

THE PORT AUTHORITY OF NY & NJ

PROCUREMENT DEPARTMENT
4 WTC 150 Greenwich Street, 21st Floor
New York, NY 10007

October 19, 2016

ADDENDUM #2

To prospective Proposer(s) on **RFP # 47302 - REQUEST FOR PROPOSAL FOR PERFORMANCE OF EXPERT PROFESSIONAL PROGRAM AND PROJECT MANAGEMENT SERVICES FOR THE PATH CAPITAL PROJECT MANAGEMENT DIVISION'S SUPERSTORM SANDY RECOVERY AND RESILIENCY PROGRAM DURING 2016 THROUGH 2020**

Due date for the subject RFP has been extended to October 26, 2016
Originally due back on October 24, 2016.

I. CHANGES/MODIFICATIONS

The following changes are hereby made to the solicitation documents:

1. In the RFP Letter, page 1, paragraph 1, add the following sentences after the first sentence: "It is currently anticipated that the base term for the performance of said services will be for a five (5) year period commencing on the date of Award ("Effective Date"). The Authority reserves the right to extend the Agreement for two (2) additional one (1)-year periods ("Option Periods"). Notification of exercise of said Option Period(s) shall be in writing from the Director."
2. In the RFP Letter, page 1, paragraph 3, second sentence, replace the word "firms" with "the Consultant."
3. In the RFP Letter, page 2, **I. SUBMISSION OF PROPOSALS**, paragraph C add the following after the first sentence: Proposers are required to submit Attachment F, the Cost Proposal in a separate sealed envelope from the Proposal setting forth their qualifications. The separate envelope containing the Cost Proposal should be clearly marked "Sealed Cost Proposal – Only Open in the Event that Cost Negotiations Commence with the Port Authority."

For ease of understanding, a revised RFP letter including the above revisions has been attached to this Addendum. Revisions are in italics.

4. Replace the Agreement with the Attached Agreement dated October 18, 2016.

II. PROPOSER'S QUESTIONS AND ANSWERS

The following information is made available in response to questions submitted by prospective Proposer(s). It should not be deemed to answer all questions, which have been submitted by Proposer(s) to the Port Authority. It addresses only those questions, which the Port Authority has deemed to require additional information and/or clarification. The fact that information has not been supplied with respect to any questions asked by a Proposer(s) does not mean or imply, nor should it be

deemed to mean or imply, any meaning, construction, or implication with respect to the terms.

The Port Authority makes no representations, warranties or guarantees that the information contained herein is accurate, complete or timely or that such information accurately represents the conditions that would be encountered during the performance of the Agreement. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefore in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer(s) required by this Proposal or Agreement and the Proposer(s) agrees that it shall not hold the Port Authority liable or responsible therefore in any manner whatsoever.

No.	Q & A	CONTENT
1	QUESTION	Would a firm that holds an existing Call-In or Indefinite Quantity (IQC) Contract on a federally-funded Port Authority project related to Super Storm Sandy Recovery/Resiliency be precluded from providing the requested services due to a Conflict-of-interest?
	ANSWER	No. However, such a firm may be precluded from performing certain tasks in the event the Port Authority determines that the work set forth in said task may result in a conflict. See section 5. ORGANIZATIONAL CONFLICT OF INTEREST of Exhibit I. The Port Authority will make this determination on a case-by-case basis, based upon the services covered in each task issued to the Call-in or IQC list. Any conflicts of interest must be disclosed in writing to the Port Authority per item I. GENERAL CONFLICT OF INTEREST, under section V. PROPOSAL SUBMISSION REQUIREMENTS of the RFP letter.
2	QUESTION	Is this award for 4 years or 5 years? Does it begin in January 2017?
	ANSWER	See #1 in CHANGES/MODIFICATIONS , above.
3	QUESTION	Will this contract be awarded to a single firm or will there be multiple awards to multiple firms?
	ANSWER	

		The award will be made to a single firm.
4	QUESTION	Is the Cost Proposal to be submitted in a separate envelope?
	ANSWER	See # 3 in CHANGES/MODIFICATIONS , above.
5	QUESTION	Can a firm submit on this RFP as prime and as sub? If so, can a firm submit as sub to the same company that they have included as a sub on their own prime team?
	ANSWER	That is a business decision and not a Port Authority determination.
6	QUESTION	Is Attachment E- Staffing Analysis (part of Letter F. Management Approach) excluded from the 50-page limit?
	ANSWER	Yes, it is.
7	QUESTION	Can 11 x 17s (paper dimension) be utilized for this submission – will it be counted as one (1) page?
	ANSWER	Proposals should be submitted in “letter” size paper.
8	QUESTION	What section of the proposal should the Financial information be submitted?
	ANSWER	There are no specific requirements on how the Financials should be submitted.
9	QUESTION	Are graphics, tables and matrices required to be in 12-point font?
	ANSWER	The Authority does not have any specifics regarding font size for graphics, tables and matrices.
10	QUESTION	Is Attachment H-2 for Proposer Prerequisite B, as included in the RFP, the correct form?

