4 World Trade Center, 150 Greenwich Street,21st Floor,New York, NY 10007
PORT AUTHORITY TRANS-HUDSON CORPORATION

Date 11/21/2016

REQUEST FOR QUOTATION

Vendor Name and Address:

Collective/Bid# **47768**

Bid Due Date **12/07/2016**

Bids must be received no later than 11:00 AM on the above Bid Due Date.

Port Authority Buyer:
John Santiago/212-435-4613/john.santiago@panynj.gov

Deliver Goods/Services To:
PATH Consolidated Maintenance Facility
120 Academy Street, Jersey City, NJ 07302

Quantity	Description	Unit Price	Total
	RE-BID: SUPPLY AND DELIVER TRACK JOINT BARS FOR 115RE RAIL TO PATH NOTE: These items may be federally funded in whole or in part by the Federal Transit Administration (FTA). Accordingly, FTA requirements are part of the agreement and will be applicable to the supply of such items. THIS IS A FORMAL BID INVITATION I. The following documents are attached and incorporated by reference as part of this Bid and shall be made part of the Contract resulting from this Bid: 1. Port Authority Trans-Hudson Corporation Drawing No. C11 for Rail Drilling Patterns and Joint Bars, page 13 of 16 (rev. 4/26/05). 2. The following additional items are bid submittal requirements contained within the Federal Transit Administration (FTA) Requirements and/or solicitation documents: a) Attachment A: Federal Transit Administration Contract Provisions for Grants Before December 26, 2014 b) Attachment B: PATH (FTA) Standard Contract Terms and Conditions c) Attachment A-1: Disadvantaged Business Enterprise (DBE) Program d) Appendix A1: DBE Goals Statement e) Appendix A2: DBE Participation Plan and Affirmation Statement f) Appendix A4: Information on Solicited Firms g) Appendix A5: Pre-Award DBE Trucking Commitment Form h) Appendix A6: DBE Regular Dealer Verification Form NOTE: Appendix A-3: Modified DBE Participation Form and Affirmation Statement, is neither included with this solicitation nor required at the time of Bid submission.		
	PLEASE QUOTE FULLY DELIVERED PRICES — **PAYMENT TERMS**	**Total Delivered Price**	

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed _____
Firm Name _____
Telephone number_____Date_____
Fax Number_____
Federal Taxpayer ID _____

Bidder Must Sign In Two Places

NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed_____Date_____
Firm Name_____

REQUEST FOR QUOTATION

Vendor Name and Address:	Collective/Bid #	Bid Due Date
	47768	12/07/2016

Quantity	Description	Unit Price	Total
	II. Additional Bid Submission Requirements: a) Bidders shall submit with their Bids one (1) copy of any proposed drawing, specification sheet, or other documentation on the proposed product that is sufficient to facilitate an evaluation. b) Please note that PATH, as required for further evaluation, may request delivery of four (4) samples of the proposed product, at the Bidder's expense, to determine if the performance requirements and characteristics of the proposed products are satisfactory. Failure to provide a sample or additional information within a specified timeframe, if requested by PATH to conduct its evaluation, may result in rejection of the proposed product and/or rejection of the bid. Samples that are approved, deemed in new condition, and usable by PATH will be accepted toward the order under this Contract. The Bidder shall pick up samples that are not approved within thirty (30) days of notification, after which time all samples will become the property of PATH.		
	PLEASE QUOTE FULLY DELIVERED PRICES	**PAYMENT TERMS**	**Total Delivered Price**

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed _____

Firm Name _____

Telephone number_____Date_____

Fax Number_____

Federal Taxpayer ID _____

Bidder Must Sign In Two Places

NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed_____Date_____

Firm Name_____

REQUEST FOR QUOTATION

Vendor Name and Address:	Collective/Bid #	Bid Due Date
	47768	12/07/2016

Quantity	Description	Unit Price	Total
	An award will be made to the lowest, responsive and responsible bidder. In the event of a Purchase Order/Contract resulting from this Bid, the Contractor shall deliver within its quoted Lead Time. The Purchase Order/Contract shall expire no later than ninety (90) days from the quoted Lead Time. The prices quoted on this Request for Quotation form shall be in United States Dollars. All figures inserted will be interpreted as being quoted in United States Dollars. Delivery term is FOB Destination.		
	PLEASE QUOTE FULLY DELIVERED PRICES — **PAYMENT TERMS**	**Total Delivered Price**	

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed _____

Firm Name _____

Telephone number_____Date_____

Fax Number_____

Federal Taxpayer ID _____

Bidder Must Sign In Two Places

NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed_____Date_____

Firm Name_____

REQUEST FOR QUOTATION

Vendor Name and Address:	Collective/Bid #	Bid Due Date
	47768	12/07/2016

Quantity	Description	Unit Price	Total
	This is a Formal Bid Invitation Bid Submission Instructions: Sealed Bids must be submitted to and received at the following address by the due date and time listed on this Request for Quotation, where they will be publicly opened and read: The Port Authority of NY & NJ Attn: Bid Custodian Procurement Department 4 World Trade Center 150 Greenwich Street, 21st Floor New York, NY 10007 Clearly mark the outside of your envelope/package with "BID ENCLOSED", the Collective/Bid Number and Due Date, and your complete company name and address. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8 A.M. & 5 P.M., via regular mail, express delivery service or hand delivery. Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. There is extensive security at the World Trade Center Site. Individuals must present a valid government-issued photo ID to enter 4 WTC.		
	PLEASE QUOTE FULLY DELIVERED PRICES — **PAYMENT TERMS**	**Total Delivered Price**	

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed _____

Firm Name _____

Telephone number_____Date_____

Fax Number_____

Federal Taxpayer ID _____

Bidder Must Sign In Two Places

NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed_____Date_____

Firm Name_____

REQUEST FOR QUOTATION

Vendor Name and Address:	Collective/Bid #	Bid Due Date
	47768	12/07/2016

Quantity	Description	Unit Price	Total
	Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages 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. The Port Authority assumes no responsibility for delays, including, but not limited to delays caused by any delivery service, building access procedure or security requirement. A valid government-issued photo ID is required to gain access into the building to attend the bid opening or hand deliver a bid. Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late. If any Addenda are posted or sent as part of this Bid, the Bidder shall complete, sign and include with its Bid the addenda form(s). In the event any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though the Addenda had been acknowledged. If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at http://www.panynj.gov/business-opportunities/bid-proposaladvertisements.html and download any addenda that might have been issued in connection with this solicitation.		
	PLEASE QUOTE FULLY DELIVERED PRICES — **PAYMENT TERMS**	**Total Delivered Price**	

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed _____

Firm Name _____

Telephone number_____Date_____

Fax Number_____

Federal Taxpayer ID _____

Bidder Must Sign In Two Places

NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed_____Date_____

Firm Name_____

4 World Trade Center, 150 Greenwich Street,21st Floor,New York, NY 10007
PORT AUTHORITY TRANS-HUDSON CORPORATION

REQUEST FOR QUOTATION

Vendor Name and Address:	Collective/Bid #	Bid Due Date
	47768	12/07/2016

Quantity	Description	Unit Price	Total
82 PAIRS	Track Joint Bars, 36 inches long, for use with 115RE rail section. Bars to conform to PATH Drawing No. C11 and AREMA standards. Oval holes in lieu of Elliptical holes are acceptable. Manufacturer:_____ Plant location:_____ Make/model/part number:_____ Lead Time after receipt of order: _____		
	PLEASE QUOTE FULLY DELIVERED PRICES	**PAYMENT TERMS**	**Total Delivered Price**

This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

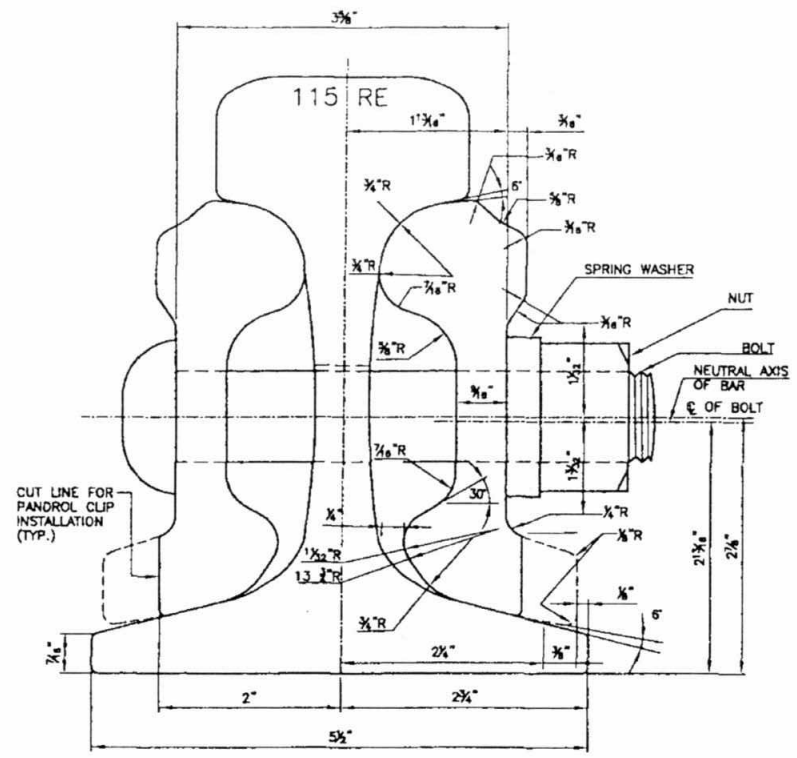
Signed _____
Firm Name _____
Telephone number_____Date_____
Fax Number_____
Federal Taxpayer ID _____

