



RECORDATION F.O. 15018 Filed 1425

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STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
Telephone: (518) 457-2411  
INTERSTATE COMMERCE COMMISSION

FRANKLIN E. WHITE  
COMMISSIONER

July 31, 1986

Office of Secretary  
Application and Fees Unit  
Room B-207  
Interstate Commerce Commission  
12th and Constitution Avenue, N.E.  
Washington, DC 20423

Re: Recording Evidence of Agreement  
49 U.S.C. §11303, #D140368  
dated October 1, 1979

Dear Madam:

I have enclosed the following true copies of original documents described below, which have been certified to be complete and identical in all respects to the original document under 49 C.F.R. 1177.3(b), to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is an Agreement, a primary document identified as Agreement No. D140368 and dated October 1, 1979 by which the New York State Department of Transportation (NYSDOT) and the Delaware and Hudson Railway Company (D&H) by which New York State acquired an equitable interest in certain rolling stock (box cars) and equipment used by the D&H in exchange for an executory promise that the D&H will upgrade or modernize said rolling stock, maintain it and use said rolling stock principally in New York State for specified period.

The filing of this document does not constitute a waiver of any rights New York may have under the contract or pursuant to any law.

The names and the addresses of the parties to the documents are as follows:

Holder of equitable interest to equipment:

New York State Department of Transportation  
Legal Services Bureau  
Building 5, Room 509  
State Campus  
Albany, New York 12232

100 OFFICE OF  
THE SECRETARY  
AUG 4 2 52 PM '86  
MOTOR OPERATING UNIT

*Counterpart*

Service provider and user of equipment:

Delaware and Hudson Railway Co.  
5th Street  
Watervliet, NY 12189

A description of the rolling stock and equipment covered by this document follows:

The rolling stock involved consists of eighty (80) box cars. An itemized list is annexed to this letter and can also be found in Appendix I (2 pages) in Agreement D140368.

The filing fee has been waived pursuant to 49 C.F.R. 1002.2(e)(1) because the New York State Department of Transportation is a State governmental entity.

Please return the extra certified true copies not needed by the Commission for recordation to:

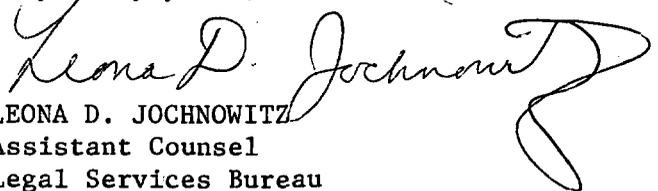
Leona Jochnowitz or William J. Dwyer, Esqs.  
Legal Services Bureau  
New York State Department of Transportation  
Building 5, Room 509  
State Campus  
Albany, New York 12232

A short summary of the document to appear in the index follows:

This is a primary document and represents an Agreement between the holder of the equitable interest to equipment, the New York State Department of Transportation and the D&H, the service provider and the user of this equipment. Under the terms of this Agreement, New York acquired an equitable interest in the aforementioned eighty (80) box cars and the D&H agreed to upgrade and/or modernize said box cars at a cost to the State not to exceed \$240,000.00. In exchange, the D&H further agreed to maintain the said box cars for the period specified in the agreement and to use the said box cars principally in New York State to maintain rail services.

The filing of this document does not constitute a waiver of any rights New York State might have under the Agreement or pursuant to law.

Very truly yours,

  
LEONA D. JOCHNOWITZ  
Assistant Counsel  
Legal Services Bureau

cc: Kathleen King, Esq.  
Office of Secretary

WORK SCHEDULE

Railroad agrees to rehabilitate the following Box Cars in order to place them in dedicated revenue

service in Buffalo, New York. Box Cars rehabilitated will be fit to carry flour products.