	ANSWER	Yes, it is the correct form. Be aware Attachment H-1 and Attachment H-2 request different prerequisites.
11	QUESTION	For Attachments H-1 and H-2 the footnote states “client contact must be employee of the Company.” Please clarify that “Company” means the client company/organization not the Proposer’s company/organization.
	ANSWER	Correct.
12	QUESTION	Can the account team members chart, as referenced in Section I. SUBMISSION OF PROPOSALS of the RFP letter, be included in Section C, Staff Qualifications and Experience – does it count toward the 50-page limit?
	ANSWER	Please include it under its own section – this will not count toward the 50-page limit.
13	QUESTION	On page 4, Section III. B requests, the RFP letter calls for a statement of work. Does the Authority want this statement to contain all of the proposer’s current work?
	ANSWER	The Authority envisions proposers to submit ALL of the proposer’s current work.
14	QUESTION	On page 2, section III. DESCRIPTION OF CONSULTANT’S TASKS , Item 7. <u>Latent Damage Assessment</u> , under TASK A PROGRAM MANAGEMENT of the Scope of Services, does PATH expect the consultant to perform a thorough inspection of the known inundated portions of the PATH system, or is the consultant to rely on previous inspection work and conduct only limited verification inspection(s) of areas geographically associated with the proposed project locations identified in the RFP?
	ANSWER	The Authority may require the Consultant to perform inspection(s) throughout the PATH system.

This communication should be initialed by you and annexed to your response to the above-referenced RFP upon submission.

In case any Respondent fails to conform to these instructions, its submission will nevertheless be construed as though this communication had been so physically annexed and initialed.

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO THOMAS LAL, WHO CAN BE REACHED AT (212) 435-5383 or at tlal@panynj.gov.

THE PORT AUTHORITY OF NY & NJ

JOANN SPIRITO
MANAGER, WTC & FEDERAL
PROCUREMENT & COMPLIANCE
PROCUREMENT DEPARTMENT

RESPONDENT'S FIRM NAME: _____

INITIALED: _____

DATE: _____

September 26, 2016

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL PROGRAM AND PROJECT MANAGEMENT SERVICES FOR THE PATH CAPITAL PROJECT MANAGEMENT DIVISION’S SUPERSTORM SANDY RECOVERY AND RESILIENCY PROGRAM DURING 2016 THROUGH 2020 (RFP No. 47302)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (“Authority” or “Port Authority”) is seeking Proposals from prospective Consultants (also “you,” “Firm” and “Proposer”) in response to this Request for Proposals (RFP) for the performance of Expert Professional Program and Project Management Services for the Port Authority Trans Hudson (PATH) Capital Project Management Division’s Superstorm Sandy Recovery and Resiliency Program During 2016 through 2020. *It is currently anticipated that the base term for the performance of said services will be for a five (5) year period commencing on the date of Award (“Effective Date”). The Authority reserves the right to extend the Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Director.* The scope of the services to be performed by the Consultant hereunder is set forth in Attachment A to this RFP Letter and shall form part of the Port Authority’s Standard Agreement (“Standard Agreement” or “Agreement”). A sample of the Standard Agreement is attached hereto. Please review the attached form of agreement that will be the basis for the submission of Proposals and which you will sign in the event the Authority accepts your Proposal.

The Standard Agreement contains the terms and conditions governing the resultant agreement of this RFP. You are expected to agree with all of the terms and conditions of the Standard Agreement. You should therefore not make any changes to the Standard Agreement or restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. After the Proposal Due Date, the Proposer will be precluded from raising any exceptions to this RFP.

This Agreement may be funded in whole or in part by the Federal Transit Administration (“FTA”). Accordingly, the Proposer agrees to comply with the applicable FTA requirements and upon award of the Agreement, *the Consultant* will be required to comply with the Federal Transit Administration Contract Provisions set forth in Exhibit I of the referenced Agreement.

RFP Contents

Request for Proposals Cover Letter
Attachment A: Scope of Services
Attachment B: Agreement on Terms of Discussion
Attachment C: Company Profile
Attachment D: Disadvantaged Business Enterprise (DBE) Program

Attachment E: Staffing Plan Template
Attachment F: Pricing & Compensation
Attachment G: Insurance Requirements
Attachment H-1: Proposer Prerequisite A
Attachment H-2: Proposer Prerequisite B
Exhibit I: Federal Transit Administration Contract Provisions
Port Authority Standard Agreement

I. SUBMISSION OF PROPOSALS:

To respond to this RFP, the Proposer shall submit a concise Proposal in accordance with the following requirements:

- A. The Proposal shall be no more than 50 pages-single-sided or 25 pages-double-sided using 12 point or greater font size. The page limit pertains only to Letters E and F in Section V below. Please provide a chart with the account team members’ names/education/affiliates (e.g. Professional Engineer/P.E.) in the left column and the Current Responsibilities/Background (e.g. “20 years in various engineering disciplines prior to joining management team”) in the right column. The Proposal pages shall be numbered and bound or in a 3-ring binder, with “Firm Name”, and **RFP Number 47302** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified in Section V below entitled Proposal Submission Requirements.
- C. **All Proposals must be delivered in sealed envelopes and/or packages.** *Proposers are required to submit Attachment F, the Cost Proposal in a separate sealed envelope from the Proposal setting forth their qualifications. The separate envelope containing the Cost Proposal should be clearly marked “Sealed Cost Proposal – Only Open in the Event that Cost Negotiations Commence with the Port Authority. Address Proposal to: The Port Authority of New York and New Jersey, Attention: RFP Custodian, Procurement Department, 4WTC, 150 Greenwich Street, 21st floor, New York, NY 10007. Do not address your Proposal to any other name.* Clearly mark the solicitation number on the outermost package. You are required to submit one (1) reproducible original and five (5) copies, along with six (6) USB flash drive copies, of your Proposal for review. Notwithstanding retention of the USB flash drive, in case of conflict, the reproducible original of the Proposal shall take precedence over material on the USB flash drive.
- D. In each submission to the Authority, including any return address label, information on the USB flash drive and information on the reproducible original and copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.

