

THE PORT AUTHORITY OF NY & NJ

**PROCUREMENT DEPARTMENT
ATTN: BID/PROPOSAL CUSTODIAN
4 WORLD TRADE CENTER
150 GREENWICH STREET, 21ST Floor
NEW YORK, NY 10007**

REQUEST FOR PROPOSALS

ISSUE DATE: December 3, 2018

**TITLE: REQUEST FOR PROPOSAL TO PROVIDE, INSTALL, AND
MAINTAIN AN UNDER-VEHICLE SURVEILLANCE
SYSTEM AT THE WORLD TRADE CENTER HUB**

RFP NUMBER: 55599

**SUBMIT PROPOSALS NO LATER THAN THE DUE DATE AND TIME TO THE
ABOVE ADDRESS**

QUESTIONS DUE BY: December 21, 2018

TIME: 2:00 P.M. (ET)

PROPOSAL DUE DATE: January 9, 2019

TIME: 2:00 P.M. (ET)

**CONTACT: DONALD THOMPSON
PHONE: (212) 435-4659
EMAIL: DThompson@panynj.gov**

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1. INFORMATION FOR PROPOSERS ON THIS REQUEST FOR PROPOSALS

A. General Information: The Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.), see www.panynj.gov. Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

B. Brief Summary of Scope of Work

The Port Authority is seeking a vendor to provide, install and maintain a mobile Under-Vehicle Surveillance System (“UVSS”) for use at the World Trade Center (“WTC”) site. The proposer’s offering shall generally consist of a mobile UVSS and related services for deployment, maintenance and training for the duration of the contract.

C. Deadline for Receipt of Proposals

The due date specified on the cover page is the Proposal Due Date. Closing of due date is 2:00 P.M., Eastern Time (ET)

PLEASE READ THE FOLLOWING DELIVERY REQUIREMENTS CAREFULLY. Proposers assume all responsibility for delays or problems in delivery.

Proposal submissions will be received at:

The Port Authority of NY & NJ
Attention: Proposal Custodian
Procurement Department
4 World Trade Center
150 Greenwich Street, 21st Floor
New York, NY 10007

Clearly mark the solicitation number on the outermost package.

At this address, proposals will be accepted via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery.

Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4 WTC) 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. Individuals without valid identification shall be

turned away and their packages not accepted. 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 caused by any delivery service.

D. Vendor Profile

To ensure maximum opportunities, it is vitally important that Proposers keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Proposers may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://www.paprocare.com>.

E. Submission of Proposals

One reproducible original (containing original signatures and clearly designated as such), three (3) double-sided copies of the proposal and two (2) compact disk (CD) copies must be submitted on or before the due date and time in accordance with the information on the cover page of this RFP and sent or delivered to the RFP Custodian at the address specified on the cover page. Each copy of the proposal as well as the parcel(s) used for shipping must be conspicuously marked with the Proposer's name and address as well as the Proposer's Vendor Number, if available. In addition, the outside of the package must clearly state the title of this RFP, the number of this RFP and the Proposal Due Date. Failure to properly label proposal submissions may cause a delay in identification, misdirection or disqualification of proposal submissions.

Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4 WTC) 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. Individuals without valid identification shall be turned away and their packages not accepted. 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 caused by any delivery service.

Consistent with environmentally preferable procurement practices, the Port Authority requests all documents submitted to be in a form that can be easily recycled (i.e., no plastic covers or binding) and to provide only supporting literature which directly relates to the proposal being submitted.

F. Communications Regarding this RFP

All communications concerning this RFP should be directed to the Contracts Specialist listed on the cover page. All questions regarding this RFP should be submitted in writing to the Contracts Specialist at the address or facsimile number listed on the cover page no later than 2:00 p.m. (Eastern Time) on December 21, 2018.

The Contracts Specialist is authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Contracts Specialist nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.