Bidder Must Sign In Two Places

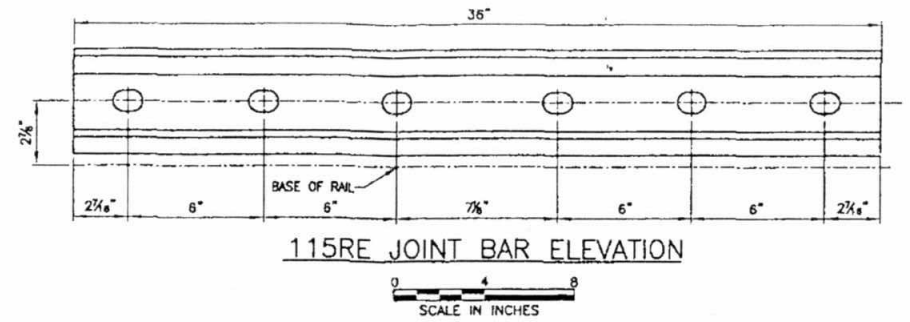
NOTICE TO BIDDERS: Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

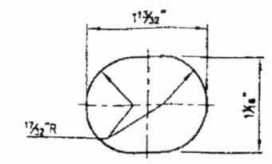
Signed_____Date_____
Firm Name_____



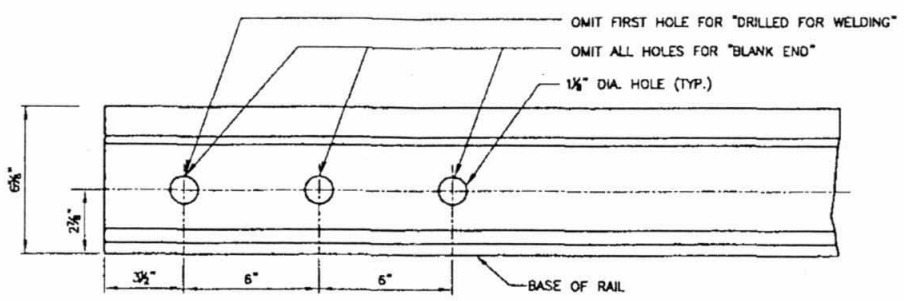
115RE JOINT BAR SECTION



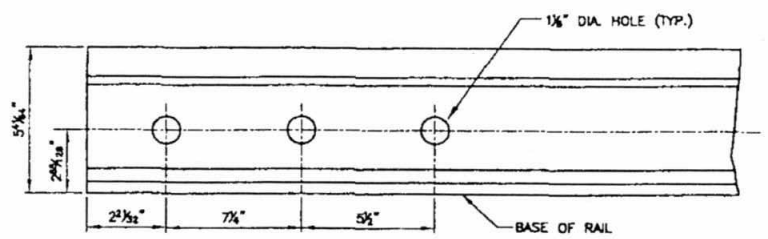
115RE JOINT BAR ELEVATION



DETAIL OF OVAL JOINT BAR HOLE (115RE, 100RB)

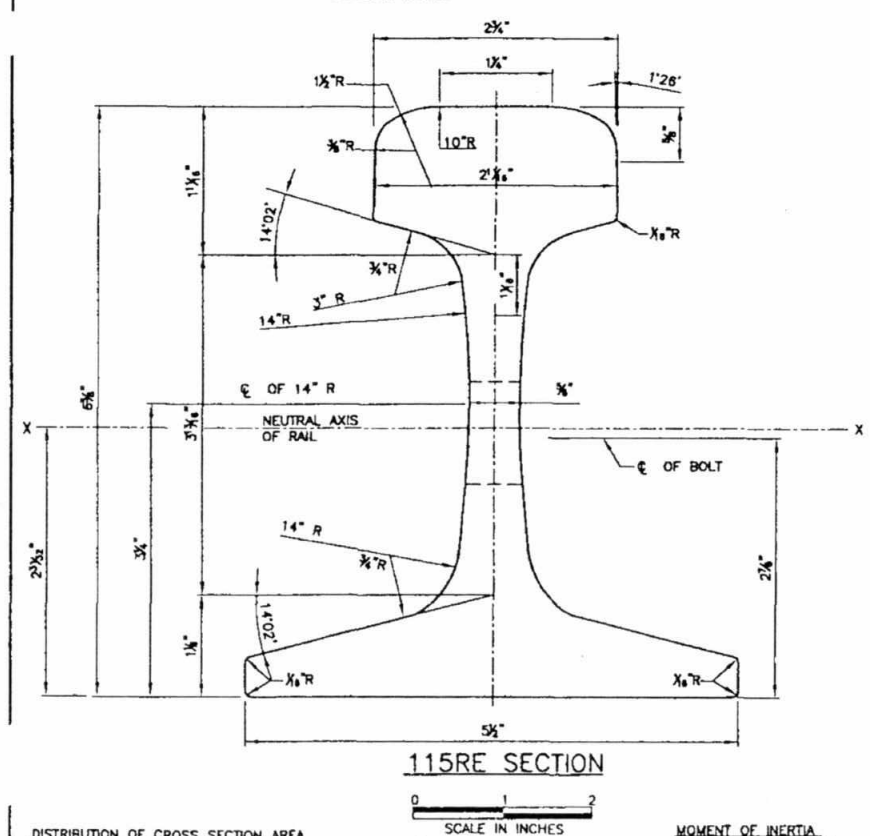


STANDARD RAIL DRILLING FOR 115RE SECTION



STANDARD RAIL DRILLING FOR EXISTING 100RB SECTION

N.T.S.



115RE SECTION

DISTRIBUTION OF CROSS SECTION AREA		
HEAD	3.91 SQ.IN	34.8%
WEB	3.05 SQ.IN	27.1%
BASE	4.29 SQ.IN	38.1%
TOTAL	11.25 SQ.IN	100.0%

MOMENT OF INERTIA

(X-X) 65.6 IN^4

SECTION MODULUS

HEAD 18.0 IN^3

BASE 22.0 IN^3

NOTES

1. INSULATED JOINTS AND COMPROMISE JOINTS SHALL BE DRILLED FOR BOLTING. RAIL ENDS SHALL BE BEVELED.
2. BLANK RAIL ENDS SHALL NOT REQUIRE BEVELING.
3. CONDITION OF RAIL HEAD WEAR OF 100RB RAILS, IF ANY, WILL BE INDICATED ON THE SHOP DRAWING FOR FORGED COMPROMISE BARS DURING THE ENGINEER'S REVIEW OF SAID DRAWING. IF HEAD WEAR IS SO INDICATED, DESIGN OF COMPROMISE BARS SHALL COMPENSATE FOR 100RB RAIL HEAD WEAR.

PORT AUTHORITY
TRANS-HUDSON CORPORATION

CHIEF CIVIL ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

TURNOUT REPLACEMENT PHASE IIIB - OPEN AREA

CIVIL

Title

PURCHASE OF SPECIAL TRACKWORK

RAIL DRILLING PATTERNS AND JOINT BARS

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to PATH and may not be used without its written consent.

J.DIKLIC T.CHAN	B.ROSE	K.POLLARD
Designed by	Drawn by	Checked by

Date APRIL 26, 2006

Contract Number PAT-624.331A

Drawing Number C11

PID# 99202000

ATTACHMENT A
FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS
FOR GRANTS BEFORE DECEMBER 26, 2014

Contents

ATTACHMENT A 1
1. DEFINITIONS 1
2. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS 1
3. FEDERAL CHANGES 2
4. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES 2
5. ORGANIZATIONAL CONFLICT OF INTEREST 3
6. LOBBYING 4
7. CIVIL RIGHTS REQUIREMENT 4
8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS 5
9. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS 6
10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT 12
11. VETERANS EMPLOYMENT 13
12. SEISMIC SAFETY 14
13. ENERGY CONSERVATION 14
14. CLEAN WATER REQUIREMENTS 14
15. CLEAN AIR REQUIREMENTS 15
16. FLY AMERICA 15
17. RECYCLED PRODUCTS 15
18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS 16
19. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS 16
20. ADA ACCESS REQUIREMENTS 18
21. BUY AMERICA 18
22. TERMINATION FOR CAUSE OR CONVENIENCE 18
23. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION 19
24. NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE 20
25. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) 20
26. ACCESS TO RECORDS AND REPORTS 21
CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352 23
STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES 25
INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES 27
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND

VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS 29
BY SIGNATURE OF AUTHORIZED OFFICIAL 29
END OF FTA CONTRACT PROVISIONS..... 30

1. DEFINITIONS

"Agreement" shall mean "Contract". This Agreement is anticipated to be funded in whole or in part by the United States Department of Transportation's Federal Transit Administration (FTA).

