONDITIONS FOUND DIFFERENT	GC - 7
1.12	WORK REQUIRED	GC - 7
1.13	START AND PROGRESS OF WORK	GC - 7
1.14	CONTRACTOR TO GIVE PERSONAL ATTENTION	GC - 7
1.15	ORDERS TO FOREMAN	GC - 8
1.16	MATERIAL, SERVICES AND FACILITIES	GC - 8
1.17	SUBCONTRACTS	GC - 8
1.18	SEPARATE CONTRACTS	GC - 8
1.19	INSPECTION OF WORK	GC - 9
1.20	CONTROL OF MATERIAL	GC - 9
1.21	REJECTION AND CORRECTION OF WORK	GC - 9
1.22	STOPPING WORK	GC - 10
1.23	WEATHER CONDITIONS	GC - 10
1.24	PROTECTION OF WORK AND PROPERTY-EMERGENCY	GC - 10
1.25	RAILWAY'S RIGHT TO DO WORK	GC - 10
1.26	ABANDONMENT	GC - 10
1.27	DISPUTED WORK	GC - 11
1.28	CONTRACTOR'S CLAIM FOR DAMAGES	GC - 12
1.29	SUSPENSION OF WORK	GC - 12
1.30	PATENTED DEVICES, MATERIALS AND PROCESSES	GC - 12
1.31	EQUIVALENTS	GC - 12
1.32	SURVEYS, PERMITS AND REGULATIONS	GC - 12
1.33	CUTTING, PATCHING AND DIGGING	GC - 13
1.34	PROTECTION OF WORK AND PROPERTY	GC - 13
1.35	WORK ON EASEMENTS AND RIGHT-OF-WAYS	GC - 13
1.36	LAWS	GC - 13
1.37	TRESPASSING ON PRIVATE PROPERTY	GC - 13
1.38	CHANGES IN THE WORK	GC - 14
1.39	FEDERAL LABOR STANDARDS	GC - 14
1.40	MINIMUM WAGES	GC - 14
1.41	WORKING HOURS	GC - 14
1.42	LOCAL LABOR	GC - 14
1.43	TWENTY-FOUR HOUR CALL	GC - 14

1.44	SANITARY REGULATIONS	GC - 15
1.45	DISPOSAL OF SURPLUS MATERIAL	GC - 15
1.46	BLASTING	GC - 15
1.47	CLEAN UP	GC - 15
1.48	STREAM CROSSINGS	GC - 15
1.49	TRAFFIC CONTROL	GC - 16
1.50	UTILITIES	GC - 17
1.51	DUST CONTROL	GC - 17
1.52	PERMITS AND FEES	GC - 17
1.53	SAFETY	GC - 17
1.54	REFERENCE STANDARDS	GC - 18
1.55	SALES TAX	GC - 18
1.56	LIABILITY	GC - 18
1.57	CONTRACTORS AND SUBCONTRACTORS INSURANCE	GC - 18
1.58	PRECONSTRUCTION CONFERENCE	GC - 20
1.59	JOB MEETINGS	GC - 20
1.60	EXAMINATION & AUDIT	GC - 20
1.61	CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES	GC - 21
1.62	TIME FOR COMPLETION	GC - 21
1.63	FAILURE TO COMPLETE WORK ON TIME	GC - 22
1.64	QUANTITIES OF ESTIMATE	GC - 22
1.65	PAYMENT TO CONTRACTOR	GC - 23
1.66	EXTRA WORK	GC - 24
1.67	EVIDENCE OF PAYMENT BY CONTRACTOR	GC - 24
1.68	PAYMENTS WITHHELD	GC - 24
1.69	ACCEPTANCE OF FINAL PAYMENT	GC - 24
1.70	GUARANTEE & CORRECTION OF WORK	GC - 25
1.71	LIENS AND CONTRACTOR'S TITLE TO MATERIALS	GC - 25
1.72	ASSIGNMENT	GC - 26

1.01 CONTRACT AND CONTRACT DOCUMENTS

The Contract Documents shall include the Advertisement of Bids, Information for Bidders, Contractor's Proposal, Agreement, Specifications, and any addenda to specifications and all provisions required by law to be inserted in the contract, whether actually inserted or not.

1.02 DEFINITIONS

- a. "Calendar Day" - Every day shown on the calendar.
- b. "Contract" - The agreement covering the performance of the work, and the furnishing of labor and materials in the construction of the work in conformance with the requirements of the contract documents.
- c. "Contract Item" - (Pay Item) A specifically described unit of work for which a price is provided in the contract.
- d. "Contractor" - A person, firm or corporation with whom this contract is made by the Railway.
- e. "Engineer" - The Engineer representing the Railway having direct inspection of the execution of the contract under the direction of the Railway or the Railway's representative.
- f. "Extra Work" - An item of work not provided for in the Contract awarded but found essential to the satisfactory completion of the contract within its intended scope.
- g. "Final Estimate" - A certified listing of final quantities, amounts of each item and total cost of the completed work specified in the agreement, the amounts paid to the Contractor under the contract, any deductions not included in the final agreement, and the amount of the final payment to the Contractor.
- h. "Highway" - The whole strip of land bounded by the right-of-way lines.
- i. "Inspector" - The Railway or Engineer's representative design to observe or inspect methods and materials used relating to work both on and off the site of the contract.
- j. "Monthly Estimates" - Payment to the Contractor for work satisfactorily performed, made on percentage basis prescribed by the "General Conditions"
- k. NYSDOT - When used shall mean New York State Department of Transportation.
- l. "Railway" - When used means The New York, Susquehanna and Western Railway or representative named in the Advertisement of Bids.
- m. "Plans" - The official contract drawings and applicable standard sheets, which show the

location, character, dimensions, and details of the work to be performed.

- n. "Project" - Construction work to be performed under one or more construction contracts to complete an undertaking.
- o. "Right-of-Way" or R.O.W. - A general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to a highway.
- p. "Roadbed" - The graded portions of a highway within top side slopes, prepared as the foundation for the pavement structure and shoulders.
- q. "Roadway" - The portion of a highway included between the outside edges of the shoulders.
- r. "Shoulder" - Portion of the roadway contiguous to the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
- s. "Site" - The specific area adjacent to and including the area upon which the construction work is to be performed. Generally such an area may be considered as the right-of-way or property made available to the Contractor for construction.
- t. "Specifications" - The body of direction, requirements, etc. contained in these General Conditions, together with all documents and any descriptions and agreements made (or to be made), pertaining to the methods (or manner) of performing the work or to the quantities and qualities as shown by the test records as accepted materials to be furnished under a contract.
- u. "Subcontractor" - A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with the Contractor.
- v. "Ton" - A short ton of 2,000 pounds.
- w. "Work" - Also defines Project.
- x. "AREMA"- American Railway Engineering & Maintenance-of-Way Association

1.03 GENERAL AND CONTRACTOR'S OBLIGATION

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the directions of the Engineer as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry, and complete the entire work to the satisfaction of the Engineer.

When available, information will be furnished regarding the location of accepted materials; but the use of any material will be permitted only so long as its quality remains equal to that of the accepted sample. In all cases the Contractor will be required to satisfy himself as to the available supply of materials and the relative location of the same.

1.04 MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other contractors or any subcontractors shall suffer loss or damage of work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the Railway on account of damage alleged to have been sustained, the Railway shall notify the Contractor, who shall indemnify and save harmless the Railway against such claim.