- E. Your Proposal should be received in sufficient time so that the Authority receives it **no later than 2:00 p.m. on October 17, 2016**. The cover of your submittal must include the RFP Number (as stated above) and the RFP title. The outermost cover of your submittal must be labeled to include the RFP Number and RFP title as indicated in "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.
- F. The Authority will not accept Proposals submitted via electronic mail or fax.
- G. If your Proposal is to be hand delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification shall be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

II. PROPOSER PREREQUISITES:

Only Proposals from Firms demonstrating previous experience in the performance of services similar to those contemplated herein shall be considered. The Authority will be the sole judge of whether a Proposer meets the prerequisite requirements.

Only Firms which can demonstrate that they comply with the following prerequisites should submit Proposals, as only Proposals from such Firms will be considered:

- A. The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of seven (7) years of experience, at the time of proposal submission, in performing project and program management services for major transportation facilities.
- B. The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of five (5) years of experience in managing federally funded projects and at least thirty (30) or more individuals on staff, including executive management, who have demonstrated experience performing project and program management services.

In the event a Proposal is submitted by a joint venture, the foregoing prerequisites will be considered with respect to such Proposal as follows:

With respect to subparagraphs (A), and (B) above, the prerequisites will be considered satisfied if the joint venture itself, or any of its participants individually, meet the requirements.

If a joint venture which has not been established as a distinct legal entity submits a proposal, it and all participants in the joint venture shall be bound jointly and severally and each participant in the joint venture shall execute the proposal and do each act and thing required by this Request for Proposals.

If the joint venture is a distinct legal entity the name of the joint venture Proposer shall appear on the original proposal and wherever else the Proposer's name would appear.

If the Proposer is a common law joint venture, the names of all participants shall be listed followed by the words "acting jointly and severally".

All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites. Attachment H-1 Proposer Prerequisites Item A and Attachment H-2 Proposer Prerequisites Item B should be completed and submitted as part of the Proposal to document the required experience. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that it will be deemed qualified in connection with other Proposal requirements included herein.

III. FINANCIAL INFORMATION

The Proposer will be required to demonstrate that it is financially capable of performing the Agreement resulting from this RFP. The determination of the Proposer's financial qualifications and ability to perform this Agreement will be in the sole discretion of the Port Authority. The Proposer shall submit, with its Proposal, the following:

- A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer's most recent fiscal year.

(2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

- B. A statement of work which the Proposer has on hand, including any work on which a bid and/or Proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.

- C. The Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

IV. EVALUATION CRITERIA

Each Proposal will be evaluated by a Selection Committee composed of Port Authority personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of a proposing Firm and its oral presentation, if necessary.

The Selection Committee members will base their evaluation on selection criteria, which are listed below in relative order of importance.

1. Staff qualifications and experience;
2. Firm qualifications and experience;
3. Technical Approach; and
4. Management Approach

Award shall be made following the federal Brooks Act qualifications-based selection (QBS) process. The ranking of proposals shall be based upon the qualifications indicated above. After consideration of these factors, the Authority will enter into negotiations with the highest rated firm deemed best qualified to perform the required services outlined in Attachment A-Scope of Services. If an agreement cannot be reached with the highest technically qualified firm, the Authority will commence negotiations with the next technically qualified firm, and so on until an agreement can be reached.

V. PROPOSAL SUBMISSION REQUIREMENTS:

To respond to this RFP, provide the following information:

- A. In the front of your Proposal, a copy of Attachment B of the Standard Agreement, "Agreement on Terms of Discussion," signed by an officer of your Firm. If the Proposer is a joint venture, an authorized representative of each member of the joint venture shall sign the Agreement.
- B. Complete a copy of Attachment C (Company Profile)
- C. **STAFF QUALIFICATIONS AND EXPERIENCE**

List the name(s) and title(s) and provide the resumes of key personnel who will be assigned to perform any services requested. Detail the experience of key individuals to be responsible for the successful completion of the proposed project. Attach a detailed resume for each individual that includes his or her educational background, chronological history of employment, relevant licenses and certifications. The resumes should clearly identify the years of experience and technical capabilities in the field related to the tasks for which

the individual will be responsible. Each resume shall be two-page maximum, single-sided, using 12-point or greater font size.

Indicate how you will assure commitment to the project of said key personnel and your plan for providing equally qualified personnel in the event that such key personnel become unavailable during the progress of the work. However, notwithstanding the aforementioned required plan, please note that it is expected that key personnel submitted under this Request for Proposal will be committed to being assigned to this project for its duration. The Consultant shall not remove or replace the Project Manager or any other key personnel, as identified by the Authority, without the written consent of the Authority and the Authority will not consent until the Consultant has proffered a candidate with similar and equal credentials acceptable to the Authority.

Identify sub-consultants, if any, and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their New York State or New Jersey State DBE certification status and the technical qualifications of their key personnel to be assigned to the subject project.

D. FIRM QUALIFICATIONS AND EXPERIENCE

Demonstrate your compliance with the proposer prerequisites listed above by providing Attachments H-1, and H-2.

In addition, prepare a spreadsheet, signed by the principal of your firm, identifying your firm's specific relevant experience in the performance of services similar to those contemplated herein. For all projects referenced, the services must have been performed by or are currently being performed by the Proposer within the last seven (7) years. The spreadsheet outlining the services performed or currently being performed shall include:

- The name, address, point of contact and telephone number(s) of the Contracting party.
- The locations where the work was performed.
- Duration of the Contract.
- Date(s) the services were provided.
- The approximate dollar amount of the Contract.
- The annual staff hours of full and part time labor expended in the performance of the Contract.
- A summary of the types of work performed.
- Representatives familiar with the work that the Port Authority may contact.

Only Proposals received from Firms demonstrating relevant prior experience will be evaluated for performance of the subject services.