Series Number	Year Built	Car Numbers	# of Cars	Type of Repairs	Approximate Cost
28100	1964	28101	25	Plug Door Repairs; Bulkhead and Side Filler Repairs; Cushion Springs (60%); FRA Inspection; Paint	\$ 3,000/car
		28103			
		28104			
		28105			
		28106			
		28112			
		28120			
28200	1968	28123	15	Plug Door Repairs; Bulkhead and Side Filler Repairs; Cushion Springs (60%); FRA Inspection; Paint	3,000/car
		28128			
		28129			
		28130			
		28131			
		28135			
		28137			
28300	1967-68	28138	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28139			
		28140			
		28141			
		28143			
		28145			
		28148			
28400	1967-68	28151	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28205			
		28212			
		28216			
		28217			
		28219			
		28223			
24200	1964	28230	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		28235			
		28236			
		28241			
		28245			
		28246			
		28248			
28300	1967-68	28304	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28311			
		28322			
		28328			
		28333			
		28405			
		28408			
24200	1964	28430	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		28443			
		28436			
		28437			
		24215			
		24216			
		24226			
24227					
24247					
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24296					

APPENDIX I

WORK SCHEDULE (cont'd)

<u>Series Number</u>	<u>Year Built</u>	<u>Car Numbers</u>	<u># of Cars</u>	<u>Type of Repairs</u>	<u>Approximate Cost</u>
24300	1968	24330	1	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	\$ 3,000/car
24400	1971	24433	1	Door Repairs; Cushion Spring; FRA Inspection; Paint	3,000/car
Grand Total			80		<u>\$240,000</u>

October 16, 1979

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INTERSTATE COMMERCE COMMISSION

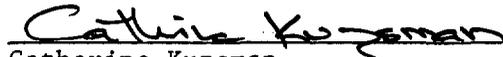
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

Catherine Kuzsman being duly sworn, deposes and says:

1. That your deponent is a Senior Rail Transportation Specialist with the Rail Division of the New York State Department of Transportation.
2. That among her duties she is involved with the capital construction projects with the Delaware and Hudson Railway Company and Guilford Transportation Industries and its subsidiaries.
3. That as such your deponent has access to the original executed agreements which have been entered into between the said Delaware and Hudson Railway Company, Guilford Transportation Industries, its subsidiaries and the New York State Department of Transportation.
4. That your deponent has read the original agreement identified as:

Agreement D140368, dated October 1, 1979  
between NYSDOT and D&H

and hereby certifies that the attached is a true, accurate and complete copy of the original agreement now on file in the offices of the New York State Department of Transportation.

  
Catherine Kuzsman

Sworn to before me  
this 1st day of Aug 1986.

  
Notary Public  
**WILLIAM J. DWYER**  
Notary Public in the State of N. Y.  
Resident in and for ALB. County  
Commission Expires March 30, 1987



DT 40368 (11)

RENOV BOX CARS

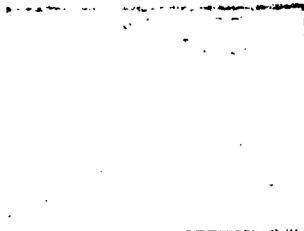
STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
WILLIAM C. HENNESSY, COMMISSIONER



# AGREEMENT



REHAB. 80 BOX CARS



THIS AGREEMENT made this 1st day of October, 1979, by and between the People of the State of New York, acting by and through the Commissioner of Transportation, AND the Delaware and Hudson Railway Company, a railroad company authorized to do business in New York State.

WITNESSETH:

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

WHEREAS, funds have been appropriated to the Department for the Project to be undertaken in accordance with the provisions of this Agreement pursuant to the provisions of Section 14-d of the Transportation Law; and

WHEREAS, the STATE and the RAILROAD desire to accomplish the completion of the Project to be undertaken in accordance with the provisions of this Agreement;

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

ARTICLE ONE

- DEFINITIONS -

"Commissioner" means the Commissioner of Transportation of the State of New York or his authorized representative.

"Department" means the New York State Department of Transportation.

"Railroad" means the Delaware and Hudson Railway Company.

"State" means the People of the State of New York.

"Box Car(s)" means railroad box car(s) upgraded and/or modernized or to be upgraded and/or modernized pursuant to this Agreement.

"Agreement" means this document and any attachments hereto referred to herein.

ARTICLE TWO

- THE PROJECT -

Section 2.1. Description of Project

Railroad shall provide for the upgrading and/or modernization of specified Box Cars in accordance with and subject to all of the provisions of the Work Schedule (Appendix I) of this Agreement.

