

**P.A. Agreement #**

DATE

FIRM NAME  
ADDRESS  
CITY, STATE ZIP

Attention: Contact Name, Title

**SUBJECT: INDEFENITE QUANTITY CONTRACT (IQ) FOR THE  
PERFORMANCE OF EXPERT PROFESSIONAL AUDIT AND  
INTEGRITY MONITORING SERVICES FOR FEDERALLY FUNDED  
SUPER STORM SANDY REPAIR AND RESILIENCY PROJECTS ON AN  
“AS NEEDED” BASIS DURING 2014 THROUGH 2019**

Dear Contact,

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority" or "Port Authority"), hereby offers to retain <FIRM NAME> (hereinafter referred to as "the Firm/Consultant" or "you") to provide Expert Professional Audit and Integrity Monitoring Services for Federally Funded Super Storm Sandy related Repair and Resiliency Projects on an "As Needed" Basis during 2014 through 2019 ("Services" or the "Project") as more fully set forth in Attachment A – Scope of Services, which is attached hereto and made a part hereof.

For the purpose of administering this Agreement, the Director has designated \*\*\*\*, <TITLE>, or other such individual as hereinafter designated, to act as his duly authorized representative. The Project Manager for this project is <NAME>, at tel. (\*\*\*) \*\*\*-\*\*\*\*, or email address: \*\*\*\*\*@panynj.gov.

This Agreement shall be signed by you, and the Director of Procurement

2. As used herein:

“Agreement” shall mean the writings setting forth the Scope of Services, the individual task orders, terms and conditions for the procurement of Services, as defined hereunder and shall include, but not be limited to the Request for Proposals (RFP), Clause 37 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.

“Director” shall mean the Authority’s Director, Office of the Inspector General acting either personally or through one of his/her authorized representatives within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

“Manager” shall mean the Program Manager, Office of Inspector General or his designee or his successor in duties for the purpose of this Agreement, acting personally or through his duly authorized representative..

3. The term of this Agreement shall commence on XXXXXXXX XX, 2014 (“Effective Date”) and shall continue for a period six (6) years. The Authority reserves the right to extend this Agreement for two (2) additional one (1) year terms, as needed. Accordingly, compensation for such additional terms shall be agreed upon by all parties in accordance with the “Changes” section of this Agreement prior to the commencement of additional terms. Notification of exercise of said extension shall be in writing from the Director of Procurement at least thirty (30) days prior to the end of the base term.

4. In order to effectuate the policy of the Authority, the services provided by the Firm/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 Firm/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 Exhibit G, Insurance Requirements.

5. The Firm/Consultant shall meet and consult with Authority staff as requested by the Director in connection with the services to be performed herein. All items to be submitted or prepared by the Firm/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 or professional standards or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated services are intended. If any of the said items or any portion thereof are so disapproved, the Firm/Consultant shall forthwith revise them until they meet the approval of the Director, but the Firm/Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval, disapproval or omission to approve or disapprove, however, shall relieve the Firm/Consultant of its responsibility, if any, under this Agreement to furnish the requested services in accordance and in accordance with professional standards.

6. Upon issuance of a Task Order under the Indefinite Quantity Contract (IQC) Agreement, you shall not continue to render services after the point at which the total amount to be paid to you, including reimbursable expenses reaches the Not to Exceed amount of each Task Order unless you are specifically authorized in writing to so by the Director. If no such authorization is issued, the Task Order and/or 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.

7. As full compensation for all of your services and obligations in connection with Task Orders awarded under 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 6 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

Attachment E, Staffing Plan Template attached hereto, includes a schedule of the all-inclusive (fully loaded) hourly rates payable hereunder that have been approved by the Port Authority.

- A. The Consultant's compensation shall be computed by multiplying the applicable fully loaded hourly rate times the number of hours worked by each employee hereunder. The fully loaded (all-inclusive) hourly rates shall be computed as follows:
1. Direct Personnel Costs - Actual hourly rates of Consultant's full time employees ("Personnel") for Services on the Project.
  2. Consultant's Profit.
  3. Consultant's Overhead Costs, inclusive of indirect cost items as set forth in 48 CFR Part 31, which shall not apply to partners, principals or temporary employees of Consultant.

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 and cost of living 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.

- B. Costs of Subconsultants. Consultant shall be reimbursed for the costs of any subconsultants, which shall only include an amount equivalent to the aggregate amount actually paid to subconsultants by Consultant. All subconsultant costs shall be

reimbursed in accordance with the terms and conditions outlined in Section (A) above. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

C. Reimbursable Expenses. The Consultant shall also be compensated in an amount not to exceed 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 (beyond normal commuting costs); 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, Telex and telegrams, 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 Services) 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 advance 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](http://www.gsa.gov).

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.