E. TECHNICAL APPROACH

Submit a detailed description of the proposed technical approach to be taken for the performance of the required services for each task in Attachment A, of this Agreement,

entitled “Scope of Services” and a schedule for completion for said tasks. Factors to be addressed in your technical approach shall include, but are not limited to, your proposed methodology and strategy demonstrating to the Authority the knowledge and skill of your firm to address specific technical areas defined within Attachment A. The technical approach description should provide at a minimum a clear understanding of how services defined under Attachment A are to be provided using proposer’s demonstrated experience on projects similar to those in Exhibit A to Attachment A. Proposer shall provide specific examples of projects for all three Consultant’s Tasks identified under Section III of Attachment A: PROGRAM MANAGEMENT, PROGRAM ADMINISTRATION AND CONTROLS and CONSTRUCTION STAGING. Proposal should include examples of the specific tasks defined within each of these three categories within Attachment A, including title of the individual(s) involved in performing those tasks.

F. MANAGEMENT APPROACH

Submit a detailed description of the proposed management approach to be taken for the performance of the required services for each task listed in Attachment A entitled “Scope of Services”. In support the Proposer shall also provide:

- 1) A detailed Staffing Plan in accordance with the Attachment E – Staffing Plan including an organization chart
- 2) A tracking system for deliverables, controlling costs, and meeting management (organizing meetings, determining agendas, writing and distributing meeting minutes, and monitoring the progress of action items agreed upon in meetings, etc.).
- 3) Procedures for keeping the Authority team informed of issues and progress during project.
- 4) Approach to quality control.

G. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in Attachment D of this solicitation: Disadvantaged Business Enterprise (DBE) Program.

Proposers are required to submit the following DBE forms included in Attachment D with their Proposal.

1. APPENDIX A1: Professional, Technical And Advisory Services DBE Goals Statement
2. APPENDIX A2: Professional, Technical And Advisory Services DBE Participation Plan and Affirmation Statement
3. APPENDIX A4: Professional, Technical And Advisory Services Information On Solicited Firm

*Note: APPENDIX A3: Modified DBE Participation Plan and Affirmation Statement, is neither included with these proposal documents nor required at the time of proposal submission.

H. PRICING AND COMPENSATION PROPOSAL

The Proposer shall submit a concise “Pricing and Compensation Proposal” (Attachment F) that provides the following information in accordance with the Scope of Services presented in Attachment A.

(i) The Pricing and Compensation Proposal must include the following for the five (5) year period, in accordance with Sections 8 and 9 of the Agreement:

1. The Consultant/Firm’s Fixed Fee in accordance with Section 9.A of the Standard Agreement.
2. Direct Personnel Costs, in accordance with Section 9.B of the Standard Agreement – An hourly rate schedule itemized by name, for each job title, and including experience and estimated hours to perform the defined scope for each job title.
3. Overhead Rate, in accordance with Section 9.C of the Standard Agreement. Proposer shall provide its most recent certified audited overhead statement and approval/acceptance of the firm’s proposed overhead rate by a cognizant agency. Cognizant (COG) agencies are determined by the Federal Audit Clearinghouse (FAC). A listing of current cognizant agency assignments may be found on the FAC website at <https://harvester.census.gov/facweb/>.
4. Cost of Subconsultants, in accordance with Section 9.D of the Standard Agreement – An hourly rate schedule itemized by name, for each job title, and including experience and estimated hours to perform the defined scope for each job title.
5. Reimbursable expenses, in accordance with Section 9.E of the Standard Agreement, which includes the Cost Detail and the Itemized Out-of-Pocket Expenses Worksheet with the Pricing and Compensation Proposal as part of Attachment F.
6. The Proposer shall submit any backup material deemed appropriate for consideration of costs, and shall provide such material to the Authority, upon written request by the Authority and within the time set forth in such request. Failure by a Proposer to submit such material as requested may result in a determination in the sole judgement of the Authority that such Proposer as ineligible for award.

I. FIRM’S AFFILIATES

Provide a complete list of your firm’s affiliates, if any.

J. CONTRACTOR’S INTEGRITY PROVISIONS

If your Firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled “Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information” and “Non-Collusive Proposing, and Code Of Ethics Certification; Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees”. By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such

a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT".

K. BACKGROUND QUALIFICATIONS QUESTIONNAIRE (BQQ)

The Proposer shall submit a completed Background Qualification Questionnaire (BQQ), required for itself and all subconsultants and vendors known to the Proposer at the time of proposal submission. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BOQP.zip

L. GENERAL CONFLICT OF INTEREST

If the Proposer or any employee, agent or subconsultant of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its Proposal a statement indicating the nature of the conflict and shall submit a mitigation plan addressing said conflict.

A Proposer who has a business relationship as indicated above, and who believes that it can develop a mitigation plan that would address the conflict of interest shall submit such plan for evaluation to the Authority with its Proposal.

It is envisioned and recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may in the future, or does currently exist:

- 1) A proposed organizational chart/structure/firewall designed to keep staff and resources separate, as specific by project, and to allow for no overlap between team members and resources, including, but not limited to: equipment, materials, staffing, laydown areas, oversight, and office facilities on said projects.
- 2) Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not be limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
- 3) Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
- 4) Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its role in preventing fraud waste, and abuse, and verification of such education/training and individual understanding.
- 5) Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
- 6) Specific contingency plan, notification, and approval process for cases where there is a necessary, reasonable and business related purpose for overlap in and/or sharing of staff members and/or resources.
- 7) Specific contingency plan addressing any direct or suspected violation of said mitigation plan. All violations must be reported to the Port Authority, including its Inspector General.