Section 2.2. Maintenance

Railroad shall, upon the satisfactory completion of the work specified in the Work Schedule as determined by the Commissioner, maintain the Box Cars in good order and repair and in accordance with all applicable State and Federal standards and regulation, as well as with the provisions of the Maintenance Schedule (Appendix II) of this Agreement.

Section 2.3. Reimbursement

The State shall reimburse Railroad for the Railroad's cost of upgrading and/or modernizing the Box Cars, up to the amount set forth in this Agreement. Any amount required for the completion of the upgrading and/or modernization which is in excess of the amount specified in this Agreement shall be the railroad's responsibility to pay, and the Railroad agrees to pay any such excess amount.

Section 2.4. Method of Reimbursement

RAILROAD will submit to STATE payment request vouchers on a regular basis for Eligible Costs incurred by RAILROAD in accomplishing the work. Progress payments shall be made by STATE to RAILROAD on a regular basis, and in accordance with the Special Provisions (Appendix III), for Eligible Costs incurred by RAILROAD. Eligible Costs for reimbursement shall include:

(a) Costs incurred by RAILROAD for direct labor and approved fringe benefits in connection with the work to be accomplished hereunder as specified in the Work Schedule (Appendix 1) attached hereto; and

(b) The value, as evidenced by vendor's bills, of materials incorporated into the work accomplished hereunder, as such work is specified in the Work Schedule (Appendix 1).

(c) Costs incurred by RAILROAD, in connection with the accomplishment of the work specified in the Work Schedule (Appendix 1), pursuant to contracts approved by COMMISSIONER, as such costs are documented by receipted bills or other evidence satisfactory to COMMISSIONER.

#### Section 2.4. Use and Disposition of Box Cars

Railroad agrees that during the five (5) year period following the date of satisfactory completion of the modernization and/or upgrading of each Box Car, such Box Car shall not be sold, leased, rendered unusable, relinquished or disposed of by Railroad without the express written consent of the Commissioner first having been obtained. It is intended that the Box Cars modernized and/or upgraded pursuant to this Agreement shall be utilized principally in New York State, and any inconsistent use thereof is prohibited unless prior written consent thereto has been obtained by Railroad from the Commissioner. Such consent may be qualified by any such conditions as the Commissioner deems necessary, including the payment of any revenues received by Railroad for such use or disposition to the State.

#### Section 2.5. Inspection

During the five (5) year maintenance period required under Appendix II the Commissioner shall have the right to enter upon Railroad property for the purpose of inspecting and examining the condition of any such Box Car.

Such right shall only be exercised at reasonable times and upon prior notice to Railroad. Railroad shall, when requested by the Commissioner, advise the Commissioner of the exact location of such Box Cars.

Section 2.6. Loss or Damage

No loss or damage to any Box Car shall impair any obligation of Railroad under this Agreement, which Agreement shall continue in full force and effect. In the event of loss or damage to any such Box Car, ordinary wear and tear excepted, Railroad, at the Commissioners option, shall:

- (a) Place the Box Car in good repair, condition and working order; or
- (b) Replace the same with like equipment in good repair, condition and working order.

ARTICLE THREE

- GENERAL PROVISIONS -

Section 3.1. Indemnity

Railroad shall indemnify the State and its employees against, and hold them harmless from, any and all claims, actions, suits, proceedings, costs, expenses, judgments, suits, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the work undertaken pursuant to this Agreement.

Section 3.2. Default

If the Railroad, with regard to any Box Car for which payment is made by the State pursuant to this Agreement, fails to observe, keep or perform any provision of this Agreement required to be kept, observed or

performed by Railroad, the Commissioner shall have the right, upon ten (10) days notice in writing to the Railroad, to take such action as he deems appropriate, including the withholding of any payments then or thereafter due Railroad under this, or any other, Agreement.

Section 3.3. Assignment

The Railroad agrees that it will not assign this Agreement or any interest herein without first obtaining the Commissioner's written consent thereto.

Section 3.4. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the Commissioner. Forbearance or indulgence by the State in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Railroad, and, until complete performance by the Railroad of said covenant or condition, the State shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite said forbearance or indulgence.