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

## 8. Changes

The Authority reserves the right to make changes to the Task Order Work, Task Order Schedule or terms of this IQC Agreement. The Firm/Consultant shall diligently perform all such work without delay, even if the Firm/Consultant does not agree with any schedule or cost decision of Authority related to changed Work. The Firm/Consultant must issue any related claim to Authority within five (5) days of Authority's request to perform the changed

work. 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 Work and its performance shall apply without exception to any changed or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Firm/Consultant. The Director or his/her authorized representative must authorize in writing the changed or additional Work and/or any change to the Amount Obligated under the Contract before it is performed and before the Firm/Consultant can be reimbursed for such Work.

9. Dispute Resolution.

- a. To resolve all disputes and to prevent litigation, the parties to this Agreement authorize Authority's Inspector General 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 Firm/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.
- b. The effect of Inspector General'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 Inspector General 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.
- c. All such questions or disputes under this Paragraph shall be submitted in writing by Firm/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, Firm/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.

10. You shall keep, and shall cause any subFirm/Consultants 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 subFirm/Consultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subFirm/Consultants for a period of one year after completion of services to be performed under this Agreement.

11. 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 Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Project Manager. 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.

12. 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 hereinbefore set forth. 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 Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such 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 Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits. 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.

13. 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.

14. Under no circumstances shall you or your subFirm/Consultants 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.

15. 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.

16. 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.

17. Mylars of the 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 shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Firm/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 presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Firm/Consultant to obtain for the Firm/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

Firm/Consultant, or subFirm/Consultant, or 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 of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, whether 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.

18. 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 Firm/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 Firm/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 Firm/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.

19. 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.

20. 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 subFirm/Consultants 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 subFirm/Consultant or give the subFirm/Consultant any rights against the Authority.

21. Disadvantaged Business Enterprise Program.

This Contract is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations.

The following goal for DBE participation has been set for this Contract at **17** percent):

Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) websites:

New York UCP – <http://www.nysucp.net/>

New Jersey UCP – <http://www.njucp.net/>

By submitting a Proposal for this Contract, the Proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix D1) with his Proposal. If the Proposer determines he cannot make this assurance he may nevertheless submit a bid but in such event he shall note on the DBE Goals Statement form the percentage of DBE participation he anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The Proposer shall submit with his Proposal the DBE Participation Plan and Affirmation Statement (Appendix D2) for each DBE firm he intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

A proposer who fails to meet the DBE goal for this Contract and fails to demonstrate to the Authority that the Proposer has made good faith efforts to meet same shall not be eligible to be awarded the Contract. The following are illustrative of good faith efforts:

- A. Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation;
- B. Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
- C. Written notification to DBEs that their interest in the Contract is solicited;
- D. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;
- E. Efforts to negotiate with DBEs for specific sub-bids including at a minimum;
  1. The names, addresses, and telephone numbers of DBEs that were contacted;
  2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
  3. A statement of why additional agreements with DBEs were not reached.
- F. Concerning each DBE, the Proposer contacted but rejected as unqualified, and the reasons for the rejection;

- G. Efforts made to assist the DBEs contacted that need assistance in obtaining bonding or insurance required by the Proposer or Authority.

The Proposer shall submit with his Proposal the completed Information on Solicited Firms form (Appendix D3) listing every firm that provided a quotation to the Proposer for any subcontract to be performed under this Contract, whether or not the firms are DBE certified, and whether or not the firms' quotes were included in the final Proposal.

## 22. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the Firm/Consultant, its staff and subFirm/Consultants and their staffs depending upon the level of security required, as determined by the Authority. These security requirements may include but are not limited to the following:

- Firm/Consultant/subconsultant identity checks and background screening, including but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- Requiring the Firm/Consultant and subcontractors, when appropriate, to sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2009, corrected as of February 9, 2009)* annexed hereto as Exhibit E.
- Issuance of Photo Identification cards;
- Access control, inspection, and monitoring by security guards.

The Firm/Consultant may be required to have its staff, and any subFirm/Consultant's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Firm/Consultant may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks shall be reimbursable to the Firm/Consultant as a Reimbursable Expense as provided herein.

The Authority may impose, increase, and/or upgrade security requirements for the Firm/Consultant and its staff and subFirm/Consultants during the term of this Agreement to address changing security conditions and/or new governmental regulations.

## 23. CONFIDENTIAL INFORMATION

- a. Confidential information shall mean all information disclosed to the Firm/Consultant or the personnel provided by the Firm/Consultant hereunder which relates to the Authority'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 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 Firm/Consultant's Services under this Agreement.
- b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.
- c. The Firm/Consultant shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Firm/Consultant and the personnel provided by the Firm/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 Firm/Consultant and the personnel provided by the Firm/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 Firm/Consultant and the personnel provided by the Firm/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 Firm/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 Firm/Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Firm/Consultant's attention in connection with this Agreement.

24. The Firm/Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Firm/Consultant or its subFirm/Consultants 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 or loss or damage to any property of the Firm/Consultant or its subFirm/Consultants 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 Firm/Consultant or its subFirm/Consultants or the Authority, for loss or damage to any property of the Firm/Consultant's agents, employees, subcontractors, subFirm/Consultants, materialmen or others performing services hereunder;
- d. The risk of claims, just or unjust, by third persons made against the Firm/Consultant or its subFirm/Consultants or 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 Firm/Consultant or its subFirm/Consultants or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after the completion of services hereunder.

