

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
and
MOYNIHAN STATION DEVELOPMENT CORPORATION
GRANT AGREEMENT
Moynihan Station Phase 1
COMPTROLLER CONTRACT No. DH34354
PROJECT IDENTIFICATION : X822.66.371

This Agreement dated this first day of September, 2012, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, and the Moynihan Station Development Corporation, with offices at 633 Third Avenue, 34th Floor, New York, NY 10017, hereinafter referred to as the "MSDC".

WITNESSETH:

WHEREAS, the STATE and the MSDC wish to provide for re-construction of the "Connecting Corridor" between the West End Concourse, the 8th Avenue Subway and existing Pennsylvania Station ("Penn Station"), as well as the construction of the fan rooms and sub-station structure "Platform Ventilation Structure Work" for the platform ventilation system in the Penn Station train shed for a new intercity train hall for the National Railroad Passenger Corporation ("Amtrak") in New York City to improve capacity and relieve passenger congestion at Penn Station (the "Project"); and

WHEREAS, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and

WHEREAS, the total cost of the Project is thirty million dollars (\$30,000,000); and

WHEREAS, the Federal Railroad Administration of the U.S. Department of Transportation ("FRA") has provided federal funding pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA") for the Project, pursuant to a Cooperative Grant Agreement with the New York State Department of Transportation ("NYSDOT"); and

WHEREAS, it has been determined to be in the best interest of the public to make thirty million dollars (\$30,000,000) available to the MSDC from the funds provided by the FRA for the Project; and

NOW THEREFORE, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

ARTICLE ONE: DEFINITIONS

The words and expressions defined below shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his/her designated representative.

"Project or Approved Project" means the Construction of the Connecting Corridor 33rd Street Connector between the West End Concourse, the 8th Avenue Subway and existing Penn Station, as well as the Platform Ventilation Work including the construction of the fan rooms and substation structure for the platform ventilation system in the Penn Station train shed conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.3 for accomplishing the work set forth in Appendix 1 of this Agreement and in conformance with Office of Management and Budget Circular A-87 and A-122 and 49 CFR, Part 19, and amendments thereto.

"Work Schedule" means a description of the Project as described in Appendix 1.

"Project Facilities" means the infrastructure being constructed as part of the Project as set forth in Appendix 1 including all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of MSDC pursuant to the provisions of this Agreement.

ARTICLE TWO: COMPLETION OF THE PROJECT AND REIMBURSEMENT

Section 2.1. Description of Work

MSDC agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix 1 - Work Schedule of this Agreement (hereinafter referred to as the "Work Schedule"), which is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the time limits specified in said Work Schedule or any extension thereof.

Any time limits for the accomplishing of work which are set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

Section 2.2. Maintenance

MSDC agrees to arrange to have maintained, at no expense to the STATE, the Project, as well as ancillary facilities useful or necessary for providing rail transportation services thereon or therewith, in accordance with the usage and the requirements of the COMMISSIONER, for a period of twenty years from the date the Project is placed into service and accepted by the COMMISSIONER, which is the useful life of the Project, consistent with the satisfactory continuing control and maintenance responsibilities of 49 U.S.C. 24402(b)(1) and (c)(1) and as referenced in Appendix C to this Agreement. In the event the Project property is not maintained as required by this section, for a period of time in excess of six (6) months, or such other period as may be mutually determined by STATE and FRA, and is not restored within a reasonable time to the level of utility which exists when the Project improvements are completed, MSDC will refund to FRA a pro-rata share of the Federal contribution, based upon the percentage remaining of the twenty (20) year period that commenced when the Project property was placed in service.

In the event that all intercity passenger rail (IPR) service making use of the Project property is discontinued during the twenty (20) year period, MSDC shall continue to ensure that maintenance of the Project property, as set forth above, for a period of one (1) year from the date of the discontinuance to allow for the possible reintroduction of IPR service.

Section 2.3. Reimbursement

STATE agrees to reimburse MSDC for the STATE's share of eligible Project Costs, up to the total amount identified in Appendix 1 - Work Schedule, which MSDC incurs for the work performed or facilities provided as described in the attached Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of MSDC. The STATE shall not be obligated to pay nor shall MSDC claim reimbursement for the use of facilities or equipment which have been acquired by MSDC in whole or in part with funds provided by STATE under this or any other agreement.

MSDC shall submit to STATE fair and reasonable charges less the salvage value of materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller.

STATE shall reimburse MSDC in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by MSDC shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller, the Inspector General of the United States Department of Transportation, the Comptroller General of the United States, the FRA, or their authorized representatives.

MSDC shall submit monthly invoices for eligible costs incurred, accompanied by documentation and a certification of costs, including executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and propriety of the charges. These

documents shall be retained and maintained by the MSDC, as provided in Section 3.9 herein, so that they will be available for audit as provided in this Agreement.

Upon the completion of all said work by MSDC pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the MSDC project account records within one hundred eighty (180) days to determine the resources applied or used by MSDC in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by MSDC, the final reimbursement payment will be made to MSDC.

In the event that any payments are made by the STATE to the MSDC for costs incurred by MSDC, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to MSDC under the Agreement, or MSDC shall repay such amount to STATE within forty-five (45) days from the date MSDC receives notice of such determination of ineligibility or the date on which a final decision is made in any appeal or review of such determination authorized by applicable law and made by MSDC, whichever is later.