1.05 ENGINEER'S AUTHORITY (OR DESIGNATE)

The Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts with regard to their work which may arise between the Contractor under this contract and other contractors performing work for the Railway shall be adjusted and determined by the Engineer.

1.06 LAND AND RIGHTS-OF-WAY

Prior to the start of construction, the Railway shall obtain all land right-of-ways necessary for the carrying out and completion of work to be performed under this contract.

1.07 DETAILS, DRAWINGS AND INSTRUCTIONS

The Engineer shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. In giving such additional instructions, the Engineer shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of such work.

1.08 SHOP DRAWINGS

The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other Contractor, all requested copies of all shop or setup drawings and schedules required for the work of the various trades and the Engineer shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Engineer, file with him corrected copies and furnish such other copies as may be needed. The Engineer's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviation from drawings or specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

1.09 AMBIGUITY IN PLANS

In case of any ambiguity in the plans and specifications, or between them, the matter must be immediately submitted to the Engineer, who shall adjust the same, and his decision in relation thereto shall be final and conclusive.

1.10 ACCURACY OF PLANS AND SPECIFICATIONS

The detail plans and specifications for the contract have been prepared with care and are intended to show as clearly as is practicable the work required to be done. The Contractor must realize, however, that construction details cannot always be accurately anticipated and that in executing the work, field conditions may require reasonable minor modifications in the details of plans and quantities of work involved. Work under all items in the contract must be carried out to meet these field conditions to the satisfaction of the Engineer and in accordance with his instructions and the contract specifications.

1.11 EXISTING CONDITIONS FOUND DIFFERENT

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications, he shall immediately give notice to the Engineer of such conditions before they are disturbed. The Engineer will thereupon promptly investigate the conditions. If he finds that they materially differ from those shown on the plans or indicated in the specifications he will make such changes as necessary, and any increase or decrease in cost resulting from such changes will be adjusted in the manner provided for in Paragraph 1.66 of the General Conditions.

1.12 WORK REQUIRED

Under this contract the Contractor shall be required to do all work enumerated under the different items of the contract and in addition to this shall be required to protect all the adjoining property and to repair or replace any such properties damaged or destroyed by him or his employees. He will also be required to put in perfect condition for use the entire premises, and to remove from the premises and from the adjoining property all rubbish and surplus materials resulting from the work which may have accumulated during its prosecution, and to clean up the entire premises within the bounds thereof during the progress and upon completion of the work.

1.13 START AND PROGRESS OF WORK

At least five (5) working days before starting work, the Contractor shall submit to the Engineer for approval an outline of his proposed methods and manner of executing the work including sequences of operation and time schedule for work to progress. If found satisfactory, the Engineer shall approve such and the work shall progress in accordance with such schedules or amendments thereto.

1.14 CONTRACTOR TO GIVE PERSONAL ATTENTION

The Contractor shall give his constant personal attention to the work while it is in progress or he shall place it in charge of a competent and reliable English-speaking superintendent, who shall have authority to act for the Contractor and who shall be acceptable to the Engineer. The Contractor shall, at all times, employ labor and equipment which shall be sufficient to prosecute the several classes of work to full completion in the manner and time specified. All workmen must have sufficient skill and experience to properly perform the work assigned them. All workmen engaged on special or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform such and operate the equipment involved. Any person employed by the Contractor whom the Engineer may deem incompetent or unable to perform the work shall be immediately removed from the site of the work and shall not again be employed at the site of the work. In case the Contractor disagrees with the removal of such employee from the site of the work, the matter may be reviewed by the Railway

1.15 ORDERS TO FOREMAN

Whenever the Contractor or his superintendent is not present on any part of the work where it may be desired to give directions, orders will be given by the Engineer or his representative and shall be received and obeyed by the Foreman who may have charge of the particular work in reference to which the orders are given. All foremen shall be English speaking.

1.16 MATERIAL, SERVICES AND FACILITIES

Railway shall provide all materials, except those otherwise specifically in the Contract Documents.

It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all labor, tools, equipment, water, light, transportation, superintendence, and temporary construction of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

Any work necessary to be performed after regular hours, on Saturday, Sundays or legal holidays, shall be performed without additional expense to the Railway.

1.17 SUBCONTRACTS

The Contractor to whom this contract shall be let is prohibited from assigning or otherwise disposing of same, or his right, title or interests therein, or his power to execute said contract, to any other person(s), company or corporation, without the previous consent of the Railway in writing. If such consent is obtained and work is sublet this section shall not relieve the Contractor from any part of his obligation under the contract to the Railway. The Railway shall have the right at any time to terminate said subcontract if the subcontractor fails to perform the work satisfactorily, in which case the Contractor shall complete the work. If the Contractor proposes to subcontract a part of the Contract, the name of the proposed subcontractor shall be submitted for approval.

1.18 SEPARATE CONTRACTS

The Railway reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other Contractors work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the drawings.

1.19 INSPECTION OF WORK

The Railway, the Engineer, and their representatives, shall at all times have access to the work wherever it is in preparation or progress. The Contractor shall provide adequate notice to the Railway and Engineer before entering the site, beginning work, or beginning a new phase of work.

Wherever or whenever the Engineer shall consider it necessary to remove any portion of the work executed under this contract for inspection or for any other purpose, no payment shall be made for such removal or for replacement of the work to satisfactory conditions in case such inspection shows that the work was not constructed in accordance with the terms of this Contract; nor shall payment be made for the removal or replacement of any work which may itself be satisfactory, but the removal of which is necessary for the replacement of unsatisfactory work.

But if such inspection shows that the work was constructed in accordance with the terms of the Contract, payment shall be made for the removal at contract unit prices for furnishing and incorporating like materials into the work. Replacement in such cases and where ordered, shall be paid for at contract unit prices. When unit prices do not apply, payments shall be based on the actual net cost of labor and materials plus 15%.

All work shall be in a first-class and satisfactory condition at the time the contract is accepted.

1.20 CONTROL OF MATERIAL

All materials will be supplied and controlled by Contractor, except those otherwise specifically listed in the Contract Documents.

1.21 REJECTION AND CORRECTION OF WORK

All work, all materials, (whether incorporated in the work or not), all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction, for the purposes for which they are used. Should they fail to meet this approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall be removed immediately from the site. If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount that in the judgment of the Engineer shall be equitable.

1.22 STOPPING WORK

The Engineer may stop by written order any work or any part of the work under the contract if the methods or conditions are such that unsatisfactory work might result, or if improper materials or workmanship are being used.

1.23 WEATHER CONDITIONS

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and will cause his subcontractors to, protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

1.24 PROTECTION OF WORK & PROPERTY - EMERGENCY

In case of any emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Engineer, in a diligent manner. He shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Engineer for approval.

Where the Contractor has not taken action but has notified the Engineer of an emergency, threatening injury to persons, or damage to the work or any adjoining property, he shall act as instructed or authorized by the Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 1.66 of the General Conditions.

1.25 RAILWAY'S RIGHT TO DO WORK

If the Contractor should neglect to prosecute the work properly or fail to perform any provisions of the contract, the Railway, after three days' written notice to the Contractor, may without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Engineer shall approve both such action and the amount charged to the Contractor.