"Construction" shall mean Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, Construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

"Contractor" and "Subcontractor" shall have the same meanings as "Consultant" and "Subconsultant," respectively.

"Micro-Purchase" shall mean a purchase of $3,500 or less and is exempt from FTA's Buy America requirements but is subject to Davis-Bacon prevailing wage requirements such that even though the Port Authority uses micro-purchase procurement procedures, prevailing wage requirements apply to Construction contracts exceeding $2,000.

"PATH" shall mean the Port Authority Trans-Hudson Corporation.

"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.

"Recipient" shall mean a Recipient of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts).

2. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

This section applies to all contracts except Micro-Purchases.

The following provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (DOT), whether or not expressly set forth in the following contract provisions. All contractual provisions required by DOT, as set forth in the FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA terms and conditions.

The Contractor shall include the above clause in every subcontract financed in whole or in part

with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

Each and every provision required by the FTA to be inserted in this Contract shall be deemed to be inserted herein. If any provision of this Contract shall be such as to effect non- compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

o

3. FEDERAL CHANGES

This section applies to all contracts except Micro-Purchases.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Authority and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices shall apply to this Contract at any particular time, unless the FTA issues a written determination otherwise. All standards or limits within this document are minimum requirements, unless modified by the FTA or any subagency thereof. The requirements of this section shall apply to each applicable changed requirement.

The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

4. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

This section applies to all contracts except Micro-Purchases.

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. ORGANIZATIONAL CONFLICT OF INTEREST

This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

1.) The Contractor may have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.

2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.

The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

6. LOBBYING

This section applies to Construction/architectural and engineering/acquisition of rolling stock/professional service contracts/operational service contracts/turnkey contracts; and does not apply to Micro-Purchases

Byrd Anti-Lobbying Amendment, 31 USC 1352 as amended by the Lobbying Disclosure Act of 1995 —"Byrd Anti-Lobbying Amendment" (31 U.S.C. 1352) — Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR Part 20, ''New Restrictions on Lobbying.''. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member ofCongress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining anyFederal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient**.**

7. CIVIL RIGHTS REQUIREMENT

This section applies to all contracts except Micro-Purchases.

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq*., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect

Construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

This section applies to contracts involving equipment, materials or commodities, which may be transported by ocean vessels. These requirements do not apply to Micro-Purchases, except for Construction contracts over $2,000).

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

To furnish within twenty (20) working days following the date of loading for shipments

originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the FTA Administrator and grantee (through the contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.

The Contractor agrees to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

9. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section applies to Construction contracts and subcontracts. For purposes of this section, construction includes actual construction, alteration and/or repair, including decoration or painting, exceeding $2,000.

(a) The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee Construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any Construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a.). 'Construction,' for purposes of the Acts, includes "actual Construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a Construction contract (as delineated above) over $2,000.

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than

quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(A) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(B) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The Port Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Port Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in

providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Port Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Port Authority, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

> (*1*) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
>
> (*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
>
> (*3*) That each laborer or mechanic has been paid not less than the applicable wage

rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any

lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Port Authority, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

This section applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for Construction, and non-Construction projects that employ "laborers or mechanics on a public work, where the contract amount is greater than $100,000.

i. Overtime Requirements
No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one- half

times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

ii. Violation; liability for unpaid wages; liquidated damages
In the event of any violation of the clause set forth in Paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph A of this Section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Paragraph A of this Section.

iii. Withholding for unpaid wages and liquidated damages
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

iv. Subcontracts
The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section. The FTA does not require the inclusion of these requirements in subcontracts.

11. VETERANS EMPLOYMENT

Contractors working on a capital project funded using FTA assistance agree to give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. 2108) who have the requisite skills and abilities to perform the Construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee. The Contractor shall ensure that its hiring practices reflect the requirements of this section and shall, upon request, provide to the Authority personnel data which reflects compliance with the terms contained herein.

12. SEISMIC SAFETY

Applies only to the Construction of new buildings or additions to existing buildings. These requirements do not apply to Micro-Purchases except for Construction contracts over $2,000).

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance.

13. ENERGY CONSERVATION

This section applies to all contracts except Micro-Purchases.

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. and the National Environmental Policy Act, 42 U.S.C. §4321 et seq, Accordingly, the Contractor agrees that the construction of any new building, or any addition, alteration or renovation of any existing building which materially increases the heating or cooling requirements for the building will comply with mandatory standards and policies relating to energy efficiency which are contained in 42 USC §6321 et seq., Article 11 of the New York State Energy Law and in Parts 7810 to7815 of Title 9, Subtitle BB of the New York Codes, Rules and Regulations. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

14. CLEAN WATER REQUIREMENTS

This section applies to each contract and subcontract which exceeds $150,000.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. For contracts and subgrants in excess of $150,000, the Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water 33 USC §1251-1387. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall include the above clause in every subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the FTA and shall ensure that

such provisions will be binding upon each subcontractor of any tier.

15. CLEAN AIR REQUIREMENTS

This section applies to all contracts over $150,000, including indefinite quantities where the amount is expected to exceed $150,000 in any year.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, (42 U.S.C. 7401-7671q. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall include the above clause in every subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

16. FLY AMERICA

This section applies to certain contracts involving international transportation of persons or property, by air when the FTA will participate in the costs of such air transportation. These requirements do not apply to micro-purchases ($3,000 or less, except for Construction contracts over $2,000).

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that Recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation. The Contractor shall include the requirements of this section in all first tier subcontracts that may involve international air transportation and shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

17. RECYCLED PRODUCTS

This section applies to all contracts over $10,000 for items designated by the EPA.

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding $10,000 for items designated by the Environmental Protection Agency (EPA) and issued pursuant to this Contract. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

This section applies to all contracts except Micro-Purchases.

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq*. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with federal assistance, the Federal Government reserves the right to impose the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable federal law to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

19. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

This section applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator, except for Micro-Purchases.

(i) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- General Transit Employee Protective Requirements - To the extent that FTA

determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29
C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA

applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1.), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non- urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

- Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities: If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the Recipient. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, the procedures implemented by U.S. DOL or any revision thereto.

The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding

upon each subcontractor of any tier.

20. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq*. and with DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

21. BUY AMERICA

This section applies to Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $150,000).

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Final assembly of rolling stock must occur in the United States and rolling stock must contain the required domestic content, as set forth in the 49 USC Section 5323(j)(C)(2), as amended by Section 3011 of the Fixing America's Surface Transportation (FAST) Act. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements. Subcontracts in any amount are subject to Buy America.

A bidder or offeror must submit to the FTA Recipient the appropriate Buy America Certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as non-responsive. This certification requirement does not apply to lower-tier subcontractors.

22. TERMINATION FOR CAUSE OR CONVENIENCE

Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority's best interest, pursuant to 49 C.F.R. 13.36 (i)(2) and as set forth in the "Standard Contract Terms and Conditions," Part II, Section 14. In the event of termination for convenience, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work performed up to the time of termination for

convenience. See the “Standard Contract Terms and Conditions,” Part II, Section 14(II)(2).

23. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION

Inasmuch as the public interest requires that the project to which this Contract relates shall be performed in the manner which the Port Authority, acting through the Chief Engineer (or his/her designee), deems best, the Chief Engineer (or his/her designee) shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in the clause hereof entitled "General Agreement" and the Contract Drawings and Specifications shall be deemed merely his present determination on this point. In the exercise of this authority, he/she shall have power to alter the Contract Drawings and Specifications; to require the performance of Work not required by them in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

If at any time it shall be, from the viewpoint of the Port Authority, impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Port Authority, he/she shall have authority to suspend performance of any part or all of the Contract until such time as he may deem it practicable or desirable to proceed. Moreover, if AT any time it shall be, from the viewpoint of the Port Authority impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of the Port Authority, he shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. 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.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer (or his/her designee) 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 Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid or Proposal and claims of a type which are barred by the provisions of this Contract) and his/her decision shall be conclusive, final and binding on the parties. His/her decision may be based on such assistance as he/she may find desirable. The effect of his/her decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by the Contractor to the Chief Engineer (or

his/her designee) for his/her decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Port Authority relating to any such question the Contractor must allege in his 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 the Chief Engineer (or his/her designee).

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

Performance During Dispute – Unless otherwise directed by the Port Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within five (5) days after the claim arises.

Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

24. NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE

The Contractor agrees to comply with and assures compliance with any applicable employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

25. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

This section applies to all contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 3000. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

26. ACCESS TO RECORDS AND REPORTS

This section applies to all contracts except Micro-Purchases.