Electronic Contract Payments

Payment for invoices submitted by the MSDC shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The MSDC shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. The MSDC acknowledges that it will not receive payment on any invoices submitted under this Agreement unless it complies with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

Section 2.4. Reserved

Section 2.5. Title to Materials

The improvements will be constructed by MSDC within the Penn Station and the Penn Station train shed owned by Amtrak and upon property owned by MSDC, and upon completion and final inspection of the constructed improvements, ownership of the improvements will be vested in Amtrak or MSDC, as the case may be, without the need of any execution and delivery of deeds, bill of sale or other title document.

Section 2.6. Use and Disposition of Project Facilities

a. MSDC acknowledges that the purpose of the Project is to benefit intercity passenger rail (IPR) service. In the event that all IPR service making use of the Project improvements is

discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project improvements were placed in service, and if such IPR service is not reintroduced during a one (1) year period following the date of such discontinuance, MSDC shall refund to FRA, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

To the extent necessary and appropriate, this Section 2.6 and Section 2.2 shall be implemented in a manner so as to avoid double counting of any refunds paid or required to be paid to FRA.

b. Upon completion and acceptance of the Project by the MSDC, MSDC shall certify in writing to the COMMISSIONER that the Project has been completed and accepted in accordance with the Appendix 1.

MSDC shall arrange for Amtrak, the project site owner, to cause the Project Facilities to be used and cause to be provided IPR service on or in connection with the Project in a careful and proper manner and comply with and conform to or cause to be complied with and conformed to all applicable Federal, State and local laws, ordinances and regulations in any way relating to the IPR service and use or maintenance of the Project Facilities.

Section 2.7. Manner of Performing Work

MSDC agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work within the time limits specified in said Work Schedule. MSDC shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the MSDC's timetable for completion.

Section 2.8. Inspection

During the term of this Agreement, the COMMISSIONER shall have the right to request periodic progress meetings and/or site visits for the purpose of inspecting and examining the progress and condition of the Project and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to MSDC and in accordance with the safety requirements and guidelines of the Long Island Railroad and Amtrak.

Section 2.9. Environmental Protection

MSDC agrees that all work accomplished under this Agreement will be performed in accordance with all applicable local, State and Federal environmental laws and regulations.

ARTICLE THREE: GENERAL PROVISIONS

Section 3.1. Liability and Indemnification

MSDC hereby agrees to indemnify and hold harmless the STATE, the New York State Department of Transportation and its respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment and risks of other damages to the extent arising from activities conducted by or on behalf of MSDC pursuant to this Agreement, except when attributable to the fault or negligence of the STATE, the New York State Department of Transportation or its respective agents and employees other than MSDC.

MSDC agrees to obtain or require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all activities under this Agreement whether performed by the MSDC, its contractor(s) or subcontractor(s). MSDC shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the STATE. The minimum required kinds and amounts of insurance required are as follows:

a. Public Liability Insurance Contractor's Commercial General Liability)

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

b. Protective Public Liability Insurance (Subcontractors Commercial General Liability)

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform work within 50 feet of railroad tracks the Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any

one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one

e. Force Account Insurance

The MSDC shall cause Amtrak or others performing force account work to carry Force Account insurance covering bodily injury, legal liability, liability assumed under this Agreement and property damages resulting from any acts, errors or omissions for the work performed by their employees in connection with this Agreement. This policy shall provide limits not less than Two Million (\$2,000,000) nor more than Six Million Dollars (\$6,000,000) as determined by MSDC

The insurance herein before specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 3.2. Assignment

MSDC shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 3.3. Approval of Contracts

MSDC shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER, which shall not be unreasonably withheld or delayed. This Section 3.3 shall apply only to contracts, subcontracts, amendments and obligations pursuant to which MSDC incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

The construction of the platform ventilation fan rooms will be completed through a change order to an existing construction contract for other Phase 1 improvements approved by the FRA and the MSDC Board on May 9, 2012, which construction contract is hereby expressly approved by the COMMISSIONER.

Section 3.4. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by MSDC as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

Section 3.5. Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and MSDC and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

Section 3.6. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 3.7. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and obligations.

Section 3.8. Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or MSDC any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and MSDC unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

Section 3.9. Records and Documents

MSDC shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of six (6) years from the date of submission of the final bill by MSDC, books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement 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.

Section 3.10. ARRA Jobs Accountability Reports

MSDC shall submit a jobs accountability report to <http://www.FederalReporting.gov> not later than ten days after the end of each quarter as required under section 1512(c) of the American Recovery and Reinvestment Act of 2009 (ARRA) as required and consistent with Office of Management and Budget (OMB) guidance, dated June 22, 2009 and found at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf. The report shall contain: (1) the total amount of ARRA funds received pursuant to this Agreement; (2) the amount of ARRA funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which ARRA funds were expended or obligated, including – (A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on any subcontracts or subgrants awarded to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Information from these reports will be made available to the public. OMB may issue additional guidance on the preparation and submission of jobs accountability reports. MSDC must also register with the Central Contractor Registration database (<http://www.ccr.gov>) or complete other registration requirements as determined by the Director of OMB. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

Section 3.11. Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of MSDC, final payment shall be made based on the actual cost incurred by MSDC in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by MSDC prior to the termination, no consideration will be given to profit which MSDC might have made on the uncompleted portion of the work.

(b) If the termination is brought about as a result of unsatisfactory performance on the part of MSDC, the value of the work performed by MSDC, prior to termination shall be established by the percent of the amount of such work completed by MSDC and acceptable to the STATE, of the total amount of work contemplated by this Agreement.