1.26 ABANDONMENT

If the Contractor shall abandon the work under this contract or if at any time the Engineer shall be of the opinion, and shall so certify to the Railway, that the work is unnecessarily delayed, or that the Contractor is violating any of the conditions of the contract, or executing same in bad faith, then at the option of the Railway, this contract may be declared null and void, the security forfeited, the materials delivered and built into the work shall become the property of the Railway. The Railway, may then, at its option, proceed to complete the work and increased costs and any damage to the Railway shall be deducted from the funds retained by the Railway and

from any moneys realized from the value of the reverting material. If the contract is annulled as per this provision, the Contractor shall not be entitled to any damage on account thereof, or shall such annulment affect the right of the Railway to recover from the Contractor or his bondsmen, damages arising therefrom.

1.27 DISPUTED WORK

If the Contractor is of the opinion that any work ordered by the Engineer to be done as contract work is extra work and not contract work, or any other order of the Engineer violates the provisions of the contract, he shall promptly notify the Engineer in writing of his contentions there to and then progress the work as subsequently required and ordered. In the meantime, the Contractor, if he considers the issue unresolved, shall promptly notify the Railway in writing of his position relative to the dispute indicating the substance of previous communication on the issue with the Engineer and his rebuttal of the Engineer's previous finding.

During progress of the disputed work, the Contractor and Engineer shall keep daily records of all labor, materials and equipment used in connection with such work and the cost thereof. The Contractor shall submit his written daily summary to the Engineer not later than closing time on the following day the disputed work is completed. The summary shall include:

- A. A list of materials and associated cost (including receipts).
- B. A list of equipment used indicating number of hours, used and the kind/size and type used.
- C. A list of personnel by name, including hours worked and labor classification.
- D. A statement of the disputed work accomplished for that day.
- E. Within ten (10) days of completion of the disputed work the Contractor shall submit a summation wherein all labor, equipment and material charges are shown and totaled together.

If the Railway determines that the work in question is contract work and not extra work, or that the order complained of is proper, he shall direct the Contractor to continue the disputed work and the Contractor must promptly comply. The Contractor's right to file a claim for extra compensation or damages will not be affected in any way in complying with the directions of the Railway, provided the Contractor continues to keep and furnish the Engineer with daily work summaries as specified above.

If the Railway determines that such work is extra work, not contract work, or that the order complained of is not proper, then the Railway shall have prepared, if necessary, an Order-on-Contract covering such work as soon after the determination is made as is practical. Adjustments of contract items or the addition of new items to the contract necessitated by such other determination may be made up until the time the final agreement is submitted for payment provided that all other requirements of the Contract Railway are complied with.

Failure by the Contractor to promptly notify, in writing, the Engineer, and the Railway of his contentions relative to any dispute or to maintain and furnish force account reports for disputed work shall constitute a waiver of the disputed work claim.

1.28 CONTRACTOR'S CLAIM FOR DAMAGES

If the Contractor shall make claim for damage from the Railway for any damage sustained by reason of acts of the Railway he shall within five days after sustaining such damage, make written statement of the nature of the damage to the Engineer, and shall within twenty days thereafter file with the Engineer an itemized statement of the details and amount of the damage.

1.29 SUSPENSION OF WORK

Should the Railway be prevented or enjoined from proceeding with work or from authorizing its prosecution either before or after its prosecution, by reason of any litigation, the contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of the work will be extended to such reasonable time as the Railway may determine will compensate for time lost by such delay with such determination to be set forth in writing.

1.30 PATENTED DEVICES MATERIALS AND PROCESSES

It is mutually understood and agreed that contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Contractor is required or desires to use any design device, material or process covered by letters patent or copyright the Contractor shall indemnify and save harmless the Railway from any and all claims for infringement by reason of the use of any such patented design, device, material or process, to be performed under the contract, and shall indemnify the said Railway for any costs, expenses, and damage which it may be obliged to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the work.

1.31 EQUIVALENTS

The mention of apparatus, articles or materials by trade names and such specific description of same as is made is intended to convey to the Contractor the understanding of the degree of the excellence required. An article or material which will conform substantially to the standard of excellence established is deemed to be eligible for offer by the Contractor. The Engineer shall be sole judge of the qualifications of the offerings and shall accept or reject said offerings in writing.

1.32 SURVEYS, PERMITS, AND REGULATIONS

Unless otherwise expressly provided for in this contract, the Railway shall furnish to the Contractor a bench mark necessary for the execution of the work. The Contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of his contract. The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the

performance of the work, the protection of adjacent property and the maintenance of passageways, guard fences and their protective facilities.

1.33 CUTTING, PATCHING AND DIGGING

The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive work of other Contractors shown upon, or reasonably implied by, the Drawings and Specifications, for the completed structure and he shall make good after them, as the Engineer may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.

1.34 PROTECTION OF WORK AND PROPERTY

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Railway's property from injury arising in connection with the contract. He shall make good any such damage or injury, except such as may be directly due to errors in the contract's documents. He shall adequately protect adjacent property as provided by law and the contract's documents.

1.35 WORK ON EASEMENTS AND RIGHT-OF-WAYS

The Contractor shall confine his operations to the limits of the right-of-ways indicated on the drawings and shall not trespass on private property. Where the Railway has procured easements and right-of-ways from individuals, extreme care must be exercised while working on these areas. Where lawns, gardens, driveways, and other developed ground is traversed of necessity by heavy equipment, the surface of the area shall be planked, or otherwise adequately protected to prevent harm by caterpillar tractors, heavy wheels, etc. Bulldozers and other heavy equipment shall not be used for backfilling near lawns or other highly developed areas.

1.36 LAWS

All Town, County, State and Federal laws, ordinances and regulations limiting the operations of those engaged upon the work or affecting the materials used therein, must be complied with by the Contractor.

1.37 TRESPASSING ON PRIVATE PROPERTY

The Contractor shall not invade or enter upon private property, lands, or buildings along the right-of-way, unless written permission is secured from the Railway. The Contractor will be held responsible for all damages done. Any such injury committed shall be satisfactorily repaired, or items replaced, at the Contractor's own expense. The Engineer will act to see that the Contractor underwrites all expenses and damages so incurred. The Contractor may make arrangements to use private property for storage, etc.

1.38 CHANGES IN THE WORK

The Railway, without invalidating the contract, may make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, such adjustments being based on the schedule of values or unit prices; all such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

1.39 FEDERAL LABOR STANDARDS

The Contractor agrees that "construction" work (as defined by the Secretary of Labor) shall be subject to the following labor standards provisions, to the extent applicable:

- A. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-33);
- B. COPELAND ANTI-KICKBACK ACT (18 U.S.C. 874); and
- C. EXECUTIVE ORDER 11246 (Equal Employment Opportunity); and implementing rules, regulations, and relevant orders of the Secretary of Labor.

1.40 MINIMUM WAGES

All laborers, mechanics, and workmen employed in the execution of the work described herein, shall be paid in accordance with the U.S. Department of Labor minimum wage statute and New York State minimum wage statute, if applicable.

1.41 WORKING HOURS

Unless special permission is given by the Engineer, all work shall be done between 7:00 A.M. and 5:00 P.M., Monday through Friday.

1.42 LOCAL LABOR

Other things being equal, the Contractor shall give preference to the employment of citizens residing within the area of the work. The Contractor shall comply with the Laws of the State of New York, including the Labor Law.

1.43 TWENTY-FOUR HOUR CALL

The Contractor shall provide the Engineer with the names and telephone numbers of at least two (2) employees of the firm who can be reached twenty-four (24) hours a day. This will enable the Railway to contact the Contractor any time that an emergency might arise involving the Contractor's operations or responsibilities.