Section 3.5. Entire Agreement

This instrument and the attached Appendices and Schedules identified herein constitute the entire agreement between the State and the Railroad, and it shall not be amended, altered or changed except by a written agreement signed by 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, accidents, 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 whether or not expressly assumed by such successors and assigns.

Section 3.8 Interpretation

The Article and Section headings utilized in this Agreement are for convenience only and shall not affect the construction hereof. 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 the State or the Railroad any legal or equitable right, remedy or claim under or in respect of 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 the Commissioner and the Railroad unless a provision hereof expressly permits either of said parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which event such action shall be taken in accordance with the terms of such provision.

Section 3.9 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 3.10 Notices

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States, postage prepaid, if to the Commissioner, in an envelope addressed as follows:

Commissioner of Transportation  
State of New York  
Department of Transportation  
1220 Washington Avenue  
State Campus  
Albany, New York 12232

and if to the Railroad, in an envelope addressed to the attention of:

D.D. Muir, Vice President - Finance  
Delaware and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

Section 3.11 Counterparts

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

Section 3.12 Relationship of Parties

The relationship of the Railroad to the State is that of an independent contractor and said Railroad, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that it 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 workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

Section 3.13 Records and Documents

The Railroad shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. All books, records, bills, vouchers payrolls, invoices and other documents of every type and description pertaining to the work under this Agreement shall be available to the Commissioner or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged to the State under this Agreement shall be supported by paid invoices, contracts and such other documentation as the Commissioner may require, evidencing in detail the nature of the charges for which reimbursement is sought.

Section 3.14 Approval of Contracts

The Railroad shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party with

respect to the project to be undertaken pursuant to this Agreement without the prior written approval of the Commissioner.

Section 3.15 Effective Date of Agreement

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

Section 3.16 Termination Clause

The State reserves the right to terminate or suspend this Agreement, for any reason whatsoever. Such right of termination or suspension shall be exercised, at the discretion of the Commissioner, by delivery of written notice thereof to the Railroad, and such termination or suspension shall thereupon take effect immediately. However, nothing in this Agreement or in this Section 3.16 shall relieve the State of its obligation to reimburse the Railroad for costs and expense which the Railroad has incurred or committed itself to under the terms or for the purposes of this Agreement prior to such termination or suspension, subject to compliance with all other provisions of this Agreement.

Section 3.17 Documents Forming Agreement

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

Appendix I	-	Work Schedule
Appendix II	-	Maintenance Schedule
Appendix III	-	Special Provisions
Appendix A	-	New York State Required Standard Contract Clauses

PEOPLE OF THE STATE OF NEW YORK

DELAWARE AND HUDSON RAILWAY COMPANY

BY Loew Ross  
Commissioner of Transportation

BY A. H. Muir

TITLE Vice President - Finance

APPROVED AS TO FORM

Approved: [Signature]

NOV 14 1979

[Signature]

Attorney-General

BY: \_\_\_\_\_

DONALD E. ...  
ASSISTANT ATTORNEY GENERAL

Approved:

[Signature] NOV 14 1979

For the Comptroller Pursuant to  
Section 112, State Finance Law



WORK SCHEDULE

Railroad agrees to rehabilitate the following Box Cars in order to place them in dedicated revenue service in Buffalo, New York. Box Cars rehabilitated will be fit to carry flour products.

Series Number	Year Built	Car Numbers	# of Cars	Type of Repairs	Approximate Cost
28100	1964	28101	25	Plug Door Repairs; Bulkhead and Side Filler Repairs; Cushion Springs (60%); FRA Inspection; Paint	\$ 3,000/car
		28103			
		28104			
		28105			
		28106			
		28110			
		28112			
28200	1968	28120	15	Plug Door Repairs; Bulkhead and Side Filler Repairs; Cushion Springs (60%); FRA Inspection; Paint	3,000/car
		28123			
		28128			
		28130			
		28131			
		28135			
		28137			
28300	1967-68	28139	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28140			
		28141			
		28143			
		28145			
		28148			
		28151			
28400	1967-68	28205	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28212			
		28216			
		28217			
		28219			
		28223			
		28230			
24200	1964	28231	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		28235			
		28236			
		28241			
		28245			
		28246			
		28248			
28300	1967-68	28304	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28311			
		28322			
		28328			
		28333			
		28405			
		28408			
28400	1967-68	28430	7	Plug Door Repairs; Bulkhead Repairs; FRA Inspection; Paint	3,000/car
		28436			
		28443			
		28428			
		28437			
		24215			
		24216			
24200	1964	24227	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		24247			
		24253			
		24258			
		24259			
		24260			
		24261			
24200	1964	24262	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		24270			
		24271			
		24276			
		24278			
		24280			
		24282			
24200	1964	24285	24	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	3,000/car
		24286			
		24290			
		24215			
		24216			
		24233			
		24249			
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24286					
24290					