(c) If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if MSDC is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to MSDC. MSDC shall have the opportunity to cure such default during this fifteen (15) day notice period.

Section 3.12. Permits

MSDC agrees to obtain or cause to be obtained all approvals, permits and licenses necessary to progress the work described in Appendix 1- Work Schedule, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws, including New York Railroad Law, which in any way impacts work to be accomplished by the Project.

Section 3.13. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 3.14. Notices

Any request, authorization, direction, notice, consent, waiver or other document provided for or permitted by this Agreement to be made upon, give or furnished to, or filed with one party by the other party, shall be in writing and shall be transmitted either (i) by certified or registered United States mail, return receipt requested, (ii) by facsimile transmission; (iii) by expedited delivery service; (iv) by personal delivery service or (v) by e-mail to the appropriate address of such party set forth below:

If to the COMMISSIONER, to:

Marie Corrado, Director, Major Projects Office
NYSDOT
50 Wolf Road - 6th Floor
Albany, New York 12232
Fax No.: (518) 457-4190
E-mail: mcorrado@dot.state.ny.us

If to the Moynihan Station Development Corporation, to:

Timothy Gilchrist, President
Moynihan Station Development Corporation
633 Third Avenue, 34th Floor
New York, NY 10017

II. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mails, as of the date of first attempted delivery at the address in the manner provided hearing, or in the case of facsimile transmission or e-mail, upon receipt.

III. The parties may, from time to time, specify any new or different address in the United States as their address for purposes of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party said in accordance herewith. The parties agreed to

mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration

Section 3.15. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

Section 3.16. Relationship to Parties

The relationship of the MSDC to the STATE is that of any independent contractor, and the MSDC, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

Section 3.17. Effective Date of Agreement

This Agreement shall take effect at the time at which it is approved by the State Comptroller.

Section 3.18. Term of Agreement

The term of this Agreement shall commence on September 1, 2012 and shall extend to the date final payment has been made by the STATE, provided, however, that the provisions in this Agreement relating to maintenance of the Project Facilities, federal reporting and record retention shall survive the termination of this Agreement.

Section 3.19. Documents Forming Agreement

This Agreement shall consist of this document and the following attachments:

- Appendix 1 – WORK SCHEDULE
- Appendix 2 – Funding Information
- Appendix 3 – Iran Divestment Act
- Appendix A – Standard Clauses For All New York State Contracts
- Appendix A-1 – Supplemental TITLE VI Provisions (CIVIL RIGHTS ACT), if applicable
- Appendix B – ARRA Reporting and Record Keeping Requirements & State Job Posting Requirements, if applicable
- Appendix C – FRA Flow Down Provisions

Moynihan Station Development Corporation:

[Signature]
Signature
Timothy J Gilchrist
Print Name
PRESIDENT, MSDC
Title
9-10-12
Date

County of Albany

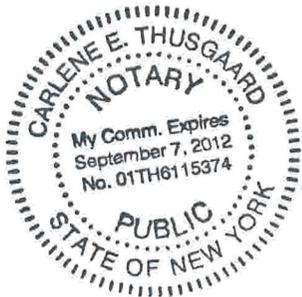
) ss: Carlene E. Thusgaard

State of New York

On this 10th day of September, 2012, before me personally came Timothy Gilchrist to me known to be the President of the MSDC, the entity described in and which executed the foregoing instrument, and s/he: acknowledged to me that s/he executed the same, pursuant to authorization by the MSDC.

Notary Public Stamp

Date 9/10/12



New York State Department of
Transportation:

Joan McDonald
Signature

Joan McDonald, Commissioner
Name

September 17, 2010
Date

Department Certification:

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

Signature

Signature

Date

Date

APPENDIX 1 – WORK SCHEDULE

Phase 1 of the Moynihan Station Project

Funding for this project has been provided as stated in Appendix 2 – Funding Information.

The FRA has provided \$30,000,000 of funding to the STATE for this project as described herein and as more fully described in plans and estimates prepared by or on behalf of the STATE for this project. The STATE has determined that MSDC will implement construction of \$30,000,000 of improvements for this project for the Tasks stated in the Work Description Table below.

Funds from this grant will be used to construct the Connecting Corridor Sub-project and the fan room and sub-station structures for the Platform Ventilation System Sub-project. Tasks 1 & 2 shall be carried out by MSDC and 100% of the cost of construction will be funded by the FRA.

Final Design prepared by the MSDC shall be deemed to be included herein as part of the Work Schedule.

MSDC will prepare and submit all necessary project documentation required by the FRA including a project management plan, baseline schedule, budget, and required railroad agreements.

MSDC will coordinate project activities with appropriate agencies and stakeholders including PANYNJ, MTA, LIRR, NJT, Amtrak and others as needed to complete construction activities stated in the table below.

MSDC will be reimbursed for costs deemed eligible incurred on or after September 1, 2012 associated with this Work Schedule up to a maximum amount payable of \$30,000,000.