1.44 SANITARY REGULATIONS

The Contractor shall provide the necessary enclosed sanitary conveniences for the use of his workmen and inspection personnel. They shall be of a type approved by the Engineer and in accordance with New York State Law. These structures shall be sufficient in number for the size of the job and their use will be required. The Contractor shall notify all his workmen that no nuisances will be permitted in this regard and any complaints from the residents along these lines shall call for stricter enforcement of the provisions of this paragraph.

Facilities such as "Sani-John" or similar prefabricated units will be approved as long as they are kept in a clean condition. Each unit shall include a toilet and urinal.

Potable drinking water shall also be provided.

1.45 DISPOSITION OF SURPLUS MATERIAL

All excess excavated material shall become the property of the Contractor unless expressly stated otherwise elsewhere in these Specifications or on the Contract Drawings. It shall be removed from the working areas as work proceeds. If the Contractor desires to deposit this surplus material on private property, written permission shall first be obtained from the property owner. A copy of the written permission shall be provided to the Engineer. In all cases, the surplus material shall be disposed of in accordance with local and state laws and ordinances.

1.46 BLASTING

No blasting will be allowed on this project.

1.47 CLEAN UP

As work along the various lines is completed, the Contractor shall systematically clean up the area. Surplus material, debris, or any waste material shall be removed. Fences, shrubs, sidewalks, or any items that require replacement, shall be set in a workmanlike manner. Where material has been spilled over on lawns, or well developed gardens, etc., said material shall be thoroughly removed to the satisfaction of the Engineer. Sidewalks or paved areas shall be left broom clean.

1.48 STREAM CROSSINGS

Whenever work is done on this project in the area of streams and waterways, the Contractor shall adhere to all the requirements set out by the NYSDEC & ACOE. These regulations are as follows (and additional requirements may apply per NYSDEC & ACOE permits):

- A. The project shall not obstruct the upstream or downstream movement of the fish. Culverts and the floors of box culverts in bridges shall be, as nearly as possible, flush with the stream bed.

- B. Sufficient flow of water shall be maintained at all times to sustain aquatic life downstream.
- C. Any culvert, box culvert, or bridge floor shall be designed to provide a “V” or dish shaped channel, which concentrates flow during periods of low water, and facilitates the movement of fish.
- D. Disturbance of the stream bed shall be kept at an absolute minimum; the stream bed shall be returned as nearly as possible to its original condition or better. Where possible, in modifying a stream bed, the centerline shall be eight (8) to twelve (12) inches lower than the toe of the channel bank, to concentrate the flow of water.
- E. Where work necessitates disturbing banks, they shall be returned to original condition or they shall be graded to a 1 vertical to 3 horizontal slope and rip rapped or planted with suitable grasses, trees and shrubs so as to prevent erosion. All trees and brush removed shall be kept to a minimum.
- F. Any dike or cofferdam required to facilitate construction shall be erected in such a manner that stream flow will not be sufficiently reduced to endanger fish life downstream. Such dike or cofferdam shall be erected with materials that will not contribute substantially to the turbidity or siltation of the stream.
- G. During the project, care shall be taken to prevent or reduce to a minimum, any damage to any stream from pollution by debris, or sediment of other material, or from the manipulation of equipment and/or materials in or near such streams. Water that is used for washing or processing, or that contains oils or sediments that will reduce the quality of the water in the stream, shall not be directly returned to the stream. Such waters will be diverted through a settling basin or filters, before being directed into the streams.
- H. If water is taken from a stream for construction purposes and an impounding structure is necessary, such structures shall be erected in a manner causing the least possible disturbance to the stream.
- I. In all cases involving work in streams, every effort shall be made to return the stream to the highest possible standard for aesthetic value, water quality, and fish habitat.

1.49 TRAFFIC CONTROL

Traffic Control, if needed, will be provided by Railway

1.50 UTILITIES

All known public and private utility installations within the contract limits are shown in their approximate existing locations on the Contract Plans. The Contractor is, however, cautioned that these locations are not guaranteed, nor is there any guarantee that all such facilities within the contract limits have been shown on the plans.

The relocation and adjustment of all privately owned utilities will be performed by the respective utility companies at their expense. It is imperative that the Contractor consult, cooperate and coordinate his work fully with the utility company.

The Contractor shall notify, in writing, any public utility, as well as the Engineer, at least five (5) days in advance of any work which may affect the utility or cause an interruption or disruption of utility service.

Utilities encountered during the work shall be maintained and protected in their existing locations until otherwise provided for. If service or utility lines not shown on the plans are encountered, excavation and grading shall be done with caution in order that these services not be disturbed until proper disposition of such is made by their Railways.

The Contractor shall be responsible for any damage to utility lines caused by his operation.

1.51 DUST CONTROL

The Contractor shall make every effort to control the amount of airborne dust resulting from construction operations by wetting debris or other means acceptable to the Engineer. Payment shall be included in the various items of the contract.

1.52 PERMITS AND FEES

Unless otherwise noted the Contractor shall obtain and pay for all permits, licenses and approvals for the execution of this contract.

1.53 SAFETY

The Contractor shall be responsible for all working conditions related to the construction site. The Contractor shall continuously observe and provide all appropriate equipment, materials, systems, and facilities necessary to protect construction personnel and the general public during and after construction (every night, weekend, and holiday). The Contractor shall be required to implement the following Federal, State, and local health and safety regulations:

1. Occupational Safety and Health Standards (OSHA).
2. Information required for work on The New York, Susquehanna and Western Railway/The New York, Susquehanna & Western Railway Corporation Right of Way.

All construction work creates a high potential for hazardous conditions to exist, and the Contractor has the sole responsibility to take the appropriate safety precautions throughout the performance of the Contract. The regulations and guidelines stated above are the minimum permissible and are not to be construed as adequate to meet every condition. Therefore, the Contractor is responsible to anticipate safety hazards and to provide all additional precautions, as

necessary.

1.54 REFERENCE STANDARDS

Where reference is made to any published standards or organizations, it shall be to the latest edition which is in effect at the date of Invitation or Advertisement to Bid.

1.55 SALES TAX

The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the work.

1.56 LIABILITY

The Contractor shall assume all liability for, and indemnify and save the Railway, their respective agents and employees and their successors or assigns, harmless from any and all claims, demands, and suits arising out of state or federal statutes, or at common law in connection with any injury to persons including death resulting therefrom or loss of any damage to property, sustained by the parties to this contract or any of their officers, agents, or employees, or by third parties, arising out of, or occurring in connection with, or in any way relation to, the work hereby undertaken by Contractor.

1.57 INSURANCE

The Contractor agrees, at his own cost and expense, to procure and maintain for a period of time until final acceptance by Railway of the work covered by this agreement, insurance coverage for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided with insurance companies acceptable to the Railway and authorized to do such business in the state(s) where the work is to be performed covering all operations under this contract.

Before commencing any work under this agreement, Contractor shall furnish to the Chief Engineer of the Railway the original and one copy of the Railway Protective Liability policy and the Owners' Protective Liability policy and in addition two (2) copies of certificate or certificates of insurance in form satisfactory to the Railway showing that Contractor has complied with this paragraph. All policies and certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the Chief Engineer of the Railway.