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to and the right to examine and inspect any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15, to provide the FTA Administrator or authorized representatives thereto, including any Project Management Oversight (PMO) Contractor, access to the Contractor's records and Construction sites pertaining to a major capital project, major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period from the beginning of the Project, and through the course of the Project, until three years after the Recipient has submitted its final expenditure report and other pending matters are closed. Project closeout does not alter the record retention requirements of the FTA Master Agreement, §9.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the Contract Documents. The FTA does not require the inclusion of these requirements in subcontracts.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352
(TO BE SUBMITTED WITH EACH BID OR OFFER EXCEEDING $150,000)

I, the undersigned

_____
(name of authorized officer) certify,
to the best of my knowledge and belief, that:

- No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.

- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day_____of_____ , 201__

By:_____
Signature of Authorized Official

_____
Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____a. contract _____b. grant _____c. cooperative agreement _____d. loan _____e. loan guarantee f. loan insurance	**2. Status of Federal Action:** _____a. bid/offer/application _____b. initial award _____c. post award	**3. Report Type:** _____a. initial filing _____b. material change **For material change only:** Year_____ quarter_____Date of last report___
4. Name and Address of Reporting Entity: _____Prime _____Subawardee Tier _____, if known: **Congressional District,** *if known*:	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District,** *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount**, *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Print** **Name:** _____ **Title:** _____ **Telephone No.:**_____**Date:** __	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal Recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward Recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal Recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding

the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day_____of_____ , 201_____.

_____

BY SIGNATURE OF AUTHORIZED OFFICIAL

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue all available remedies including suspension and/or debarment.

END OF FTA CONTRACT PROVISIONS

ATTACHMENT B

PATH (FTA) STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS 2

PART II GENERAL PROVISIONS 4

1. Facility Rules and Regulations of PATH 4
2. Contractor Not An Agent 4
3. Contractor's Warranties 4
4. Personal Non-Liability 5
5. Non-Discrimination Requirements 5
6. Rights and Remedies of PATH 5
7. Rights and Remedies of the Contractor 6
8. Submission To Jurisdiction 6
9. Harmony 6
10. Claims of Third Persons 7
11. No Third Party Rights 7
12. Provisions of Law Deemed Inserted 7
13. Costs Assumed By The Contractor 7
14. Termination Provisions, and Rights and Remedies 8
15. Sales or Compensating Use Taxes 11
16. No Estoppel or Waiver 11
17. Records and Reports 11
18. General Obligations 12
19. Assignments and Subcontracting 13
20. Indemnification and Risks Assumed By The Contractor 14
21. Approval of Methods 15
22. Safety and Cleanliness 15
23. Accident Reports 15
24. Trash Removal 15
25. Lost and Found Property 16
26. Property of the Contractor 16
27. Modification of Contract 16
28. Invalid Clauses 16
29. Approval of Materials, Supplies and Equipment 16
30. Intellectual Property 16
31. Contract Records and Documents – Passwords and Codes 17
32. Designated Secure Areas 17
33. Notification of Security Requirements 17
34. Construction In Progress 20
35. Permit-Required Confined Space Work 20
36. Signs 20
37. Vending Machines, Food Preparation 20
38. Confidential Information/Non-Publication 20

39. Time is of the Essence 21
40. Holidays 21
41. Personnel Standards 22
42. General Uniform Requirements for Contractor's Personnel 22
43. Labor, Equipment and Materials Supplied by the Contractor 22
44. Contractor's Vehicles – Parking - Licenses 22
45. Superintendent/Manager's Authority 23

PART III CONTRACTOR'S INTEGRITY PROVISIONS 23
1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information 23
2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees 24
3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts 25
4. Contractor Responsibility, Suspension of Work and Termination 26
5. No Gifts, Gratuities, Offers of Employment, Etc. 26
6. Conflict of Interest 27
7. Definitions 27

PATH STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

PATH – shall mean the Port Authority Trans-Hudson Corporation.

Authority or Port Authority - shall mean The Port Authority of New York and New Jersey, which may act on behalf of PATH for the purposes of this Contract.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued by an authorized member of the Procurement Department.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month – unless otherwise specified, shall mean a calendar month.

Director/General Manager – shall mean the Director/General Manager of PATH, which operates the PATH facility 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.

Superintendent/Manager – shall mean the Superintendent/Manager of the PATH Division responsible for operating the said Facility for the time being, or his/her successor in duties for the purpose of this Contract, or his/her duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director/General Manager or Superintendent/Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director/General Manager or Superintendent/Manager as the case may be. Further, no person shall be deemed a successor in duties of the Director/General Manager unless the Contractor is so notified in writing signed by the Procurement

Department. No person shall be deemed a successor in duties of the Superintendent/Manager unless the Contractor is so notified in a writing signed by the Director/General Manager.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of PATH

a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of PATH now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by PATH for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. PATH agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.

b. A copy of the facility Rules and Regulations of PATH shall be available for review by the Contractor at the Office of the Director/General Manager of PATH.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor as the agent or representative of PATH or the Port Authority, for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of PATH or the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;

d. That no Director, officer, agent or employee of PATH is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder and that no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;

e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, PATH, their Directors, Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to

exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by PATH as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority and PATH to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to PATH's consent to enter into this Contract and that without such provisions, PATH would not have entered into this Contract.

4. Personal Non-Liability

Neither the Directors of PATH, the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee of PATH or the Port Authority, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Non-Discrimination Requirements

The Contractor shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Contract.

A. Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Contractor agrees that these "Non-Discrimination Requirements" are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled "Termination Provisions."

C. Contractor agrees to cooperate fully with the Authority's investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these "Non-Discrimination Requirements."

6. Rights and Remedies of PATH

PATH shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.

b. The right to cancel this Contract as to any or all of the Work yet to be performed.

c. The right to specific performance, an injunction or any appropriate equitable remedy.

d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of PATH indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of PATH shall not be deemed to limit any other rights or remedies which PATH would have in the absence of such enumeration; and no exercise by PATH of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by PATH, the Contractor expressly agrees that no default, act or omission of PATH shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of PATH, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of PATH or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies

and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of PATH, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of PATH, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, PATH shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as PATH deems necessary and without cost to PATH. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by PATH, it shall give the Contractor notice thereof, which notice may be oral. No exercise by PATH of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to PATH under this Contract or otherwise.

b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of PATH and the public as may be directed by PATH.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from PATH, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall PATH be liable to any third party (including the Contractor's employees) for any such costs and expenses

incurred by the Contractor and under no circumstances shall PATH be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Termination Provisions, and Rights and Remedies

Any right of termination set forth in this paragraph shall be in addition to and not in lieu of any and all rights and remedies that PATH shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all other rights and remedies available to PATH. It is hereby specifically agreed and understood that the exercise by PATH of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by PATH of an election of remedies that would preclude PATH from exercising any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

I. Termination due to Impossibility of Performance

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of PATH's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, PATH shall have the right on twenty-four (24) hours written notice to the Contractor to terminate this Contract, such termination to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of termination as if said date were the date of the expiration of this Contract. Such termination shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of termination.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any

act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, PATH shall have the right upon five (5) days' notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

II. Termination for Cause or Convenience

PATH may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority's best interest (for convenience), pursuant to 49 C.F.R. 13.36 (i)(2) and 2 CFR 200, Appendix II (B). In the event of termination for convenience, the Contractor will be paid its costs, including contract close-out costs, as provided for in the Contract, for work performed up to the time of termination for convenience.

1. Termination for Cause

a. If any of the following shall occur:

1. The Contractor shall cease working, abandon any part of his performance, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from PATH or the Port Authority on behalf of PATH (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, PATH shall have the right on twenty-four (24) hours' notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

b. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract, PATH, upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours' notice, may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

c. No payment by PATH of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by PATH shall be deemed to be a waiver of the right of PATH to terminate this Contract or of any other right or remedy to which PATH may be entitled because of any breach thereof. No waiver by PATH of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor

shall be or be construed to be a waiver by PATH of any other subsequent default in the performance of any of the said terms, covenants and conditions.

2. **Termination for Convenience**

   a. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract, PATH may terminate this Contract and the rights of the Contractor hereunder for convenience 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 PATH 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.