Work Description	Estimated Total Construction Cost (\$)
<p><u>Tasks:</u> Professional services for this Project include project management, engineering review, construction inspection, and all necessary permits. They will be funded by MSDC from other sources</p> <p><u>Construction:</u> Construction includes three sub-projects:</p> <ol style="list-style-type: none">1. Connecting Corridor Sub-Project, construction includes a widened, ADA-compliant corridor between the new WEC and existing Penn Station, beneath 33rd Street. The ADA-compliant Connecting Corridor construction consists of removing existing ramps, re-grading and installing new ADA compliant ramps. Construction also includes improved below grade lighting and signs. Construction will also include new stairs from the sidewalk on the West side of 8th Avenue to the A,C,E 8th Avenue subway lines, which will meet NYC Transit requirements. Existing public stairs will be removed, relocated and replaced with new steel stairs and appropriate construction staging.	\$11,750,000

APPENDIX 1 – WORK SCHEDULE

<p>2. Platform Ventilation System C Yard Sub-Project, construction includes three new fan rooms and a sub-station room structures in the train shed for the Platform Ventilation System. The train shed structures include all of the fan rooms and support structures necessary to hold the ventilation fans, conduit and other mechanical equipment that constitute the completed Platform Ventilation System. Construction includes the electrical sub-station structure. Structures consist of three new Fan Rooms, located to the north of the Amtrak controlled train shed. The completed electrical sub-station room will accommodate the main termination/switching for the new power feeds to service the fan rooms. Work also includes all necessary steel erection and concrete and masonry work.</p>	<p>\$18,250,000</p>
<p>GRAND TOTAL</p>	<p>\$30,000,000</p>

The Work Schedule maybe amended and individual work elements may be adjusted within the total Agreement amount with prior written approval of the Commissioner. Any overage will be the responsibility of MSDC. All work identified in this Work Schedule shall be substantially completed no later than September 30, 2016. The audit and administrative closeout of the agreement shall be completed no later than April 1, 2017.

APPENDIX 2 – FUNDING INFORMATION

Phase 1 of the Moynihan Station Project

Funds Sources		
	Federal Funds	State Funds
Total Funds	Federal Railroad Administration American Recovery and Reinvestment Act	None
\$30,000,000	\$30,000,000	\$0

Funds Uses			
	Total Fund Uses by Task	Federal Funds Uses	State Funding Uses
Task 1 – Connecting Corridor	\$11,750,000	\$11,750,000	\$0
Task 2 - Platform Ventilation System C Yard	\$18,250,000	\$18,250,000	\$0
Total Uses - All Sources	\$30,000,000	\$30,000,000	\$0

APPENDIX 3 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 (or any assignee) 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. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Transportation (NYSDOT) may approve a request for Assignment of Contract

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 NYSDOT 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 assignment 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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
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	4-5
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 New York State Information Security Breach and Notification Act	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

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, licenser, 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 \$10,000, 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 is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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 because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. 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 (2NYCRR 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 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 section. 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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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.

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

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 subcontractor 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. The parties understand that, notwithstanding the above, MSDC will comply with and carry out the provisions of its MSDC DBE/MWBE Plan, approved by the FRA and the MSDC Board on June 3, 2011.

APPENDIX B
ARRA REPORTING & RECORD KEEPING REQUIREMENTS &
STATE JOB POSTING REQUIREMENTS

Section 1. MSDC and its contractors and consultants (reporting entities) shall complete Form 1589 on a monthly basis. If the Form 1589 is not properly completed and submitted by the scheduled submittal date, NYSDOT may withhold the related monthly billing request. There will be no additional compensation for this reporting activity and Form 1589 will be required in both paper and electronic formats. A copy of this form and an instruction sheet are included as Attachment 1. An electronic format (MS Excel) of this form is available for download at <http://www.nysdot.gov/recovery> by selecting the “Reporting Requirements” option. All reporting entities must have a Dunn & Bradstreet Unique Identification Number (DUNS) and must include their DUNS on the subject form and shall complete a Form 1589 and include the signed original form with the monthly billing request package to NYSDOT. If a billing request is not available for submittal by the 10th of the month, Form 1589 shall be submitted separately with supporting documentation to the NYSDOT Project Manager. MSDC is to complete a Form 1589 for its own employees and ensure their contractors and consultants submit individual Form 1589s covering their employees and any subcontractor and/or subconsultant firms employees used in the progression of the contract work. Subcontractors and subconsultants are not required to have a DUNS number. If no work is progressed during a reporting period, a Form 1589 is still to be submitted with “ZEROS” indicated.

Section 2. MSDC shall post any jobs that it creates or seeks to fill as a result of this agreement to the New York State Department of Labor’s (<http://labor.state.ny.us>) New York State Job Bank. Any advertisements posted for such jobs must indicate that the positions are funded with ARRA funds. MSDC is also responsible for requiring its contractors and consultants to comply with this requirement.

Section 3. As required by Section 1512(c) of ARRA, and consistent with Office of Management and Budget (OMB) Guidance, dated June 22, 2009 and found at (http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-2_1.pdf), MSDC shall submit a jobs accountability report to NYSDOT not later than the last day of the last month of each calendar quarter. (March 31, June 30, September 30, December 31) The report shall contain:

- (1) The total amount of ARRA funds received pursuant to this Agreement;
- (2) The amount of ARRA funds received that were expended or obligated to projects or activities; and
- (3) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - A. The name of the project or activity;
 - B. A description of the project or activity;
 - C. An evaluation of the completion status of the project or activity;
 - D. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

- E. Detailed information on any subcontracts or subgrants awarded by MSDC to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Section 4. MSDC and its contractors and consultants (reporting entities) shall complete the NYSDOT EB 10-013 Form on a monthly basis. If the form is not properly completed and submitted by the scheduled submittal date, NYSDOT may withhold the related monthly billing request. A copy of this form is included as Attachment 2. An electronic format (MS Excel) of this form is available for download at <https://www.nysdot.gov/recovery> by selecting the “Reporting Requirement” option. All reporting entities shall complete the EB 10-013 form and include the signed original form with the monthly billing request package to the NYSDOT Project Manager. If a billing request is not available for submittal by the 10th of the month, the form shall be submitted separately with supporting documentation to the NYSDOT Project Manager. MSDC is to complete the form for its own DBE certified firms used in the progression of the contract work and ensure their contractors and consultants submit individual EB 10-013 Forms covering DBE certified subcontractors, subconsultants, material providers or other service provider firms used in the progression of the contract work. If no DBE firms have been utilized by MSDC, Contractor or Consultant, the monthly EB 10-013 form is still to be submitted with “\$0.00” indicated.