G. Proposal Acceptance or Rejection

Acceptance shall be only by mailing to or delivering at the office designated by the Proposer in its proposal, a notice in writing signed by an authorized representative on behalf of the Port Authority specifically stating that the proposal is accepted or by execution of an agreement covering the subject matter of this RFP signed by authorized representatives of the Port Authority and the Proposer. No other act of the Port Authority, its Commissioners, officers, agents, representatives, or employees shall constitute acceptance of a proposal. Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Port Authority and mailed to or delivered to the Proposer at the office designated in the Proposal, or (b) omission of the Port Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Port Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

H. Union Jurisdiction

Proposers are advised to ascertain whether any union now represented or not represented at the facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the Section of this RFP entitled "Harmony" included in the "General Contract Provisions" hereunder.

I. City Payroll Tax

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

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

These taxes, if applicable, are the sole responsibility of the Contractor. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Tax Exemptions", in the "General Contract Provisions" included herein, does not apply to these taxes.

J. Additional Proposer Information

Prospective Proposers are advised that additional vendor information, including, but not limited to forms, documents and other information, including MBE/WBE Participation Plan Submission Forms and protest procedures, may be found on the Port Authority website at:

<http://www.panynj.gov/business-opportunities/become-vendor.html>

K. Automated Clearing House Enrollment

The Port Authority of New York and New Jersey has transitioned to an electronic method of paying its vendors, contractors and consultants via an Automated Clearing House (“ACH”) funds transfer. It is the Port Authority’s expectation that all vendors, contractors and consultants will be paid via an ACH funds transfer. To avoid delays in payment, vendors, contractors, and consultants should enroll in ACH and complete the Port Authority’s “Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)” form, which is available at <https://www.panynj.gov/business-opportunities/pdf/Vendor-ACH-auth-form.pdf>. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the vendor, contractor or consultant of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act on it. Any questions on this process may be directed to the Comptrollers’ Department ACH Enrollments contact line at 201 216-6002 or emailed to ACHENROLLMENT@PANYNJ.GOV.

2. SCOPE OF WORK

A. Objective

The Contractor shall furnish, install, and maintain a portable, lightweight, and durable mobile UVSS that shall be utilized as a vehicle screening measure at any security checkpoint where alterations to the road surface is not possible. The UVSS should have a minimal impact on the Authority’s security procedure and vehicle flow through checkpoints. It shall also provide full, high quality images of the underside of a vehicle and allow operators to easily distinguish foreign or suspicious objects during inspection.

B. Product Features

The mobile UVSS shall meet the following mandatory features (note that items “1.13” and “1.14” are non-mandatory features):

#	Mandatory Features
1.1	Rapid deployment that has a range between twenty (20) or thirty (30) minutes of set-up time.
1.2	Include rugged cases for transport.
1.3	Include a control unit, power supply unit, monitor, mouse and keyboard as part of the mobile UVSS.
1.4	Weather resistant cameras embedded into the rugged vehicle speed bump with built-in lighting.
1.5	Produce full color, high definition scan of the entire vehicle undercarriage as one (1) stitched camera view displayed on a monitor integrated into/with the UVSS system

	within the Personally Owned Vehicle (POV) lane screening booth and additional locations if needed.
1.6	Ability to scan multiple undercarriages at once and review each undercarriage separately. The user interface (UI) should allow the operator to view a list of each produced image/video.
1.7	UI allowing operators to review a live or produced stitched image with zoom capability.
1.8	Ability to scan and review stored images on the internal hard drive disk (HDD).
1.9	30-day image retention period and the ability to export onto an external drive.
1.10	Ability to systematically save and archive images/videos produced by each scan. All scans will need to be saved automatically.
1.11	Images can be exported onto Port Authority Internal Servers
1.12	Inspection of vehicles moving between 10 to 20 mph.
	Non-Mandatory Features
1.13	Automatic License Plate Recognition (LPR).
1.14	Power Inverter (for when traditional power it not available for use).