The kinds and amounts of insurance are as follows:

A. Workers Compensation and Employers' Liability

The Contractor shall procure and maintain (and assume the expense of) during the Contract time - in accordance with the provisions of the laws of the State of New York - Workers Compensation insurance, including the requirements of any Occupational

Disease Law, Disability Benefits Law, and/or Employers' disability Law, for all of the Contractor's employees. In case any work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers Compensation insurance (including the requirements as stated above) for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees (engaged in hazardous work under this contract at the site of the project) is not protected under Workers Compensation statute, the Contractor shall provide - and shall cause each Subcontractor to provide - adequate and suitable insurance for the protection of those employees not otherwise protected. For purposes of the insurance policies enumerated above, employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

B. Statutory Disability Benefits – New York State

The Contractor shall procure and maintain (and assume the expense of) coverage which will pay the benefits to employees required under the Worker's Compensation Law of the State of New York, for off-the-job injury and for non-occupational disease.

C. Public Liability and Property Damage Insurance

A policy issued to and covering the liability for damages imposed by law upon the Contractor with respect to all work performed by him under this agreement which policy shall have minimum limits of \$2,000,000 combined single limit per occurrence and \$6,000,000 aggregate.

D. Automobile Liability Insurance

A policy covering all owned, non-owned and hired vehicles of Contractor engaged in or about the work with limits of not less than those in paragraph C above.

Note: For purposes of the insurance policies enumerated in paragraphs C and C employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

E. Protective Liability Insurance

Each policy shall have limits of not less than \$2,000,000 combined bodily injury and/or property damage liability for each occurrence with a \$6,000,000 aggregate limit for the term of the policy and shall be furnished in the following types:

(i) Railway Protective Liability Insurance

A policy issued to The New York, Susquehanna and Western Railway Corporation, covering the liability for damages imposed by law upon or incurred

in any way by Railway or its affiliates or subsidiaries with respect to all operations under this agreement by the Contractor upon Railway's right-of-way.

(ii) Owner's Protective Liability Insurance

A policy issued to and covering liability for damages imposed by law upon The People of the State of New York, the Commissioner of Transportation and employees of the Commissioner of Transportation, both officially and personally, with respect to all work under this agreement by the Contractor, including omissions and supervisory acts of the State.

Note: For purposes of the insurance policies enumerated in paragraphs A, B, C and D, E(i) employees of the Railway assigned to the work of the Contractor for the prevention of accidents or protection of property shall be deemed to be employees of the Contractor.

F. It is understood and agreed by Contractor that the furnishing by it of the above insurance and the acceptance of same by Railway is not intended to and shall not limit, affect or modify the obligations of Contractor under any provisions of this agreement.

1.58 PRECONSTRUCTION CONFERENCE

It is required that there shall be a pre-work conference and the Contractor shall attend this meeting. It shall take place at a time and place to be announced later. This meeting shall take place before the beginning of construction. Performance of the Contract will be discussed, plus scheduling, number of crews, equipment, materials and construction details.

1.59 JOB MEETINGS

The Contractor shall attend all job meetings called by the Engineer or shall be represented by a person with complete authority to make all decisions affecting the Contractor's operations. Failure to be so represented at any job meeting which is held at a mutually agreed upon time or for which three (3) days oral or written notice is given, shall in no way relieve the Contractor from abiding by any and all decisions made at such meeting.

1.60 EXAMINATION & AUDIT

The General Contractor shall keep all necessary records, books, dairies, etc., of the performance of work in accordance with accepted construction and business practices. They shall be available to the Railway, to representatives of New York State and any other parties as dictated by law, and they shall have access if necessary.

The Contractor shall:

(A) During the effective term of this Agreement and for three (3) calendar years after final payment is made to the Contractor under this Agreement, or such longer period as may be required for final disposition of the items mentioned in subsection (C) below, establish and maintain relevant books, records, payroll records, receipts documents, papers, and any other data

or information which support and substantiate the charges made to and payments received from the Railway under this Agreement.

(B) During this time, unless a longer period of time is required in order to comply with subsection (C) below, the Railway or its duly authorized representatives shall have access to and the right to examine any relevant books, records, documents, papers, receipts, and any other data or information of the Contractor relating to this Agreement.

(C) With respect to (1) litigation or the settlement of claims arising out of performance of this Agreement, or (2) charges by the Contractor to which the Railway takes exception, Railway's right of access and examination, as well as the duty of the Contractor under subsection (A) above, shall continue until disposal of such litigation, claims or exceptions.

Contractor shall furnish Railway, if required, such itemizations or subdivision of all sums for which it bills the Railway for Work done under this Agreement as may be reasonable or accounting or other purposes.

In case all or a part of such records are not made so available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records shall be disallowed, or if payment therefore has already been made, the Contractor shall, upon demand in writing by the Engineer, refund to the Railway the amount so disallowed.

1.61 CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after receiving the award of the contract and before the first partial payment is made, the Contractor shall deliver to the Railway an estimated construction progress schedule in a form satisfactory to the Railway, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish, on forms to be supplied by the Railway, a periodic itemized estimate of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will not be considered as fixing a basis for additions to, or deductions, from the contract prices.

1.62 TIME FOR COMPLETION

It is hereby understood and mutually agreed between the Contractor and Railway, that the date for completion as specified in the contract of work to be done hereunder, is an essential condition of the contract; it is further mutually understood that the bidder agrees to commence work in a timely manner after receiving a "Notice to Proceed", so as to fully complete the project within the specified time in ARTICLE 2 of the Agreement. The Contractor agrees that said work shall be prosecuted regularly, diligently and without interruption, such that the rate of progress will insure full completion thereof within the time specified.

1.63 FAILURE TO COMPLETE WORK ON TIME

If a specific amount is determined and stated in the Agreement for liquidated damages for any work remaining incomplete after the controlled time specified for the completion of work, this amount will be deducted from any money due the Contractor. Due account will be taken of any adjustment of the contract time for completion of the work granted in accordance with the following provisions:

- A. The number of days for performance allowed in the contract awarded is based on the original quantities. Unless otherwise determined, an increase in quantities will increase the time allowed for the performance of the contract by the ratio of the final contract price to the original contract price.
- B. If the Contractor finds it impossible, for reasons beyond his control, to complete the work within the contract time as specified or as extended in accordance with the provisions of this section, he may, at any time prior to the expiration of the contract time as extended, make a written request to the Engineer for an extension of time setting forth therein the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amount as conditions justify. The extensions of time for completion shall then be in full force and effect the same as though it were the original time for completion.
- C. If the contract time is on the calendar day basis, no extension of time will be considered for unsuitable weather or conditions resulting therefrom.
- D. In general, no extended date of completion will be allowed due to failure in procurement or functioning of equipment, materials, or other items necessary for proper prosecution of the work. However, an extension of time will be granted if a request is made in writing and supporting evidence is furnished that there will be an abnormal delay, which is beyond the control of the Contractor or the fabricator in the delivery of the materials which are in critical shortage due to defense needs.
- E. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Railway of any of its rights under this contract.

1.64 QUANTITIES OF ESTIMATE

Wherever the estimated quantities of work to be done and materials to be furnished on a unit price basis under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids, and the right is expressly reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably

necessary by the Railway, to complete the work contemplated by this contract, and such increase or diminution shall in no way violate the contract, nor shall any such increase or diminution give cause for claims of liability for damages.

1.65 PAYMENT TO CONTRACTOR

Progress payments will be made to the Contractor by the Railway based on a monthly work performance period. The estimate for in-place work performed during the preceding period must be duly certified and approved by the Railway. The Contractor shall submit his pre-approved billing to the Railway, and will receive payment in accordance with the Railway's audit procedures.

Unless otherwise stipulated in the Contract Agreement, no partial payments will be made for materials delivered and stockpiled on the project site.