Section 5. MSDC shall report the “Actual Work Completion Date” as defined below:

The contractor has completed all construction work items and any punch list work. All field work has been accepted and the contractor is ready to or has left the site. Other than removal of project area construction signing and/or pickup of construction equipment, the contractor is done. MSDC’s employees may still be performing minor site work, but the contractor is done.

MSDC shall report this date no later than 5 days after its occurrence to NYSDOT.

ATTACHMENT 1 OF APPENDIX B

FORM 1589 INSTRUCTIONS

Monthly employment information on each ARRA project is used by the State for meeting the reporting requirements of Sections 1201 and 1512. In order for the State to fulfill its reporting obligations, the State must collect and analyze certain employment data for each ARRA funded contract. MSDC and its contractors and consultants shall complete a Form 1589 for each month from the date of the contract award or Notice to Proceed until acceptance and completion of the contract and shall submit the completed form to NYSDOT no later than the 10th day of each month for the preceding month's data.

MSDC and its contractors and consultants shall submit Monthly Employment Reports providing required information on its workforce and the workforce of all subcontractors and sub-consultants who were active on the Contract during the reporting month. Contractors and Consultants shall report the direct project related job information for their workforce and the workforce of all Subcontractors or Sub-consultants active during the reporting month. These jobs include all employees actively engaged in projects who work on the jobsite, in the project office, in the home office, or who telework from a home or other alternative work location. These jobs also include any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project, but do not include material suppliers. Information will also be required concerning total hours worked for all employees reported and the total dollar amount of wages paid.

By completing Form 1589, an entity certifies that they are knowledgeable of the hours worked and the employment status for all employees listed. All entities are responsible to maintain data to support Form 1589 until September 30, 2012 and to make it available to the State or Federal Government should the State or Federal Government request such supporting documents and materials.

Coding Instructions

- BOX 1. **Report Month:** The month and year covered by the report, as mm/yyyy (e.g. "May 2009" would be coded as "05/2009").
- BOX 2. **Contracting agency:** The name of the contracting agency. Enter "State" for NYSDOT projects. For non-State projects, enter the name of the contracting agency (contractor, consultant, city, county, or other funding recipient).
- BOX 3. **Federal-aid project number:** The State assigned federal-aid project number, consistent with the format reported in FMIS.
- BOX 4. **State project number or identification number:** The project number or ID, as assigned by the State of its funding recipient, consistent with the format reported in FMIS.
- BOX 5. **Project location:** State where project occurs. If the project performed for Federal Lands, provide the FLH Division or Federal Land Managing Agency (FLMA) region.
- BOX 6. **Contractor name and address:** The name and address of the contracting or consulting firm shall include the name, street address, city, state, and zip code.
- BOX 7. **Contractor DUNS number:** The unique nine-digit number issued by Dun & Bradstreet. Followed by the optional 4 digit DUNS Plus number. Reported as "999999999.9999"
- BOX 8. **Employment data:** The prime contractor or consultant will report the direct, on-the-project jobs for their workforce and the workforce of their sub-contractors active during the reporting month. These jobs data include employees actively engaged in projects

who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project. This does not include material suppliers such as steel, culverts, guardrail, and tool suppliers. States should include in their reports all direct labor associated with the ARRA project such as design, construction, and inspection. The States reports should include their own project labor, including permanent, temporary, and contract project staff. States are asked not to include estimated indirect labor, such as material testing, material projection or estimated macro-economic impacts. FRA will be estimating all indirect labor based on the information provided in this form along with other FRA data. The form requests specifically:

- a. **Subcontractor name:** The name of each subcontractor or sub-consultant that was active on the project for the reporting month.
- b. **Employees:** The number of project employees on the contractor's or consultant's workforce that month, and the number of project employees for each of the active subcontractors for the reporting month. Do not include material suppliers.
- c. **Hours:** The total hours on the specified project for all employees reported on the contractor's or consultant's project workforce that month, and the total hours for all project employees reported for each of the active subcontractors that month.
- d. **Payroll:** The total dollar amount of wages paid by the contractor or consultant that month for employees on the specified project, and the total dollar amount of wages paid by each of the active subcontractors that month. Payroll only includes wages and does not include overhead or indirect costs.

BOX 9.

Prepared by:

- a. **Name:** Indicate the person responsible for preparation of the form. By completing the form the person certifies that they are knowledgeable of the hours worked and employment status for all the employees. Contractors, consultants, and their subs are responsible to maintain data to support the employment form and make it available to the State or Federal government should they request supporting materials.
- b. **Date:** The date the employment form was completed. Reported as "mm/dd/yyyy." (e.g. "May 1, 2009" would be coded as "05/01/2009").