III. Rights and Remedies

a. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between PATH or the Port Authority and the Contractor (including its obligation to PATH or the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH or the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor is made against the Port Authority or PATH or (3) any subcontractor under this Contract or any other agreement between PATH or the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor or (4) if in the opinion of PATH or the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority or PATH, as applicable, shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as PATH may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as PATH may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by PATH to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that PATH does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of PATH to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by PATH shall create any obligation of any kind to such supplier, subcontractor, worker or other third person. If, however, the payment of any amount due the Contractor shall be improperly delayed, PATH will pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

b. If PATH has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse PATH, or if PATH is required or elects to pay any sum or sums or incurs any obligation or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to PATH the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of PATH's statement therefor. PATH may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

c. If PATH pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor

for the amount by which the installment paid should have been reduced and the Contractor shall pay to PATH any such amount promptly upon receipt of PATH's statement therefor.

d. PATH shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if its affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by PATH in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, PATH's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to PATH for the Contractor's services under this Contract**.** The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and PATH will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

PATH shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and PATH shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which PATH may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor(and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as PATH may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of PATH of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period PATH has notified the Contractor in writing of a pending claim by PATH under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be

extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Superintendent/Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of PATH of all such equipment or devices.

a. The Contractor hereby further agrees to furnish to PATH from time to time such written reports in connection with its operations hereunder as PATH may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to PATH shall be subject to the continuing approval of PATH.

b. No provision in this Contract giving PATH a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Superintendent/Manager at the Facility.

b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by PATH or the Port Authority to the application to itself of such requirements.

c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.

d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Superintendent/Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the

Superintendent/Manager.

e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

i. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or

ii. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or

iii. in the opinion of PATH will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or

iv. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or

v. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or

vi. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

a. If by reason of the Contractor's failure to comply with the provisions of this Section and provided PATH has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay PATH that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by PATH which shall have been charged because of such violations by the Contractor.

b. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of PATH and shall conduct operations hereunder in a courteous, efficient and safe manner.

c. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of PATH, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to PATH.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor subcontracts services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this

Contract or to impose any obligations on PATH to such subcontractor or to give the subcontractor any rights against PATH.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless PATH, The Port Authority of New York and New Jersey (Port Authority), their Commissioners, Directors, agents, servants, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's agents, servants, officers, representatives and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor performed under or in connection with, this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the Contractor's operations or to its performance of work under this Contract, or arise out of the acts or omissions of the Contractor, PATH, the Port Authority, their Commissioners, Directors, agents, servants, officers, representatives or employees, third persons (including Contractor's agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against PATH or the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise out of or are in any way connected to the Contractor's operations or to its performance of work under this Contract, or arise out of acts or omissions (negligent or not) of the Contractor, PATH, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of PATH, the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of PATH or the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify PATH and the Port Authority for all loss or damage incurred in connection with such risks:

a. The risk of any and all loss or damage to PATH or Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by PATH or the Port Authority, repair, replace or rebuild to the satisfaction of PATH or the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence PATH or the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to PATH or the Port Authority the cost thereof.

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.

c. The risk of claims, whether made against the Contractor, the Port Authority, or PATH, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

d. The risk of claims for injuries, damage or loss of any kind whether just or unjust made by or on behalf of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of PATH, the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor's operations or its performance of work hereunder, whether such claims are made against the Contractor, the Port Authority or PATH.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall

not, without obtaining express advance permission from the Counsel of PATH or the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority and PATH, the immunity of PATH and the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of PATH and the Port Authority or the provision of any statutes respecting suits against PATH or the Port Authority.

Neither the requirements of PATH under this Contract, nor PATH of the methods of performance hereunder nor the failure of PATH to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of PATH to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

21. Approval of Methods

Neither the approval of PATH of the methods of furnishing services hereunder nor the failure of PATH to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of PATH to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for any injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.

b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Superintendent/Manager.

c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by PATH for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of PATH which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as PATH may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of PATH (or the Port Authority, as applicable).

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Superintendent/Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of PATH. No equipment or facilities of PATH shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other

waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to PATH and a receipt will be issued therefor.

26. Property of the Contractor

a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.

b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract PATH may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to PATH; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by PATH as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to PATH upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by PATH and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon PATH unless expressed in writing in this Contract.

28. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

29. Approval of Materials, Supplies and Equipment

Only Port Authority/PATH approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority/ PATH Approved Products List constitutes approval. The list may be revised from time to time and at any time by the Port Authority/PATH and it shall be incumbent upon the Contractor to obtain the most current list from the Superintendent/Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List, which product(s) shall be subject to review and approval by the Port Authority. Any alternate product so approved by the Port Authority/PATH may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of PATH/the Port Authority or its employees or agents, PATH/the Port Authority shall be provided with the Intellectual Property Rights required for such use

without further compensation than is provided for under this Agreement.

The Contractor shall indemnify PATH and the Port Authority against and hold them harmless from all loss and expense incurred as a result of any claims in the nature of intellectual property rights infringement arising out of the Contractor's or PATH or the Port Authority's use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor, the Port Authority or PATH, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify PATH, or the Port Authority as applicable, against infringement, then PATH, or the Port Authority as applicable, may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Superintendent/Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to PATH or the Port Authority, as applicable, or take

such steps as may be necessary to insure compliance by the Contractor, and PATH (or the Port Authority, as applicable) with said injunction, to the satisfaction of PATH or the Port Authority as applicable.

In addition, the Contractor shall promptly and fully inform the Director/General Manager in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of PATH (or the Port Authority as applicable), and PATH (or the Port Authority as applicable) 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.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by PATH (or the Port Authority as applicable), the Contractor shall make available to the designated PATH (or the Port Authority as applicable) representative all such passwords and codes.

32. Designated Secure Areas

Services under the Contract may be required in designated secure areas, as the same may be designated by the Superintendent/Manager from time to time ("Secure Areas"). The Port Authority shall 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 designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive 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 Contractor shall notify the Superintendent/Manager. The Contractor shall conform to the procedures as may be established by the Superintendent/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 work, the Contractor shall request a description from the Superintendent/Manager of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Superintendent/Manager during the term of the Contract.

33. Notification of Security Requirements

PATH 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, PATH reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority or PATH 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 and PATH reserve the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority and/or PATH.

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

- Execution of Port Authority Approved Non-Disclosure and Confidentiality Agreements

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

- Contractor/ Subcontractor identity checks and background screening

  PATH and the Port 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 federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like.

  The Contractor may be required to have its staff, and any subcontractor's staff, material-men, visitors or others over whom the Contractor/subcontractor has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority and/or PATH. The Contractor and subcontractors may also be required to use an organization designated by the Authority and/or PATH to perform the background checks.

  As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port 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 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 Contractor (and its subcontractors) 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 will be permitted on or about a Port Authority or PATH construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority and/or PATH. If the authority requires facility-specific identification credential for the Contractor's and the subcontractor's staff, the Authority and/or PATH will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Authority and/or PATH and shall be returned to the Authority and/or PATH 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 Contractor or subcontractor to immediately report to the Authority and/or PATH the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor shall be billed for the cost of the replacement identification credential. Contractor's and subcontractor's staff shall display Identification badges in a conspicuous and clearly visible manner, when

entering, working or leaving an Authority or PATH 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, unlaminated social security card for identify 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 Contractor and subcontractors shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority and/or PATH construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police, Authority or PATH retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority or PATH construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority or PATH construction sites or facilities (including rental spaces), except when necessary to perform the

Work under this Contract, without prior written permission from the Authority or PATH. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site 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.

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority or PATH information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

(1) require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure and Confidentiality Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Protected Information categorized and protected as per the Handbook;

(2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

(3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority and PATH information;

(4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;

(5) restrictions on the transfer, shipping, and mailing of PI;

(6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;

(7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;

(8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority or PATH awarded contract.

(9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, on a need to know basis, without prior approval of the Port Authority;

(10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- Audits for Compliance with Security Requirements

The Port Authority and/or PATH may conduct random or scheduled examinations of business practices under this section entitled "NOTIFICATION OF SECURITY REQUIREMENTS" and the Handbook in order to assess the extent of compliance with security requirements, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

34. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from PATH a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Superintendent/Manager to obtain a PATH Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish PATH with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs

Except with the prior written approval of PATH, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other PATH property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by PATH for such purpose.

38. Confidential Information/Non-Publication

a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH'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 Contractor's Services under this Contract.

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 Contractor shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, 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 Contract. The Contractor and the personnel provided by the Contractor 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 Contract. The Contractor and the personnel provided by the Contractor 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 Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract.

d. The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to PATH (or the Port Authority as applicable) 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 vendor first obtains the written approval of PATH (or the Port Authority as applicable). Such approval may be withheld if for any reason PATH believes that the publication of such information would be harmful to the public interest or is in any way undesirable

39. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following holidays will be observed at the Site:

New Year's Day	Labor
Day	
Martin Luther King Jr. Day	Columbus Day
Presidents' Day	Election Day
Memorial Day	Veterans Day
Independence Day	Thanksgiving
	Day Christmas
	Day

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Superintendent/Manager. If any such holiday falls on a Sunday, then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Superintendent/Manager, any employee so assigned is performing his/her functions unsatisfactorily, he/she shall be replaced by the Contractor for Work under this Contract within twenty-four (24) hours following the Contractor's receipt of the Superintendent/Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Superintendent/Manager's staff. Any employee operating a motor vehicle must have a valid driver's license. The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

42. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Superintendent/Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Superintendent/Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

PATH by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which PATH may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

44. Contractor's Vehicles – Parking - Licenses

At the discretion of the Superintendent/Manager, PATH may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Superintendent/Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by PATH for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Superintendent/Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

45. Superintendent/Manager's Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Superintendent/Manager and shall perform the Work hereunder to the satisfaction of the Superintendent/Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Superintendent/Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Superintendent/Manager objects. Upon request, the Superintendent/Manager shall confirm in writing any oral order, direction, requirement or determination.