All work paid for shall thereupon become the sole property New York State for a period of ten years and subsequently that of the Railway, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of the work which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Railway to require fulfillment of all the terms of the contract.

The Contractor agrees that he will indemnify and save the Railway harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Railway's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so, the Railway may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Railway has written notice, or direct, or withhold from the Contractor's unpaid compensation, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligation upon the Railway to either the Contractor or his Surety.

In paying any unpaid bills of the Contractor, the Railway shall be deemed the agent of the Contractor and any payment so made by the Railway, shall be considered as a payment made under the contract by the Railway to the Contractor and the Railway shall not be liable to the Contractor for any such payment made in good faith.

1.66 EXTRA WORK

No extra work will be paid for unless done upon written order from the Engineer. Extra work will be paid for according to the contract schedule of unit prices. Where unit prices for work are not included in the schedule, 15% advance upon the actual cost, as determined by the Engineer,

will be paid the Contractor. All bills for extra work must be submitted on or before the first day of the month following performance of same.

The Engineer shall, as soon as practicable after the completion of the work, make a final certificate of the amount of work done and the value thereof and the Railway shall within thirty days thereafter pay the entire sum so found to be due after deducting therefrom all previous payments, except, that in case any portion of the completed work is unsatisfactory to the Engineer, no final payment shall be made to the Contractor until same has been properly repaired.

1.67 EVIDENCE OF PAYMENT BY CONTRACTOR

The Contractor shall furnish the Railway, whenever requested, satisfactory evidence that all persons that have done the work or furnished materials under this contract have been fully paid or satisfactorily secured. In case such evidence is not furnished, such an amount as may be necessary to meet the claims of such dissatisfied person(s) may be retained from moneys due the Contractor under this contract until the claims shall have been fully discharged.

1.68 PAYMENTS WITHHELD

The Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect the Railway from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. A reasonable doubt that the contract can be completed for the balance then unpaid.
- d. Failure of the Contractor to make payments properly to subcontractor or for material or labor.
- e. Damage to another contractor.
- f. Failure to comply with "Contract Provisions" or any other requirements contained in this contract.

When all the above grounds are removed certificates shall at once be issued for amounts withheld because of them.

1.69 ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Contractor of the final estimate and payment, made as aforesaid, shall operate as and be a release to the Railway of all claims by and all liabilities to the Contractor for

all work done and materials delivered or for any act of the Railway for such labor and material.

1.70 GUARANTEE & CORRECTION OF WORK

The Contractor shall guarantee all work and equipment furnished under the Contract against defects in workmanship and materials for a period of one (1) year following the date of final acceptance by the Railway. Under this guarantee, the Contractor agrees to make good without delay, at his own expense, any failure of such parts due to faulty materials, construction, or installation, or to the failure of any such equipment to successfully perform all the work put upon it within the limits of the Specifications, and further shall make good any damage to any part of the work caused by such failure. The Contractor also agrees that the Contractor's Bond provided for in Paragraph 1.57 I. of these General Conditions shall fully cover all guarantees contained in this paragraph. Items replaced or rebuilt shall carry a one (1) year guarantee from the date of acceptance of the replacement or repairs.

If at any time within said period of guarantee any part of the work requires repairing, correction or replacement, the Railway may notify the Contractor in writing to make the required repairs, corrections, or replacements. If the Contractor neglects to commence making such repairs, corrections or replacements to the satisfaction of the Railway within three (3) days from the date of receipt of such notice, or having commenced fails to prosecute such work with diligence, the Railway may employ other persons to make the same. The Railway shall pay the cost and expense of the same out of the monies retained for that purpose, or from his sureties upon the bond given as herein provided. Upon the expiration of the said period of guarantee, provide that the work at that time is in good order, the Contractor will be entitled to receive the whole or such part of the sum of the last aforesaid, if any, as may remain after the cost and expense of making said repairs, correction, or replacements, in the manner aforesaid, have been paid therefrom.

1.71 LIENS AND CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims and encumbrances.

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Railway a complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Railway to indemnify him against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Railway all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

1.72 ASSIGNMENT

The Contractor who is awarded the contract is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right title or interest therein, or his power to execute such contract to any other person, company or corporation without the previous consent in writing of the Railway awarding the same.

Section 9

**INFORMATION REQUIRED FOR WORK
ON CNY/NYS&W'S RIGHT-OF-WAY**

**CENTRAL NEW YORK RAILROAD CORPORATION
THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**

DATE: _____

PROJECT DESCRIPTION:

SIGNATURE/DATE/TITLE: _____

CNY/NYS&W REPRESENTATIVE FOR THIS PROJECT IS **DEREK WINCHESTER, VP-ENGINEERING** OR HIS DESIGNATED REPRESENTATIVE.

INFORMATION REQUIRED FOR WORK ON CNY/CNY/NYS&W'S RIGHT-OF-WAY

The information contained in this package is not intended to replace or supplement the contract special provisions for this project. The intention is merely to explain and emphasize the information required when work is performed on Central New York Railroad Corporation/The New York, Susquehanna and Western Railway Corporation's right-of-way. Please note, the information and requirements contained in this package do fall within the scope of the special provisions and Standard Specifications.

The items covered in this package are as follows:

	<u>Page</u>
1. Safety - Note: Very Important	2
2. Protective Services (Flagging) Provided by the Railroad	4
3. Contractor's Material & Equipment Stored on CNY/NYS&W's Right-Of-Way	5
4. Protection of CNY/NYS&W's Facilities During Construction	5
5. Clearances for Temporary Deck Shields and Temporary Bents	6

6.	Protection of the Track Structure (Ballast) - Note	6
7.	Location of all Underground and Overhead Utilities Located on CNY/NYS&W's Right-Of-Way - Note	7
8.	Blasting	7
9.	Temporary Sheeting and Shoring	7
10.	Erection, Demolition and Hoisting Operations	9
11.	Submissions	11
12.	Private Grade Crossing for a Contractor	11

1. **SAFETY**

The contractor must conduct his work in a safe manner. The contractor is expected to comply with all applicable Governmental safety regulations, as well as CNY/NYS&W Safety Rules. The following section entitled, "Safety Rules to be Observed While Working on CNY/NYS&W Right-of-Way," is included as a representative sample of CNY/NYS&W's Safety Rules, but is not to be considered as a complete presentation of the safety rules. A complete copy of CNY/NYS&W's Safety Rules is available upon written request.

Contractor work standards must comply with requirements governing General Safety and Health as established by the Occupational Safety and Health Administration (OSHA)

NOTE: **All contractors and persons entering the CNY/NYS&W right-of-way must be trained on the pertinent CNY/NYS&W Safety Rules and Road Worker Protection Program.**

SAFETY RULES TO BE OBSERVED WHILE WORKING ON RIGHT-OF-WAY

(a) General

The rules involving the use of narcotics and/or alcohol (3010), attire (3020), hard hats (3060), goggles (3052) and safety toe footwear (3026) are to be strictly enforced. Safety vests (or orange colored shirts) will be required for all personnel working on or adjacent to an active highway. The Contractor is advised that each site must be kept clean and care taken that any on-site material is properly stored and secured from vandals so as to protect our train and yard operations at all times.

(b) Walking

3030. You must walk, not run, keeping your hands out of pockets. Be alert for tripping and slipping hazards. Do not jump across excavations, holes or open pits. Walk around them.