ATTACHMENT 2 OF APPENDIX B

MONTHLY ARRA 2010 DBE REPORTING FORM: EB 10-013	
Report Month:	
Project PIN:(xxxx.xx)	
Prime Contractor Name:	
Contract Number:	
OR *	
Prime Consultant Name:	
Contract Number:	
Award or Execution Date:	
DBE Goal % (Percentage):	
DBE Commitment \$ (Dollars):	
DBE Attainment \$ (Dollars):	
List below the Certified DBE Firms by Name with their Cumulative Dollar Payments to Date	
DBE Subcontractor, DBE Subconsultant, DBE Material Supplier or other service provider name.	Cumulative \$ Payment
	Cumulative Contract Total
	\$0.00
Prepared By CEO or Payroll official	
Name:	
Title:	
Date:	
Initials of DOT Reviewer:	
OR*: This form is used for both the prime contractor or the prime consultant, but only one contract per form. If the project has both contracts, use two forms.	
NOTE: Please do not modify this form in anyway as it may be used in its Electronic format for data Summarization purposes.	
March, 2010	

APPENDIX C – FRA FLOW DOWN PROVISIONS

I. PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008.

Section 1. Railroad Agreements. To the extent the Project uses right-of-way owned by a railroad, MSDC represents that it has entered into and will abide by a written agreement (approved by FRA) with the railroad(s) in accordance with 49 U.S.C. 24405(c)(1). If required, such agreement provides compensation for use, assurance regarding the adequacy of infrastructure capacity, a commitment to keeping railroad collective bargaining agreements in full force and effect, and compliance with liability requirements consistent with 49 U.S.C. 28103. MSDC shall not enter into or agree to any substantive changes to the FRA-approved written agreement with the railroad(s) on which the Project is undertaken without FRA's prior written consent.

Section 2. Service Outcome Agreements with Infrastructure Owners and Operators.

a. MSDC represents that it has satisfactory continuing control over the use of Project improvements and the capability and ability to maintain the Project improvements for the useful life of the Project, in accordance with 49 U.S.C. 24402(b)(1) and (c)(1)(B). Satisfactory continuing control has been established by either direct ownership by MSDC, Amtrak or the State of Project improvements or through a written agreement(s) (approved by FRA) between the State and/or MSDC and the owners of infrastructure on which the Project is to be undertaken and with the proposed service operator of any rail passenger service that benefits from the Project, which agreement(s) authorize construction of, access to, and/or use of Project improvements for a minimum of twenty years from the date the Project improvements are placed in service.

b. As set forth in the TIGER grant agreement executed by MSDC and FRA on October 15, 2010 and amended on June 6, 2012, MSDC has identified specific Project benefits in terms relevant to the overall Phase 1 Project, of which only a portion is being funded by this grant agreement. The Phase 1 Project Benefits include access to a new and improved station facility, improved passenger egress times, improved emergency platform clearance times, and improved level of service within the improved and expanded passenger concourse. MSDC has evidenced a firm commitment to achieving the Project benefits set forth in the TIGER grant agreement and reflected in the Statement of Work attached to the Cooperative Grant Agreement, with the understanding that those benefits can only be realized with the completion of all of the Phase 1 improvements, only a portion of which will be funded by this agreement. MSDC will comply with the Project Benefit reporting requirements as stipulated within the TIGER grant agreement.

c. MSDC and/or the State shall not enter into or agree to any substantive changes to the FRA-approved written agreement(s) with Amtrak without FRA's prior written consent.

Section 3. Buy America. MSDC agrees to comply with the "Buy America" provisions set forth in 49 U.S.C. §24405(a), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions set forth therein.

Section 4. Labor Provisions. MSDC recognizes that 49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45

APPENDIX C – FRA FLOW DOWN PROVISIONS

U.S.C. Sec. 231 et seq.), the Railway Labor Act 43 (43 U.S.C. 151 et seq.), and the Railroad Unemployment Act (45 U.S.C. 351 et seq.).

Section 5. Labor Protective Arrangements. MSDC shall comply with the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the project financed in whole or in part under this arrangement. (See 49 U.S.C. 24405(c).) MSDC agrees to include the applicable protective arrangements established by the Department of Labor under 45 U.S.C. 836, in its agreements with entities operating rail services over rail infrastructure constructed as part of the Project.

Section 6. Davis-Bacon Act Provisions. Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2). For Project components that use or would use rights-of-way owned by a railroad, MSDC shall comply with the provisions of 49 U.S.C. 24405(c)(2) with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

II. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

Section 1. Whistleblower Protection. An employee of MSDC may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General of the United States, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee reasonably believes is evidence of:

1. Gross mismanagement of an agency contract or grant relating to ARRA funds;
2. A gross waste of ARRA funds;
3. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
4. An abuse of authority related to the implementation or use of ARRA funds; or
5. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant awarded or issued relating to ARRA funds.

Section 2. False Claims Act. MSDC and any other sub-grantee awarded funds made available under ARRA and through this Agreement shall promptly refer to the U.S. Department of Transportation (USDOT) Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

Section 3. ARRA Funding Announcement. MSDC is strongly encouraged to post a sign at the project location at the most publicly accessible location announcing that the project was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided

APPENDIX C – FRA FLOW DOWN PROVISIONS

through ARRA. The configuration of the signs will be consistent with guidance issued by the Office of Management and Budget and/or the USDOT and approved by the FRA.

Section 4. Contract Awards. As required by Section 1554 of ARRA, MSDC shall to the maximum extent possible award contracts funded under this Agreement as fixed-price contracts through the use of competitive procedures. In circumstances where MSDC awards a contract that is not fixed-price and not awarded using competitive procedures, MSDC shall publicly and electronically post a summary of such contract on its website and electronically link such posting to the website created and maintained by the Recovery Accountability and Transparency Board pursuant to section 1526 of ARRA.