WORK SCHEDULE (cont'd)

<u>Series Number</u>	<u>Year Built</u>	<u>Car Numbers</u>	<u># of Cars</u>	<u>Type of Repairs</u>	<u>Approximate Cost</u>
24300	1968	24330	1	Plug and Sliding Door Repairs; Cushion Springs (75%); FRA Inspection; Paint	\$ 3,000/car
24400	1971	24433	1	Door Repairs; Cushion Spring; FRA Inspection; Paint	3,000/car
Grand Total					<u><u>\$240,000</u></u>

October 16, 1979

## MAINTENANCE SCHEDULE

Box Cars shall be maintained in good working order and in accordance with the Federal Railroad Administration's Railroad Freight Car Safety Standards and Safety Appliances and Power Brake Requirements as well as all Federal and State rules, regulations and guidelines dealing with the transport of the commodities they are required to carry, and shall have a current Inspection and Repair Record at all times during the period of this Agreement. This will constitute a five (5) year maintenance provision which should conform to the anticipated Box Car life. Maintenance performed must be in accordance with the requirements of Section 2.2 of this Agreement.

## SPECIAL PROVISIONS

1. The State assistance provided for this project shall be used solely for the direct costs of the Box Car rehabilitation. All costs not directly of a capital nature such as inspection trips, administrative costs, etc. will be borne by the Railroad.
2. The unit cost for rehabilitating each Box Car is acknowledged to be approximately \$3,000 with the total amount for rehabilitating 80 Box Cars not to exceed \$240,000.
3. In the event of the disposal of a project Box Car or should a project Box Car be rendered unuseable within the five (5) year period, the Railroad shall, at the option of the Commissioner, either:
  - a) Reimburse the State for the entire amount of the State's investment, or
  - b) Invest an amount equal to State's investment in any other State approved Railroad program as designated by the Commissioner
4. The Railroad shall keep in regular use the Box Cars rehabilitated under the terms of this Agreement. The Commissioner shall have the right to enter upon Railroad property for the purpose of inspecting and examining any records detailing the utilization rate of subject box cars.
5. The Railroad agrees that the Box Cars to be repaired under the terms of this Agreement will be placed in assigned service in Buffalo, New York for the purpose of primarily supplying cars for the movement of feed, food products, and flour in the Buffalo area. The Box Cars will not be reassigned for the term of this Agreement without express written consent of the Commissioner. In the event of the unauthorized reassignment or use of a project Box Car, the reimbursement procedure described in Section 3 above shall be applied.
6. Bills submitted to State by Railroad will include the number of the project Box Car rehabilitated, a description of all materials installed, and man hours of labor spent in the rehabilitation effort.
7. State will reimburse Railroad 90% of all eligible costs incurred by Railroad in accomplishing the work. The remainder of the reimbursement (10%) will be withheld until State inspects and approves the rehabilitation of the project Box Car.

**APPENDIX A**  
**NEW YORK STATE REQUIRED CONTRACT PROVISIONS**

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

- (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- (b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
- (c) the minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any re-determination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of re-determination and shall form a part of these contract documents.
- 1.) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than -
  - (a) the stipulated wage scale as provided in Labor Law, Section 220, Subdivision 3, as amended or
  - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended that:

- (a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason or race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- (b) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.
- (c) there may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) this contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) the aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order No. 45, dated January 4, 1977, effective February 4, 1977, 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, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) if the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereinafter OSCC), the contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or