8) The Consultant shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

The Authority reserves the right to disqualify the Proposer if, in the Authority's sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Authority's determination regarding any questions of conflict of interest will be final.

As used herein, "Integrity Monitor" shall mean a private firm hired to assist the Office of Inspector General in preventing and detecting fraud. There are two applications for an integrity monitor. First, an integrity monitor is assigned to prevent or detect fraud on a specific project. Second, the Port Authority has required contractors with integrity issues to retain at their own cost an Office of Inspector General-approved integrity monitor as a condition of being awarded contracts.

VI. ORAL PRESENTATIONS

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given short advance notice. Presentations would be limited to 30 minutes, and include the material contained in your Proposal. The presentation would be followed by an approximately 30-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than four (4) other senior staff members proposed to work on this project. Notification of presentation scheduling is made by email. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate in the event that person is unavailable.

VII. ADDITIONAL INFORMATION:

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information, may be found on the Authority website at <http://www.p6anynj.gov/business-opportunities/become-vendor.html>.

It is Authority policy that its contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State's requirements that certain contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State's Department of the Treasury.

After a review of all Proposals received, the Authority will forward two copies of the Standard Agreement and Attachment A thereto to each selected Firm, which shall sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please e-mail them to Mr. Thomas Lal at tlal@panynj.gov. **All such emails must have "RFP Number 47302 in the subject line.** The Authority must

receive all questions no later than 2:00 P.M., seven (7) calendar days before the RFP due date. Neither Mr. Lal nor any other employee of the Authority is authorized to interpret the

provisions of this RFP or accompanying documents or to give additional information as to its requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned, and such writing shall form a part of this

RFP, or the accompanying documents, as appropriate. Addenda to the RFP, if any, will be posted at

<http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6>.

You should therefore monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority, and the Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

VIII. CITY PAYROLL TAX

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

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

These taxes, if applicable, are the sole responsibility of the Consultant. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Sales Tax Exemption", in Section IX below does not apply to these taxes.

IX. SALES TAX EXEMPTION

Purchases of services and tangible personal property by the Port Authority are exempt from New York and New Jersey state and local sales and compensating use taxes. (Sales Taxes). Therefore, the Port Authority's purchase of the Consultant's services under this Contract is exempt from Sales Taxes. Accordingly, the Consultant must not include Sales Taxes in the price charged to the Port Authority for the consultant's services under this Contract.

X. DISPOSAL OF CONTRACT DOCUMENTS

The Proposers shall ensure that all recipients of Contract documents through them, including those who do not propose, and any prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must secure and appropriately dispose of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such

as cross shredding or arrangements with refuse handlers which ensure that third persons will not have access to the documents' contents before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 1st Floor, Two Montgomery Street, Jersey City NJ 07302 or the office of the Chief of Procurement, 4WTC 150 Greenwich Street, 21st Floor, New York, NY 10007.

XI. PROTEST PROCEDURES

Prospective Proposers are advised that the Authority's protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/pdf/protest-procedures.pdf>

Sincerely,

Joann Spirito
Manager, WTC & Federal Procurement & Compliance
Procurement Department

P.A. Agreement #

DATE

SENT VIA EMAIL:

FIRM

ADDRESS

CITY, ST ZIP

Attention:

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL PROGRAM AND PROJECT MANAGEMENT SERVICES FOR THE PATH CAPITAL PROJECT MANAGEMENT DIVISION'S SUPERSTORM SANDY RECOVERY AND RESILIENCY PROGRAM FOR 2016 THROUGH 2020

Dear CONTACT:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority" or "Port Authority") hereby offers to award <FIRM NAME> (hereinafter referred to as "the Consultant" or "you") to provide Performance of Expert Professional Program and Project Management Services for the PATH Capital Project Management Division's Superstorm Sandy Recovery and Resiliency Program for 2016 Through 2020 ("Services" or the "Project") as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder. For the purpose of administering this Agreement, the Director has designated NAME, TITLE or other such individual as hereinafter designated, to act as his duly authorized representative. The Project Manager for this project is NAME, telephone (***)***-****, or email address: ***@panynj.gov.

This Agreement shall be signed by you, and the Authority's Chief Procurement Officer.

As used herein:

"Agreement" shall mean the writings setting forth the Scope of Services, terms and conditions for the procurement of Services, as defined hereunder and shall include, but not be limited to this Request for Proposals (RFP), the documents set forth in Clause 40 hereof entitled "List of Attachments and Exhibits" and, if included, any other attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

"Change Order" shall mean a written modification to a Contract impacting the requirements set forth in the Contract.

"Chief Engineer" shall mean the Chief Engineer of the Authority, or through his/her duly authorized representatives acting within the scope of the particular authority vested in him/her unless specifically stated to mean acting personally.

“Chief Procurement Officer” shall mean the Chief Procurement Officer of the Authority, or his/her duly authorized representatives acting within the scope of the particular authority vested in him/her.

“Director” shall mean the Authority’s Director/General Manager, PATH who operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

“Manager” shall mean PATH’s Senior Program Manager, Project Integration or his designee or his successor in duties for the purpose of this Contract, or his duly authorized representative for the purpose of this Contract.

“PATH” shall mean the Port Authority Trans Hudson Corporation.

2. “Port Authority of New York and New Jersey” shall mean shall mean the Port Authority of New York and New Jersey and its subsidiaries, including PATH. The base term of this Agreement is for a five (5) year period commencing on _____ (“Effective Date”). The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Director.

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of all your services under this Agreement.

4. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of Federal, State, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Director personally, in which case the requirements of said notification shall apply.

This Agreement is subject to the insurance requirements set forth in Attachment G, Insurance Requirements.