C. Implementation

The Contractor shall provide all labor, transportation, materials and equipment necessary to deliver and fully install a mobile UVSS at the WTC site. The Contractor shall develop and provide an implementation plan and timeline that outlines how it will accomplish the work required by the Contract. No work shall commence until an Implementation Plan and timeline has been presented to and approved by the Port Authority Project Manager (“PA Project Manager”). The Contractor shall submit methods for system User Acceptance Testing (UAT) in their implementation plan.

D. Support and Maintenance

The Contractor’s system maintenance obligations shall commence upon completion of the UATs set forth in the Contractor’s implementation plan.

There can be no implementation plan if the Port Authority does not approve it. Therefore, as part of that approval, the UATs set forth in the implementation plan must also be approved.

E. Training

The Contractor shall develop and submit a training plan to train all users and super-users of the mobile UVSS. The training plan shall be presented to and approved by the PA Project Manager prior to the commencement of any work.

3. FINANCIAL INFORMATION

The Proposer will be required to demonstrate that it is financially capable of performing the contract resulting from this RFP (“Contract”). The determination of the Proposer’s financial qualifications and ability to perform this Contract will be in the sole discretion of the Port Authority. The Proposer shall submit, with its proposal, the following:

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

Proposer's most recent fiscal year.

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

- B. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.
- C. The name and address of the Proposer's banking institution, chief banking representative handling the Proposer's account, the Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

4. PROPOSAL SUBMISSION REQUIREMENTS

In order to expedite the evaluation of proposals, the Proposer's response to this RFP shall follow the format and order of items, using the same paragraph identifiers, as set forth below.

A. Letter of Transmittal

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, a joint venture, or is partnering with another firm in a prime/subcontracting relationship. In all cases, information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

- (1) Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;
- (2) Name(s), title(s) and telephone number(s) of the individual(s) who are authorize to negotiate and execute the Contract;
- (3) Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;
- (4) Name and address of proposed subcontractors, if any;
- (5) If a corporation: (a) a statement of the names and residences of its officers, and (b) a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the Proposals;

If a partnership: a statement of the names and residences of its principal officers, indicating which are general and which are special partners;

If an individual: a statement of residence;

If a joint venture: information on each of the parties consistent with the information requested above; if the Contract is awarded to a common law joint venture (a partnership of business entities) each member will be jointly and severally liable under the Contract.

B. Executive Summary

The Proposer shall submit a summary presenting the major features of its proposal and how the proposal satisfies the requirements contained in this RFP, as well as the special competencies and expertise of the Proposer to meet the requirements of this RFP.

C. Agreement on Terms of Discussion

The Proposer shall submit a copy of the “Agreement on Terms of Discussion,” signed by an authorized representative of the Proposer. The Agreement format is included as Attachment A and shall be submitted by the Proposer without any alterations or deviations. Any Proposer who fails to sign the Port Authority’s “Agreement on Terms of Discussion” will not have its proposal reviewed. If the Proposer is a joint venture, an authorized representative of each party must sign the Agreement.

D. Certifications With Respect to the Contractor’s Integrity Provisions

The Proposer, by signing the Letter of Transmittal, makes the certifications in the “Contractor’s Integrity Provisions,” included as Section 38 of Attachment B, General Contract Provisions of this RFP. If the Proposer cannot make any such certifications, it shall enclose an explanation of that inability.

E. Code of Ethics for Port Authority Vendors

The Proposer’s attention is directed to the Port Authority’s “Code of Ethics for Port Authority Vendors.” Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their proposal. The Compliance Certification, once executed, will be a material and integral part of any contract resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Port Authority’s website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

F. Proposal

The Proposer must submit a proposal that details and clearly describes its experience and capability to provide the product and services described in this RFP, its approach to such work and the cost of such work to the Port Authority. At a minimum, the proposal shall address the following:

1. Cost Proposal

- A. The Proposer shall submit a Cost Proposal indicating the compensation that it expects to receive. The Cost Proposal shall be complete and inclusive of all work required by this RFP. The Proposer shall complete the Cost Proposal Form provided in Attachment E and submit it as part of the Cost Proposal. The Proposer is expected to provide a detailed breakdown for each line-item on the Cost Proposal Form. The Cost Proposal shall include the following elements:

- a. Product costs
- b. Implementation/Installation costs
- c. On-going maintenance and support costs
- d. Training costs
- e. Hourly rates for out-of-scope services.