The Firm/Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Firm/Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statues respecting suits against the Authority, such defense to be at the Firm/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 Firm/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 Firm/Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Firm/Consultant or of particular claims for which it 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 it 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 it would assume or the claims for which it 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 Firm/Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

## 25. 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, disbarred, 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 \$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, 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.

## 26. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO 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 bid, 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 bidder or proposer 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 bidder, proposer 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 April 11, 1996, (a copy of which is available upon request) 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 Bidder 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; and
- F. the Proposer 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.
- G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Port Authority determination, where the solicitation is a Request for Proposals, 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 Contract.

The foregoing certifications shall be deemed to be made by the Consultant as follows:

- i. 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%;

- ii. 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 foregoing certifications, 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 foregoing certifications, 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 bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "26G", if the Consultant cannot make the certification, it shall provide, in writing, with the signed bid: (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 Contract, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of Proposals and the term of the Agreement, if Consultant is awarded the 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 and continuing 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 bids on Authority Agreements and may exercise such other remedies as are

provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a 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 Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

#### 27. 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 New Jersey that a Consultant is not eligible to propose, bid 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 New Jersey to submit a bid or proposal on a Port Authority agreement and then to establish that it is eligible to be awarded a agreement on which it has bid or 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 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

#### 28. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

During the term of this Agreement, the Consultant shall at all times during the Agreement term remain responsible. The Consultant agrees, if requested by the Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

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. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a 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 where the Consultant is determined by the Authority to be 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 pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

#### 29. 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 a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Consultant on behalf of the Port Authority, whether or not such duties are related to this Agreement or any other Port Authority contract 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 Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Consultant, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

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

In 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 Port 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 to report information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

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 April 11, 1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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

### 30. CONFLICT OF INTEREST

During the term of this agreement, the Firm/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, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Firm/Consultant has a substantial financial interest in the Firm/Consultant or potential Firm/Consultant of the Authority or if the Firm/Consultant has an arrangement for future employment or for any other business relationship with said Firm/Consultant or potential Firm/Consultant, nor shall the Firm/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 Firm/Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Firm/Consultant has any financial interest, substantial or not, in a Firm/Consultant or potential Firm/Consultant of the Authority, and the Firm/Consultant's participation in the preparation, negotiation or award of any agreement with such a Firm/Consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Firm/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 Firm/Consultant shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Firm/Consultant receives the specific written approval of the Director, the Firm/Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Firm/Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Firm/Consultant's said services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Firm/Consultant's services not be performed by the Firm/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 Firm/Consultant's execution of this document shall constitute a representation by the Firm/Consultant that at the time of such execution the Firm/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

Firm/Consultant's part. The Firm/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 which result, directly or indirectly, from the services provided by the Firm/Consultant hereunder.

Any entity performing services for the Port Authority is presumed to have a potential conflict of interest if the same entity or an affiliate also provides services to other Port Authority projects or their affiliates responsible for building portions of the Hurricane Sandy Resiliency Work. However, if Firm/Consultant desires to provide services to such a third party and Firm/Consultant believes that Firm/Consultant can provide a mitigation plan that would address the perceived conflict of interest, Firm/Consultant, before agreeing to provide services to such a third party, shall give written notice to the Port Authority and submit such plan for evaluation to the Port Authority. The Port Authority will evaluate the submitted mitigation plan and notify Firm/Consultant of whether such plan is acceptable in the Port Authority's sole discretion. If the Port Authority determines that a potential conflict of interest exists that, in the Port Authority's sole opinion would make Firm/Consultant's providing services to such a third party inappropriate, Firm/Consultant hereby agrees not to agree to provide services to such a third-party. This Section is a material component and is of the essence of the Agreement.

31. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Contract.

## 32. DEFINITIONS

As used in sections 24 to 30 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 Firm/Consultant by whatever titles known.

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

33. The entire agreement between the parties is contained herein 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.

34. 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.

35. 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.

36. 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.

37. List of Attachment/Exhibits

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

Attachment A: Scope of Services

Attachment B: Agreement on Terms of Discussion

Attachment C-1: Proposer Pre-requisite A

Attachment C-2: Proposer Pre-requisite B

Attachment D: DBE Program Requirements & Attachments

Attachment E: Contractor's Staffing Plan

Attachment F: Insurance Requirements

Attachment G: Contractor Quality Program Requirements

Attachment H: Non-Disclosure and Confidentiality Agreement

Attachment I: Information Security Handbook

Attachment J: Federal Transit Administration Provisions

Attachment K: FEMA Provisions

38. 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 Owner: The Port Authority of New York and New Jersey  
Attention:  
Title:

With a copy to: The Port Authority of New York and New Jersey  
Attention: General Counsel  
225 Park Avenue South  
New York, New York 10003

To Firm/Consultant:

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Director  
Procurement Department

Date \_\_\_\_\_

ACCEPTED:  
FIRM NAME

By: \_\_\_\_\_

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

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