This Agreement may be funded in whole or in part by the Federal Transit Administration (FTA) pursuant to the United States of America Department of Transportation Federal Transit Administration Master Agreement (FTA MA-22) dated October 1, 2015, as it may be amended or updated from time-to-time. As a result, Consultant (and its subconsultant(s), regardless of tier) agree to comply with the applicable FTA contract provisions set forth in Exhibit I of this Agreement.

5. The Consultant shall meet and consult with Authority staff as requested by the Director in connection with any service(s) to be performed herein. Any Contract Drawings, Technical Specifications and/or other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Director. The Director may disapprove if, in his sole opinion, said items are not in accordance with the requirements of this Agreement, sound engineering principles or accepted professional standards or are impractical, uneconomical or unsuited in any way for the

purpose for which the contemplated construction or services is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Director, but the Consultant will not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications (and corrections and changes thereto), if any, which are best suited for the contemplated construction, or services, are done in accordance with sound engineering principles and are signed and sealed by a licensed Professional Engineer.

6. When services to be performed by the Consultant include the preparation of contract documents, or the performance of post award services, the Consultant shall submit its specific Quality Control/Assurance Program to the Director prior to the performance of said services. Upon completion of specific services requested hereunder, the Consultant shall submit a letter to the Director certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

7. When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or as directed by the Director prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CADD Standards. All submissions of CADD drawings shall be submitted to the Authority on compact discs, uploaded to the Project Website, or as otherwise required in DWG and DWF format in accordance with the Port Authority CADD Standards.

8. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder, in accordance with Paragraph 9 below, including reimbursable expenses reaches the amount of \$_____ unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

9. As full compensation for all of your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and provisions set forth in paragraph 8 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

A. CONSULTANT'S FIXED FEE. For Consultant's satisfactory performance of its Services and all of its obligations in connection with this Agreement, the Port Authority shall pay to the Consultant, subject to pro-rata portion thereof due to any suspension or termination of this Agreement as permitted herein, the Consultant a fixed fee in the amount of \$_____. In no event shall a Change Order for additional services that are within the general scope of this Agreement, result in an increase in the Consultant's Fixed Fee. Payment of the Consultant's Fixed Fee will be made as a percentage of the total labor and

overhead on a monthly basis, but in no event shall the total amount exceed the total amount stated herein. Additionally, the Consultant's Fixed Fee shall not apply to partners, principals or temporary employees of Consultant who are engaged in the performance of services to be provided herein.

B. DIRECT PERSONNEL COSTS. Consultant shall be reimbursed for the actual hourly rates of Consultant's full-time employees ("Personnel") for Services on the Project. Attached hereto are Attachment E, Staffing Plan, and Attachment F, Pricing and Compensation Proposal, which include a schedule of the actual hourly labor rates` and titles of all Consultant's Personnel assigned to the Project that have been approved by the Port Authority, including an organizational chart showing the names and titles of all staff working on the Project.

1. The Port Authority reserves the right to audit and verify the hourly rate and time billed for the Services of each such employee. It is understood that such employee shall only bill time to the Project only for work actually performed on the Project and shall not bill time to the Project for holidays, vacation days, sick leave, personal days, maternity, medical, or family leave, nor for any other item included in the Overhead Rate, as set forth below.
2. When requesting salary or billing rate adjustments for one or more of its Personnel, the Consultant shall submit employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the Services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the Effective Date of this Agreement, it is the intention of the Port Authority to grant an increase in pay if Consultant demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit increases normally administered by the Port Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Port Authority employees possessing comparable skills and experience. If, during any calendar year, the Port Authority limits are not available to Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall, therefore, in all cases, be finally determined by the Director or his/her designee, in his/her sole and absolute discretion.

C. OVERHEAD RATE. The overhead rate of ____% ("Overhead Rate") shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall include, but not be limited to, the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and

collective bargaining, and corporate expenses as otherwise allowed in compliance with 48 CFR Part 31.

1. An Overhead Rate is applicable for a one-year accounting period (“Provisional Overhead Rate”). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this Section 9.C; or iii) the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by a contract modification.
2. The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such Personnel provided; however, for purposes of this Paragraph 9.C only, the term Personnel shall exclude any non-exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the contract documents, and are paid wages for such work. For the avoidance of doubt, the term “Personnel” for purposes of this Section 9.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendents services on the Project.
3. The Overhead Rate shall not apply to partners, principals or temporary employees of Consultant.
4. The Consultant’s actual Overhead Rate(s) during the term of this Agreement shall be subject to an audit by the Port Authority. The Authority reserves the right to retroactively adjust the Consultant’s compensation in the event that a final audit of overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.
5. The Overhead Rate shall not include any element that is attributable to the Consultant’s Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.

D. COSTS OF SUBCONSULTANTS. Consultant will be reimbursed for the costs of any subconsultants, which shall in each case include only an amount equivalent to the aggregate amount actually paid to the subconsultants by Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

E. REIMBURSABLE EXPENSES. The Consultant will also be compensated at an amount equal to the out-of-pocket expenses, approved in writing and in advance by the Director, necessarily and reasonably incurred, and actually paid by you in the performance

of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

1. Notwithstanding the above the Authority will pay an amount approved in advance by the Director and computed as follows for the reproduction of submittal drawings, specifications and reports:
 - a. If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or
 - b. If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.
2. The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including fax, emails, text messages, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.
3. When the Consultant uses its employee's personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Service) per mile traveled by auto.
4. When the Consultant is asked to provide services outside the Port District, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Director. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as provided herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the Director. The total number of reimbursable travel hours (for travel outside the Port District) will be calculated by reducing the actual travel time by three hours. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality. See www.gsa.gov/perdiem.
5. You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall

substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

6. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other professional and technical employees of the Consultant for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead Rate.