The Cost Proposal shall be firm fixed cost and must account for all costs for the period indicated in this contract. Billing for the project implementation shall be based on the below milestone schedule.

Milestone Payment Schedule: The Proposer shall propose a milestone payment schedule for the completion of the Implementation phase. The schedule shall set forth (1) what each milestone is and what constitutes completion of each milestone; (2) the number of days that each milestone is anticipated to complete; (3) the percentage of the price that is allocated for completion of each milestone that the vendor expects to be paid.

2. Technical Experience

The Proposer shall submit a listing of all UVSS contracts that were performed by or are currently being performed by the Proposer within the last **five (5)** years. For each Contract listed, include:

- The name and address of the contracting party
- The locations where the work was performed
- Duration of the Contract
- The approximate dollar amount of the Contract
- The annual staff hours of full and part time labor expended in the performance of the Contract
- A summary of the types of work performed
- The names, addresses and telephone numbers of the owners
- Representatives familiar with the work that the Port Authority may contact.

3. Management Approach

A. Project Plan

- i. Checklist of Product Features
 - The Proposer shall submit a Checklist of Product Features as outlined in the “Product Features” section of the Scope of Work, Section 2(B).
- ii. Implementation/Installation
 - The Proposer shall provide a plan as to how they intend to deliver and install a mobile UVSS solution. The plan shall include the Proposer’s methodology for functionality and user acceptance testing.
- iii. Support and Maintenance
 - The Proposer shall propose a maintenance program outlining recommended support options for the duration of the contract term.
 - The Proposer shall identify the following in their maintenance program:
 - how incidents are typically handled (i.e. escalation process)
 - any response times or resolution times they offered in the maintenance program

- how software updates are managed
 - how often updates are released.
 - the typical downtime for an update.
 - The Proposer shall indicate the warranty offered for their proposed equipment in their maintenance plan.
- iv. Training
- The Proposer shall submit a plan indicating how it will sufficiently provide all relevant training needed to familiarize Authority staff with the mobile UVSS.
- v. Customer Responsibilities
- The Proposer shall identify any and all Port Authority staff responsibilities required to complete any of the tasks identified in the project plan.

B. Staffing Plan

This section will detail the experience of the Proposer, and the Proposer's capability to meet the requirements of this RFP:

- i. The Proposer shall provide a statement indicating the qualifications and experience of managerial and supervisory personnel employed by the firm who are exclusively dedicated to the work performed under this Contract, including:
- Their length of service with the firm
 - The anticipated function of each person performing work on the Contract
 - A summary of the relevant experience of each person listed

The resumes of the individuals who are being recommended for these positions should be included in the Proposal.

- ii. The Proposer should provide a complete description of how it intends to implement and manage the required services hereunder, including any information that it believes would be helpful to the Port Authority in assessing its ability to provide the services described in the RFP.

The Proposal must include the Proposer's plan to ensure compliance with the requirements of this Contract, including, but not limited to:

- insurance requirements
- the Proposer's MBE/WBE Participation Plan, in accordance with the MBE/WBE Subcontracting Provisions hereunder.
- The Proposer's ability to satisfy the relevant requirements outlined in Audit Contract Control Requirements Checklist (**Attachment G**)
- The Proposer's Certified Environmentally Preferable Products/Practices Form ensuring compliance with all applicable federal, state and local standards in their business practices, in accordance with the Certified Environmentally Preferable Products/Practices Provision.

In addition, the Proposer shall submit proposed minimum service standards (and the appropriate measurements thereof), concepts or procedures that will further its objective to provide the highest possible level of service at the WTC site, including how it will determine and maintain performance measurements.