The Superintendent/Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Superintendent/Manager of the powers and authorities vested in him/her by this section shall be binding and final upon PATH and the Contractor.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

a. been indicted or convicted in any jurisdiction;

b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;

c. had a contract terminated by any governmental agency for breach of contract 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 Bid;

e. had any business or professional license suspended or revoked or, within the five years prior to bid 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, 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.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

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

i. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

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

k. 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) 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;

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

m. the Bidder 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 Contract.

n. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

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

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

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall

furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder 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 "2g", if the Bidder 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 Chief Procurement Officer 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 Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, 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 Bidder 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 Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder 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 Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders 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.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract 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 Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

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

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder 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.

4. Contractor Responsibility, Suspension of Work and Termination

During the term of this Contract, the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Port 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 Port Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension.
Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Port Authority issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor's expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port 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 Contractor associated with such termination.

5. No Gifts, Gratuities, Offers of Employment, Etc.

At all times, the Contractor 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 Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

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 Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, 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 Contract 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 Contractor 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 Contractor 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 Contract, the Contractor 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 Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

6. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor 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 Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Contractor to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, then the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, 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 Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor 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 Contractor's part. The Contractor 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 contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority's determination regarding any questions of conflict of interest shall be final.

7. Definitions

As used in this Part, 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 and/or law enforcement 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 Bidder by whatever titles known.

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;
Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean executing this Contract.

ATTACHMENT A-1: Disadvantaged Business Enterprise (DBE) Program

A. POLICY

It is the policy of The Port Authority of New York and New Jersey (the "Port Authority" or the "Authority") and its related entities, including Port Authority Trans-Hudson Corporation ("PATH") that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of this Contract. Each proposer shall take all necessary and reasonable steps to ensure that its proposal includes DBE participation and performance of work on this Contract, when awarded. This Contract is subject to the United States Department of Transportation ("USDOT") regulations on "DBEs" contained in Part 26 of Title 49 of the Code of Federal Regulations.

The Proposer shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.

B. GOAL

The Port Authority Office of Business Diversity and Civil Rights ("OBDCR") has established a goal for DBE participation on this Contract, which the proposer will be required to show how it will meet, if awarded this Contract. This goal, expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of the contract, is:

DBE Participation Goal: 1%

for firms owned and controlled by socially and economically disadvantaged individuals (as defined in C.5 below) and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs ("UCPs") websites:

New York UCP – https://nysucp.newnycontracts.com

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

In the event the successful proposer's proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph I.3 below.

OBDCR is responsible for determining compliance by the proposer with DBE Program requirements established for this solicitation and in this Contract. The proposer shall make all DBE Program submissions required by this solicitation to the Port Authority Procurement Department contact with a copy to OBDCR. Once awarded, the successful proposer (Contractor) will make all DBE Program submissions to OBDCR at the following address and email address:

Contract Number:

Name: Jacqueline Carroll

Email: jacarroll@panynj.gov Telephone No.: (201)395-3958

Address: The Port Authority of NY &NJ

2 Montgomery Street, 2nd Fl. Jersey City, NJ 07302

C. DEFINITIONS

1. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: **Bidder or Proposer** can be used interchangeably and **Consultant or Contractor** can be used interchangeably.

2. **Certification** means the process by which a business demonstrates to OBDCR or to a New York State Unified Certification Program Certifying Partner ("NYSUCP") or to a New Jersey Unified Certification Certifying Partner ("NJUCP") that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part26.

3. **Disadvantaged Business Enterprise** or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both sociallyand economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management anddaily business operations are controlled by one or more of the socially andeconomically disadvantaged individuals who own it.

4. **New York State Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority and the New York State Departmentof Transportation.

5. **New Jersey Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, New Jersey Transit and the New Jersey State Department of Transportation.

6. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

   a. Any individual OBDCR or a NYSUCP or NJUCP Certifying Partnerfinds

to be a socially and economically disadvantaged individual on a case-by-case basis.

b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. Black Americans which includes persons having origins in any of the Black racial groups of Africa;

2. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;

3. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

4. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women; and

7. Any additional groups whose members are designated as sociallyand economically disadvantaged by the Small Business Administration ("SBA"), at such time as the SBA designation becomes effective.

D. THE DBE PROGRAM

The Port Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with applicable United States Department of Transportation (USDOT) regulations in 49 CFR Part 26. The Port Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also Port Authority policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

3. *To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;*

4. *To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;*

5. *To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and,*

6. *To assist the development of firms that can compete successfully in the market place outside the DBE program.*

The Director of OBDCR has been delegated as the DBE Liaison Officer. In that capacity, the Director of OBDCR is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the USDOT.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through posting on the OBDCR website: http://www.panynj.gov/business-opportunities/supplierdiversity.html

E. DBE OBLIGATION

The proposer agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract, if awarded. (Note: If the total contract price is increased as a result of change orders, the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation). Submission of the proposal constitutes a certification and representation by the proposer that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B during contract performance.

Furthermore, the Proposer will ensure that the following clause is placed in every contract or subcontract resulting from this Contract:

> "The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate."

F. SUBMISSION OF DBE UTILIZATION PLAN

By submitting a bid or proposal for this Contract, the proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement and Affirmation Statement form (Appendix A1) with its Proposal. If the proposer determines it cannot make this

assurance, it may nevertheless submit a bid or proposal, but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The proposer shall submit, with its Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it 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.

The bidder shall submit with its Proposal the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

Bidders who are utilizing trucking firms to meet their DBE goal are directed to complete the "Pre-Award DBE Trucking Commitment Form" (Appendix A5) and submit the form with their Proposals for each DBE used on this Contract.

Bidders who are utilizing materials suppliers to meet their DBE goal are directed to complete the "DBE Regular Dealer Verification Form" (Appendix A6) and submit the form with their Proposals for each DBE used on this Contract.

1. By listing a firm on its DBE Participation Plan and Affirmation Statement (Appendix A2) the proposer is representing the following:

   a. It intends to use the firm for the work specified in the DBE Participation Plan and Affirmation Statement (Appendix A2) to perform the work specified.

   b. The firm is a certified DBE in the states of either New York or New Jersey and is technically and financially qualified to perform the work specified and that the firm is available to perform the work.

   c. If it is awarded the contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this contract, for the work described and at the price set forth in the DBE Participation Plan and Affirmation Statement (Appendix A2).

   d. It will not substitute a DBE firm listed in its DBE Participation Plan and Affirmation Statement (Appendix A2) unless the Port Authority provides prior written approval in accordance with Paragraph J, below.

G. <u>PROMPT PAYMENT AND RETAINAGE PROVISION</u>

The Contractor agrees to pay each subcontractor under this prime contract for the satisfactory performance of its contract, no later than ten (10) days from the receipt of each payment the

Contractor receives from the Authority. The Contractor agrees further to return all retainage, if any, owed to a subcontractor withinten

(10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time-frame may occur only for good cause following written approval from the Port Authority. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this section may constitute a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

H. CREDIT TOWARD DBE GOAL

No credit toward meeting the DBE goal will be allowed unless OBDCR or a NYSUCP or NJUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The DBE shall verify payments on the DBE Payment Request Certification Form attached to all invoices. The Authority will use the following guidelines to determine the amount to be counted toward the DBE goal:

1. OBDCR will credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided OBDCR determines the fee to be reasonable and not excessive as compared withfees customarily allowed for similar services.

2. When a DBE subcontracts part of the work of its contract to another firm, the value ofthe subcontracted work may be counted toward DBE goals only if the DBE'ssubcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

3. Joint ventures between DBEs and non-DBEs may be counted toward the DBE goal in proportion to the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. Please contact the Office of Business Diversity and Civil Rights at (201) 395-3958 for more information about requirements for such joint ventures.

4. OBDCR will credit expenditures to a DBE subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the contract.

5. Commercially Useful Function

    A. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially

useful function requirement, that firm shall not be included indetermining whether the DBE goal is met and shall not be included in DBE reports. Ifthis occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation(USDOT) funding agency (for example, FAA, FTA orFHWA).

B. Work Force. The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by anotherfirm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

C. Supervision. All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessaryto coordinate the Work.

D. Equipment. DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors ortheir affiliates, the DBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower costfrom other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

E. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, OBDCR willpresume that it is not performing a commercially useful function.

6. <u>Counting DBE Participation</u>

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.

The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be

counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the DBE goal.

A. Subcontractors. 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors ortheir affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that aDBE subcontracts to a non-DBE firm does not count toward DBE goals.

B. Manufacturers/Fabricators. 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.

C. Material Suppliers. 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

D. Brokers/Manufacturer's Representatives. 100 percent of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by a DBE broker/manufacturer's representative will be counted toward the DBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost ofthe materials and supplies themselves will not be counted.

E. Services. 100 percent of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required forthe performance of the Work will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be acontrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executingrental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatchingtrucks.

    1. DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of the work using

trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.

2. DBE Leased Trucks. The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.

3. Non-DBE Trucks. The DBE may lease trucks from non-DBE firmsand owner-operators. The value of these trucking services will be counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non- DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.