3031. Keep all walkways free of any obstruction, tripping or slipping hazard.

(c) Personnel Protective Gear

3050. Sometimes engineering controls of hazardous exposures are impractical or impossible to implement. In these cases, protective gear is the only recourse to provide a safe and healthful environment for you. Therefore, upon entering an area or facility you will conform with all rules requiring the wearing of personal protective gear.

(d) Hoisting Equipment

3400. The use of hoists is subject to certain hazards that cannot be met by mechanical means, but only by the exercise of intelligent care, common sense and experience in anticipating the motions that will occur as a result of operating the control. Inspect ropes, chains, hooks and slings before using them.

3401. When positioning and operating equipment, maintain a minimum clearance of ten feet from any wire unless it has been de-energized and visibly grounded at the point of work.

3402. Take hold of cable, sheave, boom or any potential pinch point only after protection has been provided.

3404. Before starting hoisting operation one person shall be designated to give signals and all involved in the operation shall be notified who that person is.

3409. Use a tag line or non-conductive hand line to assist in controlling any unwieldy load. See that all persons are in a safe position, then hoist slowly until the load line is vertical and the load is under complete control.

3411. Operate or move hoisting equipment only when sure that:

- (i) no persons are in a position that they are caught by any part of the load or the equipment;
- (ii) boom or load will not be carried over any other person;
- (iii) boom or load is at least ten feet from energized wires.

(e) Excavations

Before excavating, identify all underground utilities and notify those responsible for the utilities.

Keep a safe distance from the edge of a pit or trench, unless constructing, inspecting, maintaining or using it. A competent person will inspect daily the excavation, adjacent areas and protective systems. Keep equipment far enough from the edge of an excavation to avoid imposing strain from vibration on the trench walls.

(f) Elevated Places

When working on any elevated place near or over track or highway, keep all objects clear of passing trains or vehicles.

Use an adjusted safety belt and strap in an untwisted position, with tongue or snap away from your body.

2. **PROTECTIVE SERVICES (FLAGGING) PROVIDED BY THE RAILROAD**

The contractor must conduct his work so as not to interfere with the operations of our railroad. The railroad will not issue any slow order restricting the speed of the trains.

With the respect of the use of a flagman, the contractor is advised that the purpose of a railroad flagman is to protect CNY/NYS&W operations from the contractor's activities occurring on this project. It is therefore up to the sole discretion of the railroad representative (Project or Field Engineer, or Construction Inspector) when a flagman is necessary.

Generally one or more flagmen will be required where a track is/or may be fouled by the contractor's equipment and/or personnel. A track is generally considered to be fouled when personnel and/or equipment are within fifteen feet (15) of center of track. (Please note: As an example: A crane with a 100 foot boom operating 80 feet off center line of track is fouling the track - boom failure).

When protective services are ordered, the date, time, and type of flagging will be shown in the weekly Bulletin Order. If flagging is to be done by an assigned flagman at the site, construction work will only be allowed while the flagman is at the site. If flagging is to be done by the train crews (i.e., "Stop & Protect") then the contractor will only be permitted to work the hours and days which had been previously agreed to by the railroad representative (unless the contractor is advised otherwise by the railroad representative).

If an incident should occur involving a train (i.e., a train not receiving the required permission through the site or not following the "Stop and Protect" order) the railroad field representative and/or this office (Area Code 607-547-2555) should be notified immediately so that the appropriate action can be taken.

3. **CONTRACTOR'S MATERIAL & EQUIPMENT STORED ON CNY/NYS&W's RIGHT-OF-WAY**

Generally, the contractor will not be allowed to store any equipment or material on CNY/NYS&W's Right-of-Way. On projects where CNY/NYS&W's Right-of-Way is wide (100'+) or permission is obtained from our field representative, the following rules will be followed:

Any material stockpiled or stored on or adjacent to CNY/NYS&W's Right-of-Way must be secured at all times and stored far enough away from the tracks (as directed by CNY/NYS&W field personnel) so as to prevent injury to our personnel or damage to our equipment (material being thrown at trains) or causing a problem with our operations (vandals placing material on the track). This includes material on overhead structures.

Any equipment stored on our Right-of-Way must be parked at least 25 feet off the center of all tracks. This will eliminate any questions by train operators whether there is sufficient distance from the track to the vehicle to allow the safe passage of a train.

Please note, under no condition will a contractor be allowed to store debris from a sandblasting operation on CNY/NYS&W Right-of-Way.

4. **PROTECTION OF CNY/NYS&W'S FACILITIES DURING CONSTRUCTION**

It is the contractor's responsibility to ascertain that all CNY/NYS&W facilities are properly protected during construction. Special attention should be given to the following:

C&S Facilities - Before any excavation begins on CNY/NYS&W's Right-Of-Way, the contractor will verify with CNY/NYS&W's field representatives, the location of all underground C&S (Communication & Signals) facilities. The contractor will keep all equipment and material fifteen (15) feet away from all overhead C&S facilities.

Access Roadways - All access roadways in the project area will be maintained (i.e. surface & support) by the contractor for railroad vehicular traffic. The contractor will only be allowed to close a roadway after receiving written authorization from CNY/NYS&W's Engineering Department. Please note, any prolonged closing of a roadway especially where it parallels a main track, will not be allowed.

Drainage Maintenance - All the existing drainage (including headwalls, culverts, ditches) which is affected by the construction, must be maintained by the contractor.

5. **CLEARANCES FOR TEMPORARY DECK SHIELDS AND TEMPORARY BENTS**

A minimum vertical clearance of 23'-0" above the top of highest rail will be maintained at all times by the contractor. A temporary reduction of that clearance (23'-0") will only be allowed upon written authorization from CNY/NYS&W's Chief Engineer.

Any temporary bents required by the contractor during construction should be located a minimum of 12'0" from the centerline of the nearest tracks. Reduction of the 12'0" clearance to a minimum of 6'0" clearance (close clearance) will be allowed upon written authorization of the Chief Engineer provided the following condition are met:

- (a) the contractor accepts, in writing, full responsibility and liability for any and all damages which could result from our train operations (i.e., dragging equipment, derailments, etc.)
- (b) the contractor agrees to reimburse the railroad for its costs in the installation and removal of guard rails.

6. **PROTECTION OF THE TRACK STRUCTURE (BALLAST)**

In order to protect the ballast section from becoming fouled, we suggest measures be taken by the contractor such as covering the track with canvas, etc., to protect the ballast section. This covering must, of course, be properly secured and any measures for protection would need to be approved by our field representative prior to installation.

Please note: If the ballast section does become fouled, the existing ballast will be removed and replaced with clean ballast by railroad forces at the contractor's expense.

7. **LOCATION OF ALL UNDERGROUND AND OVERHEAD UTILITIES LOCATED ON CNY/NYS&W'S RIGHT-OF-WAY**

It is the contractor's responsibility to ascertain that all utilities located on and over CNY/NYS&W's Right-Of-Way are identified and located in the field and that the utility companies are properly notified before any work on our Right-Of-Way. Special attention should be given to the possibility of Fiber Optic Cable being located along or across our Right-Of-Way.

8. **BLASTING**

Blasting, as a rule, is not allowed on CNY/NYS&W's Right-Of-Way. In the event that the contractor has tried all other methods (mechanical, chemical, etc.) and they have proven to be ineffective, an exception to this rule may be considered after all the proper submissions have been made and approved by the Railroad.