G. **Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this RFP, the Proposer shall complete, sign and include with its Proposal the addenda form(s). In the event any Proposer fails to conform to these instructions, its proposal will nevertheless be construed as though the Addenda had been acknowledged.

If the Proposer downloaded this RFP document, it is the responsibility of the Proposer to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any addenda that might have been issued in connection with this solicitation.

H. Acceptance of General Contract Provisions

The Port Authority has attached to this RFP as **Attachment B**, General Contract Provisions governing the Contract. The Proposer is expected to agree with these Standard Contract Terms and Conditions. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

5. EVALUATION CRITERIA

All proposals will be reviewed by the Port Authority to determine if they adhere to the format required in this RFP and if they contain all required submissions.

Proposal(s) meeting such requirements will then undergo a two-stage evaluation as follows:

A. Stage One: Cost and Technical Plan and Management Approach Evaluation

During Stage One, Proposers will be evaluated based on their Cost Proposal, Technical Plan, and Management Approach. The following criteria, set forth in order of importance, will be utilized in the evaluation of proposals.

1. *Cost Proposal*

- The Total Estimated Contract Price as submitted on the Cost Proposal Form provided in Attachment E
- The degree and extent to which the proposal is cost-effective to the Port Authority.

2. *Technical Plan and Management Approach*

- The degree to which the features and function of the proposed UVSS product meet the features stated in this RFP, specifically the items identified as “Mandatory Features”.
- The clarity and feasibility of the Proposal, which shall include the Proposers’ management philosophy, principles and programs to be utilized by the Contractor in performing the service, and which shall include consideration of the:
 - Proposer’s proposed labor and supervisory staffing;
 - MBE/WBE sub-contracting plan;
 - Proposer’s proposed implementation, support and training plans for this Contract;
 - Proposer’s technical experience

After review of all Proposals, some, none, or all proposers may be invited to participate in Stage Two of the evaluation process. Proposers who are selected to participate in Stage Two of the evaluation process will be notified by email. It should be noted that firms selected to participate in Stage Two may be given short advance notice.

B. Stage Two: On-Site Pilot Product Evaluation

Proposer(s) who are selected to participate in Stage Two evaluations will be asked to provide an on-site pilot demonstration of their product. Evaluation in this stage will consist of an assessment of the performance of the proposed solution.

The Pilot Agreement attached hereto as Exhibit J shall govern the terms of the pilot demonstration.

- For the On-Site Pilot Product Evaluation, the Authority will conduct a two-week on-site pilot product assessment of the proposer's mobile UVSS solution. At the conclusion of the two-week pilot, the Authority RFP committee will evaluate the demonstrated effectiveness and performance of the proposed solution during the pilot phase. The assessment results from the pilot phase will be applied against the overall evaluation criteria and ranking of the firm's proposal. The committee will evaluate the following areas, set forth in order of importance, during the On-Site Pilot Product Evaluation:
 - Product feature validation/assessment
 - End-user ease of use
 - Supplemental/Enhanced functionality of the product

Proposer's shall be required to review and accept the Port Authority Pilot Agreement (Attachment D), prior to the commencement of the On-Site Pilot Product Evaluation. The Pilot Agreement will solely govern the product assessment conducted by the Port Authority during its evaluation of your proposal. The General Contract Provisions and Contract Specific Terms and Conditions attached to this RFP, among other items, will govern any contract resulting from this RFP.

6. MBE/WBE SUBCONTRACTING PROVISIONS

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The successful Proposer ("Contractor") will use good faith efforts to provide for meaningful participation by Port Authority certified MBE/WBEs as defined in this document.

MBE/WBE Good Faith Participation – The Contractor shall use every good faith effort to provide for meaningful participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Women-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including the purchase of equipment, supplies and labor services, in accordance with the section of the General Contract Provisions entitled "M/WBE Good Faith Participation."

The Proposer shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Contract price for Port Authority certified MBEs and ten percent (10%) of the total Contract price for Port Authority certified WBEs.