Section 5. Davis-Bacon Act Provisions. As required by section 1606 of ARRA, all laborers and mechanics employed by contractors and subcontractors on the Project funded directly by or assisted in whole or part by and through this Agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. For the applicability of Davis-Bacon Act provisions to Project components that would use rights-of-way owned by a railroad, see Section 6 of Part I above.

III. GENERAL PROVISIONS DERIVED FROM THE FRA-STATE COOPERATIVE AGREEMENT WHICH FUNDS THIS PROJECT.

Section 1. General Requirements. MSDC agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with this Agreement and all applicable laws, regulations, and public policies of FRA.

Section 2. Federal Laws and Regulations. MSDC understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date this Agreement was executed may be modified from time to time. MSDC agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, MSDC agrees to include in all sub-contracts financed with FRA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

Section 3. State Law. Except to the extent that a Federal statute or regulation preempts State law, nothing in this Agreement shall require MSDC to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State law; however, if any of the provisions of this Agreement violate any applicable State law, or if compliance with the provisions of this Agreement would require MSDC to violate any applicable State law, MSDC agrees to notify the State immediately in writing in order that the State, in consultation with FRA, and MSDC may make appropriate arrangements to proceed with the Project as soon as possible.

Section 4. Ethics.

APPENDIX C – FRA FLOW DOWN PROVISIONS

1. General. MSDC agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents. The code or standards shall provide that MSDC's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or sub-contractors. MSDC may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by MSDC's officers, employees, board members, or agents, or by contractors or sub-contractors or their agents.

2. Personal Conflict of Interest. MSDC's code or standards must provide that no employee, officer, board member, or agent of MSDC may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a) The employee, officer, board member, or agent;
- b) Any member of his or her immediate family;
- c) His or her partner; or
- d) An organization that employs, or is about to employ, any of the above.

3. Organizational Conflicts of Interest. MSDC's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

Section 5. Accounting Records.

1. Project Accounts. MSDC agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 49 C.F.R. § 18.20, as amended, whichever is applicable.

2. Documentation of Project Costs and Program Income. All costs charged to the Project, including any approved services contributed by MSDC or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. MSDC also agrees to maintain accurate records of all Program Income derived from Project implementation.

3. Checks, Orders, and Vouchers. MSDC agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

Section 6. Record Retention, Audits and Inspection.

1. Submission of Proceedings, Contracts and Other Documents. During the course of the Project and for six* years thereafter, MSDC agrees to retain intact and to provide any data,

APPENDIX C – FRA FLOW DOWN PROVISIONS

documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 18. Project closeout does not alter these requirements. *as required by NY State law.

2. Audit. MSDC agrees to comply with the audit requirements of 49 C.F.R. § 18.26 and OMB Circular A-133, and any revision or supplement thereto. MSDC agrees to obtain any other audits required by FRA. Project closeout will not alter MSDC's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-21, Revised; or OMB Circular A-122, Revised.

3. Inspection. MSDC agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of MSDC and its sub-contractors pertaining to the Project. MSDC agrees to require each subcontractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

Section 7. Payment by FRA. MSDC agrees to provide the State with information necessary for the State to complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FRA and to complete and submit Standard Form 270, "Request for Advance or Reimbursement," to FRA, to the extent submission of such forms are required by and not duplicative of the requirements of ARRA.

Section 10. General Federal Requirements. MSDC agrees to comply with the property management standards of 49 C.F.R. §§ 18.31, 18.32, and 18.33, including any amendments thereto, and other applicable guidelines or regulations that are issued.

Section 11. Records. MSDC agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to the State, upon request, such information as may be required to assure compliance with this section of this Agreement.

Section 12. Flood Hazards. MSDC agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition Project.

Section 13. Procurement.

1. Federal Standards. MSDC agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 and with applicable supplementary USDOT or FRA directives or regulations. If determined necessary for proper Project administration, the State and FRA reserves the right to review MSDC's technical specifications and requirements, to the extent consistent with the procurement requirements under ARRA.

2. Cargo Preference. Use of United States - Flag Vessels. Pursuant to USDOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, MSDC shall insert the following clauses in contracts entered into by MSDC in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

APPENDIX C – FRA FLOW DOWN PROVISIONS

As required by 46 C.F.R. Part 381, the contractor agrees:

- a) To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- b) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.

3. Debarment and Suspension; and Drug-Free Work Place. MSDC agrees to comply with USDOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, and "Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.

4. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals. MSDC agrees to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other USDOT agencies in 49 C.F.R. Part 26), including veteran-owned small businesses and service disabled veteran-owned small businesses, and to make good faith efforts to achieve any disadvantaged business enterprise ("DBE") goal set for the Project, in accordance with the DBE plan developed by MSDC and approved by the FRA. MSDC must submit a DBE plan to FRA within thirty (30) days following execution of this Agreement. If MSDC is unable to substantially incorporate 49 C.F.R. Part 26 elements in its DBE plan, MSDC agrees to provide FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

Section 14. Metric System: MSDC agrees to use the metric system of measurement in its Project activities to the extent practicable, in conformance with applicable regulations, guidelines, and policies that USDOT or FRA may issue. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impracticable or likely to cause significant inefficiencies or loss of markets to U.S. firms.

Section 15. Patent Rights.