9. **TEMPORARY SHEETING AND SHORING: REQUIREMENTS FOR TEMPORARY SHEETING AND SHORING TO SUPPORT CNY/NYS&W TRACKS**

The following items are to be included in the design and construction procedures for all permanent and temporary facilities adjacent to CNY/NYS&W tracks.

- A. Footings for all new piers, columns, walls or other facilities shall be located and designed so that any temporary sheeting and shoring for support of adjacent track or tracks during construction will not be closer than the toe of ballast slope (8'6" is dimension from centerline of track to toe of ballast for tangent track; see dimensions on Standard Plan (Area) for dimensions on curved track).
- B. When support of track or tracks is necessary during construction of above-mentioned facilities, interlocking steel sheeting adequately braced and designed to carry E-80 live load is required. Solder piles and lagging will be permitted for supporting adjacent track or tracks only when its use is approved by CNY/NYS&W. Consideration for its use will be made if required penetration of steel sheet piling cannot be obtained and when dry, non-running, stable material will be encountered.
- C. Exploratory trenches, three (3) feet deep and fifteen (15) inches wide in the form of an "H" with outside dimensions matching the outside of sheeting dimensions are to be hand dug prior to placing and driving steel sheeting in areas where

railroad underground installations are known to exist.

These trenches are for exploratory purposes only and are to be backfilled and the backfill compacted immediately. This work must be done in the presence of a railroad inspector.

- D. Absolute use of track is required while driving sheeting with fifteen (15) feet from the centerline of a live track. Procedure for arranging for use of track shall be as outlined in project special provisions.
- E. Cavities adjacent to sheet piling, created by driving of sheet piling, shall be filled with sand and any disturbed ballast must be restored and tamped immediately.
- F. Sheet piling shall be cut off at top of tie during construction and, after construction and backfilling has been completed, piling within ten (10) feet from centerline of track, or when bottom of excavation is below a line extending at 1:1 slope from end of tie to point of intersection with sheeting, shall be cut off eighteen (18) inches below existing ground line and left in place.
- G. Any excavation adjacent to track shall be covered and ramped and provided with barricades as required by CNY/NYS&W. A walkway must be provided adjacent to track for any excavation within 10 feet off the centerline.
- H. Final backfilling of excavation shall be as required by project specifications.
- I. The contractor is to advise CNY/NYS&W of the time schedule of each operation and obtain approval of CNY/NYS&W for all work to be performed adjacent to CNY/NYS&W tracks so that it may be properly supervised by railroad personnel.
- J. All drawings for temporary sheeting and shoring shall be prepared and stamped by a Registered Professional Engineer and shall be accompanied by complete design computations when submitted for approval.
- K. Where physical conditions of design impose insurmountable restrictions requiring the placing of sheeting closer than specified (see Item A), the matter must be submitted to CNY/NYS&W's Chief Engineer.

Two (2) copies of the submission are to be sent to:

Derek Winchester
Central New York Railroad
1 Railroad Avenue
Cooperstown, New York 13326

One (1) copy of the submission is to be sent or given to our field representative at the time the Contractor sends two (2) copies to this office. After review, one (1)

copy of the submission will be sent back to the contractor and one (1) copy will be sent to the State.

- L. The contractor is advised that they can expect a minimum of thirty (30) day review period from the date it is received in this office.
- M. CNY/NYS&W's field representative must be present at the site during the installation of any sheeting which may have an effect on our operation or facilities.

10. **ERECTION, DEMOLITION AND HOISTING OPERATIONS**

DATA REQUIRED FOR APPROVAL OF BRIDGE ERECTION DEMOLITION OR OTHER HOISTING OPERATIONS OVER TRACKS OF CNY/NYS&W

- A. Overhead protective shields are required for the removal of concrete decks, gunite encasement, etc., over active tracks. A minimum vertical clearance of 20'6" must be maintained at all times. Details of the type of shield, method of installation, and design loading calculations must be submitted for approval.
- B. A plan showing locations of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown must be submitted. The location of all tracks and other railroad facilities should also be shown. Please note, any part of the crane (outriggers, etc.) should be no closer than 10 ft. from the centerline of track.
- C. Crane rating sheets showing cranes to be adequate for 150% of the actual weight of the pick. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted.
- D. Plans and computations showing weight of picks. Where beams are being removed over CNY/NYS&W facilities, the weight shall include the weight of concrete or other material that will be included in each pick. Calculations shall be made from plans of the existing and/or proposed structure showing complete and sufficient details with supporting data for demolition or erection of the structure.

If the contractor can prove to CNY/NYS&W that plans do not exist and weights must be calculated from field measurements, the field measurements are to be made under the supervision of the Professional Engineer submitting the procedure and he shall include sketches and estimated weight calculations with his procedure. If possible, field measurements shall be taken with a CNY/NYS&W representative present. Weights shall include the weight of concrete, or other material, that will be included in the lifts.

- E. A location plan showing all obstructions such as wires, poles, adjacent structures, etc., showing that the proposed lifts are clear of these obstructions.
- F. A data sheet shall be prepared listing the type, size and arrangements of slings, shackles, or other connecting equipment. Include copies of catalog or information sheets for specialized equipment.
- G. A complete procedure is to be included, indicating the order of lifts and any repositioning or re-hitching of the crane or cranes.
- H. Temporary support of any components or intermediate stages is to be shown and detailed. If this temporary support is located within twelve (12) feet of any track, a guard rail will be installed in any track(s) by railroad forces at the contractor's expense.
- I. A time schedule of the various stages must be shown as well as a schedule for the entire lifting procedure.
- J. All bridge erection or demolition procedures submitted will be prepared, signed and sealed by a registered professional engineer.
- K. Two (2) copies of the procedures are to be sent to:
 - Derek Winchester – VP Engineering
 - Central New York Railroad
 - 1 Railroad Avenue
 - Cooperstown, New York 13326
- L. One (1) copy of the procedure is to be sent or given to our field representative at the time the contractor sends two (2) copies to this office. After review one (1) copy of the submission will be sent back to the contractor and one (1) copy will be sent to the State.
- M. The contractor is advised that they can expect a minimum thirty (30) day review period starting the day the submission is received in this office.
- N. CNY/NYS&W's field representative must be present at the site during the entire demolition and erection procedure period.
- O. Plans are to be prepared in sizes as small as practical and shall be folded, individually, by the applicant to an 8 1/2 inch by 11 inch size, as shown below, prior to submission. Where more than one plan is involved, the folded plans shall be assembled into complete sets by the applicant before submission. Failure of the applicant to comply with these requirements may be sufficient cause for

rejection of the application.

11. **SUBMISSIONS**

Please note that a minimum thirty (30) day review period can be expected from the date the submission is received in this office.

12. **PRIVATE GRADE CROSSING FOR A CONTRACTOR**

The railroad will review any request for a private grade crossing, however, it should be understood that the railroad is the sole judge if a crossing will be installed.

If the concept of a crossing is approved, then a contract with the railroad will be necessary. A request, including a drawing showing the location of the crossing (a North arrow, and the distance from the nearest milepost) should be sent to:

Derek Winchester, VP-Engineering
Central New York Railroad
1 Railroad Avenue
Cooperstown, New York 13326

A copy should also be submitted to this office.

As information, rates for private grade crossings are as follows:

<u>Preparation</u>	-	\$300	
<u>Annual Rental</u> -	<u>Width of Crossing</u>		<u>Amount</u>
	8'		\$2,400
	10'		\$3,000
	24'		\$3,600
	32'		\$4,200
	40'		\$4,800
	48'		\$5,600
	56'		\$6,200