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- a. Dividing the services and materials to be procured into smaller portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- c. Soliciting services and materials from Port Authority certified MBE/WBE firms. To access the Port Authority's Directory of MBE/WBE certified firms, go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html>
- d. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with the prompt payment provision below.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Proposers are directed to use form PA3760C as the recording mechanism for the MBE/WBE Participation Plan, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

Proposers shall include their MBE/WBE Participation Plans with their Proposals, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The Proposer must submit an MBE/WBE Participation Plan for each MBE/WBE subcontractor. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subcontractor listed on each of the MBE/WBE Participation Plans must be certified by the Port Authority in order for the Contractor to receive credit toward the MBE/WBE goals set forth in this Contract. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Contract.

Subsequent to Contract award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the MBE/WBE Plan, Contractors are directed to use form PA3760D, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subcontractors or suppliers for those named in their approved plans without the Manager's prior

written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

Prompt Payment/Retainage

The Contractor agrees to pay each subcontractor under this Contract, for satisfactory performance of its subcontract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return retainage payments, if any to each subcontractor within ten (10) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Authority.

MBE/WBE Conditions of Participation

MBE/WBE participation will be counted toward meeting the MBE/WBE contract goal, subject to all of the following conditions:

A. **Commercially Useful Function.** An MBE/WBE 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 MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Contractor shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE 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 MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

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

C. **Supervision.** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Contractor, other Subcontractors

on the contract, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

D. Equipment: MBE/WBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the MBE/WBE obtains equipment from the Contractor, their affiliates and other subcontractors performing Work on the Contract, the MBE/WBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from 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.

Counting MBE/WBE Participation

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs 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 goal.

A. Subcontractors. One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subcontractor will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Contractor, other Subcontractors or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE goals only if the MBE/WBE subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

B. Manufacturers/Fabricators. One hundred percent (100%) of the expenditure to an MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.

C. Material Suppliers. Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE 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. Broker's/Manufacturer's Representatives. One hundred percent (100%) 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 an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE 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 of the materials and supplies themselves will not be counted.

E. Services. One hundred percent (100%) of fees or commissions charged by an MBE/WBE 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 the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Trucking Operations. If using an MBE/WBE firm for trucking operations, the MBE/WBE trucking firm of record is the firm that is listed on the MBE/WBE Participation Plan. The MBE/WBE 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 for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the MBE/WBE goal. The MBE/WBE trucking firm of record shall control the day-to-day MBE/WBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.

1. MBE/WBE Owned/Leased Trucks. One hundred percent (100%) of the value of the trucking operations the MBE/WBE provides for the performance of the Work using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the MBE/WBE using drivers it employs, will be counted toward the MBE/WBE goal.

2. MBE/WBE Short-Term Leased Trucks. The MBE/WBE may lease trucks on a short-term basis from another MBE/WBE, including an owner/operator who is Port Authority certified as an MBE/WBE. 100% of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.

3. Non-MBE/WBE Trucks. The MBE/WBE may lease trucks on a short-term basis from a non-MBE/WBE, including an owner-operator. One hundred percent (100%) of the fee or commission the MBE/WBE receives as a result of the lease arrangement will be counted toward the MBE/WBE goal. The value of the trucking operations provided by the lessee will not be counted toward the MBE/WBE goal.

G. Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE 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 MBE/WBE 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.

7. CERTIFICATION OF RECYCLED MATERIALS PROVISION

Proposers shall submit, with their proposal, **Attachment F**, the Certified Environmentally Preferable Products / Practices Form attesting that the products or items offered by the Proposer contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies.

Recycling Definitions:

For purposes of this solicitation, the following definitions shall apply:

- a. "Recovered Material" shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- b. "Post-consumer Material" shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".
- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with an greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

8. CONDITIONS FOR THE SUBMISSION OF A PROPOSAL

In addition to all other requirements of this RFP, the Proposer agrees to the following conditions for the submission of its proposal.