G. Joint Venture Joint ventures between DBEs and non-DBEs will be counted toward the DBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearlydefined portion of the Work of the Contract that the DBE performs with its own forces. The joint venture agreement is therefore subject to review by OBDCR, a copy of which is to be furnished by the firm to be awarded the Contract before execution of the Contract.

7. If a firm is not currently certified as a DBE in accordance with 49 CFR Part 26 at the time of the execution of the Contract, OBDCR will not credit the firm's participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).

8. When a firm loses its DBE certification, OBDCR will follow the applicable regulations in 49 CFR Section 26.87(j).

   a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the contract or overall goal. OBDCR will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.

   b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the Contractor may continue to receive credit toward its DBE goal for the firm's work.

9. OBDCR will not credit toward the DBE goal the participation of a DBE subcontractor until the amount being counted toward the goal has actually been paid to the DBE, as evidenced by submission of the Statement of Payments to .DBE Subcontractors / Lessors / Suppliers and the DBE Payment Request Certification Form.

I. CONTRACT AWARD

1. Only proposers who submit proposals that meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract.

2. If the successful proposer does not reach the DBE goal, the proposer shall nevertheless remain eligible for award of the contract if it can demonstrate to the satisfaction of OBDCR that it has made a good faith effort to meet the DBE goal. In making sucha determination, OBDCR shall consider, among other things, the criteria set out in subparagraph 3 below.

3. Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE contract goal, a proposer shall submit with the DBE Goals Statement form (Appendix A1) a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

a. That the proposer attended any pre-solicitation or pre-bid meetings that were scheduled by the Port Authority to inform DBEs of contracting and subcontracting opportunities;

b. That the proposer advertised in general circulation, trade association, and minority-focus media, at least 15 days before proposal due date, to request DBEsubcontract performance on the specific project;

c. That the proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;

d. That the proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;

e. That the proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (includingwhere appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);

f. That the proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;

g. That the proposer negotiated in good faith with interested DBEs, notrejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. Documented efforts of negotiations with DBEs must include at a minimum:

1. The names, addresses and telephone numbers of DBEs that were considered;

2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;

3. A statement explaining why agreements with the DBEs could not bereached.

h. That the proposer made efforts to assist interested DBEs in obtaining bonding,

lines of credit, or insurance required by the Port Authority or Consultant;

i. That the proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and

j. That the proposer effectively used the services of availableminority/women community organizations; minority/women contractor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

4. Reconsideration of Good Faith Efforts Determination

In determining whether a proposer has demonstrated good faith efforts, the Port Authority will look at all efforts that the proposer has made. If OBDCR determines that the successful proposer has failed to make good faith efforts to meet the DBE goal, that firm's submission may be deemed non-responsive. The non- responsive firm will have an opportunity for administrative reconsideration, in accordance with the Port Authority's Protest Procedures. In accordance with the Protest Procedures, as part of this reconsideration,

the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. In accordance with the Protest

Procedures, a written decision will be sent to the proposer explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so.

J. DBE MODIFICATIONS

In the event that a proposer wishes to modify its DBE Participation Plan and Affirmation Statement (Appendix A2) after its submission or after a contract is awarded, the proposer must then request approval for the modification from OBDCR in writing. A proposer may not, without OBDCR's prior consent, terminate a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved DBE Participation Plan and Affirmation Statement (Appendix A2). When a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. The Contractor mustprovide OBDCR with any and all documents and information as may be requested with respect to the modification. If OBDCR determines that the Contractor failed to make good faith efforts, the Port Authority may consider such failure a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any and all other available remedies. Subsequent to Contract award, all changes to the DBE Participation Plan must be submitted via a Modified DBE Participation Plan and Affirmation Statement (Appendix A3) to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the DBE Plan, Contractors are directed to use Appendix A3 which may be downloaded at http://www.panynj.gov/business-opportunities/pdf/PA4242.pdf.

K. EEO/NON-DISCRIMINATION

During the performance of this Contract, the Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjectedto discrimination in the furnishing of goods or services or in the selection and retentionof subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discriminationin employment, including 49 CFR Part 26.

L. OFFICE OF THE INSPECTOR GENERAL

The Port Authority Office of Inspector General (OIG) is responsible for investigating fraud and misconduct by Port Authority contractors, subcontractors, consultants, suppliers and others, including the DBE Program.

Depending upon the dollar value of the construction project, and regulatory requirements, the OIG might engage the services of an Integrity Monitor who reports to the OIG and assists in monitoring compliance governing the DBE program.

The OIG and its Integrity Monitors may perform on-site investigation ns andpayment verifications, review relevant consultant, contractor, subcontractor and supplier documents, including but not limited to financial records, certificates and licenses, certified payroll reports, and employee sign-in sheets. They may also interview officers and employees of these firms either on-site, at their offices, or at any other location the OIG determines is in the best interest of the Port Authority.

All consultants, contractors, subcontractors, suppliers and others who are participating in the DBE Program in any manner, shall cooperate fully with the Port Authority OIG and shall provide all requested documents immediately upon request. The failure to cooperate may be considered a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other availableremedy.

M. APPENDICES

1. APPENDIX A1: DBE Goals Statement
2. APPENDIX A2: DBE Participation Plan and Affirmation Statement
3. APPENDIX A3: Modified DBE Participation Plan and Affirmation Statement
4. APPENDIX A4: Information On Solicited Firms
5. APPENDIX A5: Pre-Award DBE Trucking Commitment Form
6. APPENDIX A6: DBE Regular Dealer Verification Form

APPENDIX A1: DBE GOALS STATEMENT PA 3752A/ 3-16

The undersigned Bidder has satisfied the requirements of the Contract in the following manner (Complete the appropriate spaces and check one box):

- ☐ The Bidder is committed to meeting the DBE goal set forth in this Contract.

  OR

- ☐ The Bidder is unable to meet the DBE goal set forth in this Contract, but is committed to a minimum of_____% DBE utilization on this Contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Contract. Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.

It is the present intent of the Bidder to utilize the specific DBE firms identified in Appendix A2 in the performance of the Work under this Contract. If for any reason, one or more of the DBE firms identified in Appendix A2 are unable or unwilling to participate, the Bidder will make good faith efforts to replace the DBE firm with another DBE firm in accordance with the Information For Bidders clause entitled "Disadvantaged Business Enterprise Program (DBE)".

I_____(print name), an officer of _____ (company name), certify that I have read the Appendix A1 – DBE Goals Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature_____Title_____Date _____

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A1 – DBE GOALS STATEMENT (reverse)

STATE OF_____)
)ss:
COUNTY OF_____)

On the_____day of_____in the year 20 , before me, the above undersigned, personally appeared_____, the_____, of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____ _____

(Notary Signature) (Date)

APPENDIX A2: DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT PA 3752B / 3-16

Instructions: Submit one DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Contract.

CONTRACT NUMBER AND TITLE: _____

BIDDER:
Name of Firm: _____

Address: _____Telephone: _____

Email Address: _____

DBE:
Name of Firm: _____

Address: _____Telephone: _____

Description of work to be performed by DBE: _____

Calculation (supply only): _____

The Bidder is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is $_____
or
____% of the total contract amount of $_____. The anticipated start date is _____and the anticipated completion date is __

AFFIRMATION of DBE

The above-named DBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: _____ Date: _____
Signature of Principal or Officer of DBE - Print Name and Title

If the Bidder does not receive award of the Contract, any and all representations in this DBE Participation Plan and Affirmation Statement shall be null and void.

I _____ (print name), an officer of _____ (company name), certify that I have read the Appendix A2 – DBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Bidder _____ Title _____Date _____

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: $100,000 x 60% = $60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.

Officer of the Bidder must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A2
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)

STATE OF _____)

S.S.:

COUNTY OF _____)

On the ___ day of _____ in the year 20 , before me, the above undersigned, personally appeared_____, the _____, of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

_____

(Notary Signature) (Date)

APPENDIX A4: INFORMATION ON SOLICITED FIRMS PA 3752C / 6-16

The bidder must complete this form for itself and for all firms which gave the bidder a quotation for any work planned to be subcontracted regardless of whether they are ultimately chosen to participate in the Contract. Provide the information required below for every firm that provided a bid or a quote for a subcontract – even if the bid or quote from the firm is not used in the preparation of the final Proposal.

Name of Firm	Address of Firm	Phone Number	Contact Person	Firm Age	Annual Gross Revenue Range NOTE: See Footnote Below	DBE Certified (Yes/No)

Footnote: Annual Gross Revenue Ranges: Less than $500,000; $500,000 - $1 Million; $1 - $2 Million; $2 - $5 Million; Over $5 Million - Select the category that best identifies the annual gross revenue of the solicited firm.