F. All costs under this agreement will be allowed to the extent permitted under 48 CFR Part 31.

10. CHANGES

The Authority reserves the right to make changes to the Scope of Services or schedule. The Consultant shall diligently perform all such service without delay even if the Consultant does not agree with any schedule or cost decision of Authority related to changed services. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The claim will be considered by the Authority and if accepted, in whole or part, the Authority will issue a Change Order. The provisions of the Contract relating to the services and its performance shall apply without exception to any changed or additional services required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. The Director or his authorized representative must authorize in writing the changed or additional services and/or any change to the amount obligated under the Agreement before it is performed and before the Consultant can be reimbursed for such services.

The Consultant shall immediately notify the Authority, in writing, of any change in the Scope of Services either requested by Authority or desired by the Consultant. Such notice shall be in the form of a Change Request and shall include the estimated hours by element of work and the applicable hourly rates, overhead, other direct charges, subconsultant charges in the same detail as cost elements for the Consultant, and Fixed Fee, if any, all in accordance with the Section 9, as well as any proposed schedule adjustments arising from the proposed change to the Scope of Services, if any. The parties shall negotiate in good faith the proposed changes to the Scope of Services identified in the Consultant's Change Request. The amounts that the parties agree upon shall be incorporated into the Contract by issuance of a Change Order.

The Authority reserves the right to delete any item of the Work in whole or in part. Any deletion of Work must be authorized in writing by the Director or his/her authorized representative. If an item of Work is deleted, the Fixed Fee, as set forth in the Section 9, shall be reduced accordingly.

11. DISPUTE RESOLUTION

To resolve all disputes and to prevent litigation, the parties to this Agreement authorize Director to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to, or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Consultant's proposal and claims of a type that are barred by the provisions of this Agreement). Director's decision with respect to any question or dispute under this Paragraph shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Director may find desirable. The effect of Director's decision with respect to any question or dispute under this Paragraph shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Director participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.

The effect of Director's decision with respect to any question or dispute under this Paragraph shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Director participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.

All such questions or disputes under this Paragraph shall be submitted in writing by Consultant or the Port Authority to Director for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. The Port Authority may join any other entity to the dispute that has a valid dispute resolution agreement with the Port Authority. In any action against the Port Authority relating to any such question or dispute, Consultant must allege in its complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to Director.

12. SUBCONSULTANT - Consultant may subcontract only with the prior written consent of Port Authority, which consent may be withheld at Port Authority's sole and absolute discretion. Every subcontract must provide that it is subject to all of the covenants, terms, provisions and conditions of this Agreement and must provide that in the event of termination or cancellation of this Agreement for any reason whatsoever, prior to the expiration of such subcontract, the subcontract will automatically terminate on the same date this Agreement is terminated or canceled. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Agreement.

13. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of Services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services

and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of one year after completion of services to be performed under this Agreement.

14. On or about the fifteenth day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Engineer. Upon receipt of the foregoing, the Director will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority shall, within fifteen days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

15. TERMINATION

- a. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address as set forth herein. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed.
- b. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Port Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon five (5) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Consultant from the Port Authority shall be prorated when applicable on a daily basis. If termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement, the amounts computed as above set forth for services completed to the satisfaction of the Director, through the date of termination, minus all prior payments to you. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

16. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement,

unless you first obtain the written approval of the Director. Such approval may be withheld if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

17. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of Director, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary, unless otherwise instructed by the Director.

18. Any services performed for the benefit of the Authority at any time by you or on your behalf, even services in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.

19. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

20. Original Contract Drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority will have the right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons, whether such claims presently exist or arise in the future and they are whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, by a subconsultant or by an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form in which it has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

21. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, his officers, agents, employees, or subconsultants, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant, the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

22. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees or sub-consultants, which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority will have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets and/or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Engineering Department without express written authorization of the Chief Engineer. The Authority will have the exclusive right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to ensure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

23. You shall promptly and fully inform the Director in writing of any patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

24. This Agreement is based upon your special qualifications for the services herein contemplated, and any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the

Authority. All subconsultant agreements of every tier must include all applicable provisions contained herein.

For each proposed subcontractor, the Contractor shall ensure that the Background Qualification Questionnaire Package (“BQQP”), available at:

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>, is completed.

25. This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in Attachment D: Disadvantaged Business Enterprise (DBE) Program of this Solicitation. The following goal for DBE participation has been set for this Contract:

17% for firms owned and controlled by socially and economically disadvantaged individuals and certified as DBE's, as approved by the Authority.

26. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security sites and facilities (including rental spaces) to any person who declines to abide by Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files and access identification, to include some form of biometric security methodology, such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and personal identity verification checks. Such authorization shall be in a form acceptable to the Authority. The Consultant and

subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area {SIDA}, the federal regulatory requirements for personnel performing Work at aviation facilities and such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working at or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original un laminated social security card for identity and SSN verification. Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Project Manager. The Consultant shall conform to procedures as

may be established by the Project Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Services under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

27. CONFIDENTIAL INFORMATION/NON-PUBLICATION

A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's and/or the Port Authority Trans Hudson (PATH) Corporation's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Consultant's Services under this Agreement.

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under

or in connection with the supplying of services contemplated by this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

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

28. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants in the performance of services hereunder:

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk of loss or damage to any property of the Consultant or its subconsultants arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants or against the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed by the Authority, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event the Consultant shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way the jurisdiction of the tribunal,

immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

The provisions of this clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this clause if they were named at each place above at which the Authority is named, including a direct right of action against the Consultant to enforce the foregoing indemnity, except, however, that the Authority may, at any time in its sole discretion and without liability on its part, cancel the benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from his obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that the Consultant assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which the Consultant would assume or the claims for which he would be responsible in the absence of such enumerations.