A. Changes to this RFP

At any time, in its sole discretion, the Port Authority may by written addenda, modify, correct, amend, cancel and/or reissue this RFP. If an addendum is issued prior to the date proposals are due, it will be provided to all parties in the medium in which the parties obtained the RFP. If an addendum is issued after proposals have been received, the addendum will be provided only to those whose proposals remain under consideration at such time.

B. Proposal Preparation Costs

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its proposal, or in any other aspect of the Proposer's pre-contract activity. No Proposer is entitled to any compensation except under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

C. Disclosure of Proposal Contents / Use of Ideas and Materials

Proposal information is not generally considered confidential or proprietary. All information contained in the proposal is subject to the "Agreement on Terms of Discussion" attached hereto as **Attachment A**.

D. Ownership of Submitted Materials

All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of a Proposal shall not affect this right.

E. Subcontractors

If a Proposer intends to use subcontractor(s) the Proposer must identify in its proposal the names of the subcontractor(s) and the portions of the work the subcontractor(s) will perform.

F. Conflict of Interest

If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority's determination regarding any questions of conflict of interest shall be final.

G. Authorized Signature

Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its proposal and this RFP.

H. References

The Port Authority may consult any reference familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of a proposal shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

I. Evaluation Procedures and Negotiation

Only Proposers which meet the prerequisites, if any, may have their proposals evaluated based on the evaluation criteria set forth in this RFP. The Port Authority may use such procedures that it deems appropriate to evaluate such proposals. The Port Authority may elect to initiate contract negotiations with one or more Proposers including negotiation of costs/price(s) and any other term or condition, including modifying any requirement of this RFP. The option of whether or not to initiate contract negotiations rests solely with the Port Authority.

J. Taxes and Costs

Purchases of services and tangible personal property by the Port Authority 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). All costs associated with the Contract must reflect this exemption and be stated in U.S currency.

K. Most Advantageous Proposal/No Obligation to Award

The Port Authority reserves the right to award the Contract to other than the Proposer proposing the lowest price. The Contract will be awarded to the Proposer whose proposal the Port Authority believes, in its sole discretion, will be the most advantageous to the Port Authority. Neither the release of this RFP nor the acceptance of any response thereto shall compel the Port Authority to accept any proposal. The Port Authority shall not be obligated in any manner whatsoever to any

Proposer until a proposal is accepted by the Port Authority in the manner provided in the Section of this RFP entitled “Proposal Acceptance or Rejection.”

L. Multiple Contract Awards

The Port Authority reserves the right to award multiple Contracts for the products, work and/or services that are the subject matter of this RFP and Proposers are hereby given notice that they may not be the Port Authority’s only contractor for such products, work and/or services.

M. Right to Extend Contract

If this is a proposal for a contract for a term of years, including specified options for renewal, the Port Authority reserves the additional right to extend the contract term for an additional 120 days, upon the same terms and conditions of the original Contract negotiated between the Port Authority and the successful Proposer.

N. Rights of the Port Authority

- (1) The Port Authority reserves all its rights at law and equity with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change or modify this RFP, to reject any and all proposals, to waive defects or irregularities in proposals received, to seek clarification of proposals, to request additional information, to request any or all Proposers to make a presentation, to undertake discussions and modifications with one or more Proposers, or to negotiate an agreement with any Proposer or third person who, at any time, subsequent to the deadline for submissions to this RFP, may express an interest in the subject matter hereof, to terminate further participation in the proposal process by a Proposer or to proceed with any proposal or modified proposal, which in its judgment will, under all circumstances, best serve the Port Authority’s interest. The Port Authority may, but shall not be obliged to, consider incomplete proposals or to request or accept additional material or information. The holding of any discussions with any Proposer shall not constitute acceptance of a proposal, and a proposal may be accepted with or without discussions.
- (2) No Proposer shall have any rights against the Port Authority arising from the contents of this RFP, the receipt of proposals, or the incorporation in or rejection of information contained in any proposal or in any other document. The Port Authority makes no representations, warranties, or guarantees that the information contained herein, or in any addenda hereto, is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of the contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer required by this RFP or Contract and the Proposer agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.
- (3) At any time and from time to time after the opening of the proposals, the Port Authority may give oral or written notice to one or more Proposers to furnish additional information relating to its proposal and/or qualifications to perform the services contained in this RFP, or to meet with designated representatives of the Port Authority. The giving of such notice shall not be construed