I _____ (print name), an officer of _____ (company name), certify that I have read the Appendix A4 – **INFORMATION ON SOLICITED FIRMS** and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature _____ Title _____Date _____

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGEMENT BY NOTARY PUBLIC

APPENDIX A4
INFORMATION ON SOLICITED FIRMS (reverse)

STATE OF _____)
S.S.:
COUNTY OF _____)

On the ___day of _____ in the year 20 , before me, the above undersigned, personally appeared_____, the _____, of _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature) _____ (Date)

APPENDIX A5: PRE-AWARD DBE TRUCKING COMMITMENT FORM PA 3751A / 06-16

INSTRUCTIONS:

A LOW BIDDER THAT SUBMITS A DBE PARTICIPATION PLAN THAT INCLUDES AMOUNT(S) FOR TRUCKING MUST COMPLETE THIS FORM TO SHOW HOW THE COMMITMENT AMOUNT WAS ESTIMATED. THIS FORM IS TO BE ATTACHED TO THE REQUIRED "DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (APPENDIX A2)" FOR FEDERALLY FUNDED CONTRACTS.

PRIME CONTRACTORS UTILIZING DBE FIRMS WITH A "TRUCKING" CLASSIFICATION TO MEET DBE CONTRACT GOALS MUST BE AWARE THAT CERTAIN CONDITIONS MUST BE MET BY THE DBE TRUCKING FIRM IN ORDER TO BE CONSIDERED COMMERCIALLY USEFUL. THESE CONDITIONS DIRECTLY AFFECT HOW MUCH PARTICIPATION CREDIT WILL BE COUNTED TOWARD THE GOAL. FOR DBE CREDIT, THESE CONDITIONS ARE OUTLINED UNDER CFR PART 26.55(d) (1) THROUGH (7).

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates, using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from non-DBE firms and owner-operators. The DBE can count the value of these trucking services up to the value of services performed by the DBE trucks used on the contract. DBE participation can be counted for the value of services of non-DBE trucks that exceed the value of services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease arrangement.
- A lease must indicate that the DBE has exclusive use of and control over the truck for the period of the subcontract. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck

FILL OUT THE INFORMATION ON PAGE 2 FOR EACH DBE TRUCKING FIRM UTILIZED.

MAKE ADDITIONAL COPIES FOR EACH DBE TRUCKING FIRM USED ON THE CONTRACT.

PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION

DATE: _____ CONTRACTOR NAME: _____

CONTRACT NUMBER: _____ TELEPHONE: _____

NAME OF DBE TRUCKING FIRM: _____

SCOPE OF WORK OF TRUCKING FIRM: _____

SUPERVISOR OF THE DAY-TO-DAY DBE TRUCKING OPERATION: _____

NUMBER OF TRUCKS _____ + _____ = _____
OWNED LEASED TOTAL

NUMBER OF TRUCKS
PERFORMING WORK _____

_____ _____ X _____ = _____
RATE PER DURATION/NUMBER COMMITMENT

LIST THE PROPER PERMITS REQUIRED TO BE RETAINED BY THE FIRM FOR THE WORK FOR WHICH IT IS BEING HIRED. _____

DOES/WILL THE DBE FIRM HAVE OR BE ABLE TO RETAIN THE PROPER PERMITS REQUIREDTO PERFORM THE WORK FOR WHICH IT IS BEING HIRED? YES _____ NO _____ IF NO, FIRM CANNOT BE UTILIZED.

FOR ANY LEASED TRUCK, SUBMIT A COPY OF THE LEASE AGREEMENT.

SIGNATURE OF PRINCIPAL OR OFFICER OF TRUCKING FIRM: _____

PRINT NAME: _____ TITLE: _____

I _____ (print name), an officer of _____ (company name), certify that I have read the Pre-Award DBE Trucking Commitment Information and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature _____Title _____Date _____

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A5
PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION (reverse)

STATE OF _____)
)ss:
COUNTY OF _____)

On the____day of_____in the year 20 , before me, the above undersigned, personally appeared_____, the_____, of_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____ _____
(Notary Signature) (Date)

APPENDIX A6: DBE REGULAR DEALER VERIFICATION FORM PA 3750A / 06-16

(To be completed by DBE firm and signed by Prime Contractor)

Project Number:	Telephone # of Prime
Prime Contractor:	
DBE Firm:	
Provide a brief description of the material(s) your firm will be supplying and the Prime is requesting be credited as a regular dealer (including item numbers and estimated quantities when possible).	

If either question is marked 'No', then the Prime cannot receive regular dealer credit for the services provided by the DBE firm. Instead, the maximum credit that could be received would be the fee or commission the DBE firm receives for its services. Before executing this form, read the attached 'Guide for Counting DBE Suppliers' which includes the official question and answer issued by the United States Department of Transportation.

	Yes	No
1. Does your firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of product(s) of the general character which will be involved in this contract and for which DBE credit is being sought?		
2. Is the role your firm will play on this specific contract consistent with the regular sale or lease of the product(s) in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?		

Authorized Representative of DBE Firm

The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the DBE firm, that the DBE firm "regularly" engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturer's representative, or other person who arranges or expedites transactions, that the answers and information provided herein are true and correct to the best of her/his knowledge, information and belief and any false statement made in this verification 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.).

_____ _____

Signature of Principal or Officer Date

_____ _____

Print Name and Title Phone Number

Authorized Representative of Prime Contractor

The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the prime contractor, that, to the best of his/her knowledge, information and belief the DBE firm 'regularly' engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturers' representative, or other person who arranges or expedites transactions.

I, Signature of Principal or Officer _____ Date _____

_____ an officer of _____

Print Name and Title Company

certify that I have read the DBE Regular Dealer Verification Form and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A6
DBE REGULAR DEALER VERIFICATION FORM (reverse)

STATE OF_____)
)ss:
COUNTY OF_____)

On the____day of_____in the year 20 , before me, the above undersigned, personally appeared_____, the_____, of_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____ _____
(Notary Signature) (Date)

GUIDE FOR COUNTING DBE SUPPLIERS

- The official question and answer (Q & A) issued by the United States Department of Transportation on December 9, 2011 as institutional guidance based on 49 C.F.R. § 26.55 relative to regular dealers poses two questions that must both be answered 'yes' in order for the DBE firm to receive regular dealer credit equivalent to 60 percent of the value for materials supplied on federally-assisted transportation projects.
- Following is the official Q & A in italics:
  First, does the firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of products of the general character involved in the contract and for which DBE credit is sought?
    - *Answering this question involves attention to the activities of the business over time, both within and outside the context of the DBE program.*
    - *The distinction to be drawn is between the regular sale or lease of the products in question and merely occasional or ad hoc involvement with them.*
    - *In answering this question, [the Port Authority of NY and NJ] will not insist that every single item the DBE firm supplies be physically present in the firm's store, warehouse, etc. before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location.*
    - *For example, a mere showroom, the existence of a hard-copy or on-line catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract, are generally not sufficient to demonstrate that a firm regularly deals in the items.*

  Second, is the role the firm plays on the specific contract in question consistent with the regular sale or lease of the products in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?
    - *For example, a firm that regularly stocks and sells Product X may, on a particular contract, simply communicate a prime contractor's order for Product Y to the manufacturer, acting in a transaction expediter capacity.*
    - *This means that a firm that acts as a regular dealer on one contract does not necessarily act as a regular dealer on other contracts. For example, a firm that acts as a regular dealer on Contract #1 may act simply as a "transaction expediter" or "broker" on Contract #2. It would receive DBE credit for 60 percent of the value of the goods supplied on Contract #1 while only receiving DBE credit for its fee or commission on Contract #2.*
    - *In some circumstances, items are "drop-shipped" directly from a manufacturer's facility to a job site, never being in the physical possession of or transported by a supplier. In many such cases, the supplier's role may involve nothing more than contacting the manufacturer and placing a job-specific order for an item that the manufacturer then causes to be transported to the job site.*
    - *In such a situation, the supplier's role may often be better described as that of a "broker" or "transaction expediter" (see 49 C.F.R .§ 26.55(e)(2)(ii)(C)) than as a "regular dealer." In such a case, DBE credit is limited to the fee or commission the firm receives for its services. If the firm does not provide any commercially useful function (i.e., it is simply inserted as an extra participant in a transaction), then no DBE credit can be counted.*
- The Port Authority of NY and NJ propose that primes submit the two questions to DBEs in writing. If the DBE firm answers 'yes' to both questions, then the written documentation would be taken into account in the Port Authority of NY and NJ's good faith effort determination in accordance with Section 26.53 of the federal DBE regulation set forth in Title 49 Code of Federal Regulations Part 26.
- If it were later determined that the DBE misrepresented itself or erroneously concluded that it was acting as a regular dealer, the Port Authority of NY and NJ would strongly consider this documentation in evaluating the actions of the prime and in determining whether the prime exercised reasonable due diligence by obtaining a written regular dealer confirmation from the DBE even though it later turned out to be false.
- Participation would still have to be revised, but the Port Authority of NY and NJ will fully consider the written documentation in its good faith effort review.
- The Port Authority of NY and NJ reserves the right to address any misrepresentation by the DBE firm or the prime consistent with the "Bidders Certification Statement" and other requirements and procedures for determinations of whether a contractor has acted responsibly.