No third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

29. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the Consultant and each parent and/or affiliate of the Consultant has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, proposal rigging, embezzlement, misrepresentation or anti-trust, regardless of the dollar amount of the sanctions or the date of their imposition; and

G. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

30. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

By proposing on this Agreement, each Consultant and each person signing on behalf of any consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Consultant for the purpose of securing business, has been employed or retained by the Consultant to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation,

evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

* if the Consultant is a corporation, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each parent, affiliate, director, and officer of the Consultant, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Consultant with an ownership interest in excess of 10%;

* if the Consultant is a partnership, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each partner.

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "30G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority will take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsiveness or non-responsibility.

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render

any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultant is also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances, the Consultant may be required as a condition of award of this Agreement to enter into a Monitoring Agreement under which the Consultant will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might, under this clause, make it unable to make the foregoing certifications, or might require disclosure.

31. CONSULTANT ELIGIBILITY FOR AWARD OF AGREEMENTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or of the State of New Jersey to submit a proposal on an Authority agreement and then to establish that it is eligible to be awarded an agreement on which it has proposed because (i) the state agency determination relied upon does not apply to the Consultant, or (ii) the state agency determination relied upon was made without affording the Consultant the notice and hearing to which the Consultant was entitled by the requirements of due process of law, or (iii) the

state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

32. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

During the term of this Agreement, the Consultant shall remain responsible. To be "responsible" shall mean (1) to have legal authority to do business in the State of New Jersey and/or the State of New York and (2) to possess, in the Authority's opinion, integrity, experience, ability, financial capacity and a satisfactory record of prior performance sufficient to perform the services required under this Agreement. The Consultant agrees, if requested by the Authority, to present evidence that the Consultant is responsible.

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. The Authority may exercise this right to suspend the Consultant by giving the Consultant written notice outlining the particulars of such suspension. Upon receipt of such notice, the Consultant shall comply with the notice's terms. Agreement activity may resume at such time as the Authority issues another written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority not to be responsible (non-responsible). In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and may pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

33. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

At all times, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or to any other Authority agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, or discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. "Anything of value" shall not include compensation

contemplated by this Agreement or any other Authority agreement. Where used herein, the term “Port Authority” or “Authority” shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, it shall report such occurrence to the Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “<http://www.panynj.gov/inspector-general>” for information about reporting information to the Office of Inspector General). Failing to report such conduct shall constitute grounds for a finding that the Consultant is non-responsible.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your subconsultants and your subconsultant’s employees to keep confidential, a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

The Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.

34. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, nor shall the Consultant participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in any other consultant or potential consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said other consultant or potential consultant; nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in any other consultant or potential consultant of the Authority, and if the Consultant’s participation in the preparation, negotiation or award of any agreement with such other consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Authority in writing of such situation, giving the full details thereof. Unless the Consultant receives the specific written approval of the Authority, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Authority may require the

Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, and such mitigation plan shall be subject to the approval of the Authority and shall become a requirement imposed on the Consultant, as though fully set forth in this Agreement. In the event the Authority shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or if a portion of the Consultant's said services is determined by the Authority to be no longer appropriate because of such preclusion, then the Authority shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others; and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements that result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any conflict of interest shall be final.

35. DEFINITIONS

As used in sections 28 -34 above, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Consultant by whatever titles known.

Parent - An individual, partnership, joint venture or corporation, which owns more than 50% of the voting stock of the Consultant.

36. INTEGRITY MONITOR

In the event that the Port Authority retains or has retained an integrity monitor in connection with the Project (“Integrity Monitor”), the Consultant shall cooperate and cause its Subconsultants and the Contractors to cooperate fully with the Integrity Monitor and the Port Authority and its Inspector General, including but not limited to providing complete access to all personnel and records related to the performance of this Agreement. Failure to comply with this provision shall be a material breach of this Agreement.

37. The entire agreement between the parties is contained herein (including all Attachments and Exhibits, as set forth in section 40 below) and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

38. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

39. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

40. List of Attachment/Exhibits

The following list of exhibits and attachments are annexed hereto and incorporated herein:

RFP Attachment A: Scope of Services
RFP Attachment B: Agreement on Terms of Discussion
RFP Attachment D: Disadvantaged Business Enterprise (DBE) Program
RFP Attachment E: Staffing Plan Template
RFP Attachment F: Pricing & Compensation
RFP Attachment G: Insurance Requirements
RFP Exhibit I: Federal Transit Administration Contract Provisions

41. NOTICES. All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered, (ii) transmitted by certified mail, postage prepaid, return receipt requested, or (iii) transmitted by telecopier or facsimile (as elected by the party giving such notice). Notices shall be addressed and delivered as follows:

To: Port Authority Trans Hudson (PATH) Corporation
 Attention: Michael P. Marino
 Director/General Manager, PATH
 One Path Plaza, 10th Floor

Jersey City, NJ 07306

With a copy to: The Port Authority of New York and New Jersey
Attention: General Counsel
4 World Trade Center
150 Greenwich Street
New York, New York 10007

To Consultant: ***Insert Consultant Name***
Attn:
Title:
Address:

42. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

43. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Chief Procurement Officer
Procurement Department

Date _____

ACCEPTED:

FIRM NAME

By: _____

Title: _____

FIRM NAME

- PAGE 25 -

DATE

Date: _____