1. If any invention, improvement, or discovery of MSDC or any of its contractors or subcontractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MSDC agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of MSDC, its contractors and subcontractors and FRA with respect to

APPENDIX C – FRA FLOW DOWN PROVISIONS

such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

2. If MSDC secures a patent with respect to any invention, improvement, or discovery of MSDC or any of its subcontractors conceived or first actually reduced to practice in the course of or under this Project, MSDC agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

Section 16. Rights in Data and Copyrights.

1. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

2. The following restrictions apply to all subject data first produced in the performance of this Agreement:

a) Except for its own internal use, MSDC may not publish or reproduce such data in whole or in part, or in any manner or form, nor may MSDC authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

b) As authorized by 49 C.F.R. § 18.34, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

i. Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

ii. Any rights of copyright to which a Grantee, subgrantee, or a third party contractor purchases ownership with Federal assistance.

c) When FRA provides assistance to a MSDC for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, MSDC understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FRA may make available to any FRA Grantee, Subgrantee, third party contractor, or third party subcontractor, either FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement.

APPENDIX C – FRA FLOW DOWN PROVISIONS

In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FRA may direct.

d) Unless prohibited by State law, MSDC agrees to indemnify, save and hold harmless FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MSDC of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. MSDC shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.

e) Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.

f) The requirements of this section of this Agreement do not apply to material furnished to MSDC by FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by MSDC at the time of delivery of such work.

g) Unless FRA determines otherwise, MSDC agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

Section 17. Acknowledgment of Support.

1. An acknowledgment of FRA support and a disclaimer must appear in any MSDC publication, whether copyrighted or not, based on or developed under this Agreement, in the following terms:

“This material is based upon work supported by the Federal Railroad Administration (“FRA”) under a grant/cooperative agreement between the FRA and the State of New York, dated _____.”

2. All MSDC publications must also contain the following:

“Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and or USDOT.”

3. MSDC agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FRA identifying the Project and indicating that FRA is participating in the development of the Project.

Section 18. Site Visits. MSDC understands that STATE and FRA, through their authorized representatives, have the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and agrees to provide such technical assistance as may be required. MSDC shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of STATE and/or FRA representatives in the performance of their duties. All site visits and evaluations shall be performed

APPENDIX C – FRA FLOW DOWN PROVISIONS

in such a manner as will not unduly delay work being conducted by MSDC or MSDC's subcontractor(s).

Section 19. Reprints of publications. At such time as any article resulting from work under this agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to at the State, clearly referenced with the appropriate identifying information.

Section 20. Safety Oversight. To the extent applicable, MSDC agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or USDOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

Section 21. Civil Rights. MSDC agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that FRA determines otherwise in writing. These include, but are not limited to, the following:

- a) Title VI of the Civil Rights Act of 1964 (P.L.88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin;
- b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 - 1683, and 1685 – 1686, which prohibits discrimination on the basis of sex;
- c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;
- d) The Age Discrimination Act of 1975, as amended 42 U.S.C. §§ 1601-1607, which prohibits discrimination on the basis of age;
- e) The Drug Abuse Office and Treatment Act of 1972 (P.L., 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h) Title V111 of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or finance housing;
- i) 49 U.S.C. section 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs;
- j) Any other nondiscrimination provisions in the specific statute under which application for Federal assistance was made; and
- k) The requirements of any other nondiscrimination statutes which may apply to the State or MSDC.

Section 22. Americans with Disabilities Act. MSDC agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

APPENDIX C – FRA FLOW DOWN PROVISIONS

Section 23. Environmental Protection.

1. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.
2. MSDC will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. MSDC certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). MSDC will notify the Administrator as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that MSDC's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. MSDC will include or cause to be included in each subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such subcontractor to immediately inform MSDC upon the receipt of a communication from the EPA concerning the matters set forth herein.
3. MSDC may not expend any of the funds provided in this Agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations have been completed and the FRA has provided MSDC with a written notice authorizing MSDC to proceed.
4. MSDC shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, MSDC may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).
5. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by MSDC without the prior written concurrence of FRA. MSDC shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).

Section 24. Project Completion, Audit, Settlement and Closeout.

APPENDIX C – FRA FLOW DOWN PROVISIONS

- 1. Project Completion.** Within 90 days of the project completion date, or termination by FRA, MSDC agrees to submit to state all information necessary for state to submit a final financial status report (Standard Form 269), a certification or summary of project expenses, and third-party audit reports, as applicable
- 2. Audits.** MSDC agrees to provide information necessary for the State to undertake the audits required by 49 C.F.R. § 18.26 and OMB Circular A-128 or any revision or supplement thereto.
- 3. Project Closeout.** Project closeout occurs when all required Project work and all administrative procedures described in 49 C.F.R. Part 18 have been completed, and when FRA notifies MSDC and forwards the final Federal assistance payment to the State, or when the State acknowledges MSDC's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on MSDC by this Agreement or by the State's final notification or acknowledgment.

Section 25. Right of FRA to Terminate.

- 1.** MSDC understands that FRA may suspend or terminate all or part of the financial assistance provided herein if STATE has violated the terms of its Agreement with FRA, or if FRA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. MSDC further understands that any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate its agreement with STATE and shall provide a basis for STATE's termination of this Agreement under section 3.10.
- 2.** In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by MSDC and concurred in by STATE before the termination date, to the extent those obligations cannot be canceled. However, if FRA determines that STATE has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of its agreement, MSDC understands that the FRA reserves the right to require STATE to refund the entire amount of FRA funds or any lesser amount as may be determined by FRA.
- 3.** STATE shall notify MSDC in writing of any determination by FRA under this section within thirty (30) days .
- 4.** Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.