as an acceptance of a proposal. Information shall be submitted within three (3) calendar days after the Port Authority's request unless a shorter or longer time is specified therein.

O. No Personal Liability

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally with any liability by a Proposer or another or held liable to a Proposer or another under any term or provision of this RFP or any statements made herein or because of the submission or attempted submission of a proposal or other response hereto or otherwise.

P. Conflict of Interest

Individual Conflict of Interest: If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict and submit a mitigation plan addressing that conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority's determination regarding any questions of conflict of interest shall be final.

In the opinion of the Authority, any Proposer performing construction management, general contracting, design, environmental and/or management services in any capacity for the Authority or other WTC stakeholders/owners responsible for building portions of the WTC site, such as the Lower Manhattan Development Corporation (LMDC), the New York State Department of Transportation (NYSDOT), WTC Net Lessee, has a potential conflict of interest. However, a Proposer who has a business relationship as indicated above, and believes that it can provide a mitigation plan that would address the conflict of interest shall submit such plan for evaluation to the Authority with its Proposal.

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

- 1) A proposed organizational chart/structure/firewall designed to keep staff and resources separate, as specific by project, and to allow for no overlap between team members and resources including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.
- 2) Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not be limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
- 3) Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
- 4) Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its roll in preventing fraud, waste, and abuse, and verification of such education/training and individual understanding.
- 5) Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.

- 6) Specific contingency plan, notification, and approval process for cases where there is a necessary, reasonable, and business related purpose for overlap in and/or sharing of staff members and/or resources.
- 7) Specific contingency plan addressing a direct or suspected violation of said mitigation plan. All violations must be reported to the Port Authority, including its Inspector General.
- 8) The Contractor shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

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

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

Q. Organizational Conflict of Interest

- (1) The resultant contract to this RFP 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 Agreement may, without some form of restriction on future activities, result in an unfair competitive advantage to the Proposer.
 - a. The Contractor shall have access to confidential and/or sensitive Authority information in the course of performing this Agreement. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Contractor agrees to protect all such information from disclosure even after Contract expiration or termination 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.
 - b. To the extent that the Contractor either (i) 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 (ii) 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 complete.
- (2) A Proposer, by submitting its proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, agrees 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.

(3) If the Authority determines that a Contractor has violated any term of this clause entitled “Organizational Conflict of Interest”, the Authority may take any appropriate action available under the law or regulations to obtain redress including, but not be limited to, requiring the Proposer to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority, determining the Proposer ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Proposer’s actions under the resultant Contract or violations of this numbered clause, or terminating such contract, in whole or in part.

9. ATTACHMENTS

ATTACHMENT A – AGREEMENT ON TERMS OF DISCUSSION
ATTACHMENT B – GENERAL CONTRACT PROVISIONS
ATTACHMENT C – CONTRACT SPECIFIC TERMS AND CONDITIONS
ATTACHMENT D – PORT AUTHORITY PILOT AGREEMENT
ATTACHMENT E – COST PROPOSAL FORM
ATTACHMENT F - CERTIFIED ENVIRONMENTALLY PREFERABLE
PRODUCTS/PRACTICES
ATTACHMENT G –AUDIT CONTROL REQUIREMENT CHECKLIST
ATTACHMENT H – PROPOSER REFERENCE FORM

ATTACHMENT A

Under-Vehicle Surveillance System at WTC (Request for Proposals)

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent.

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority's Board of Commissioners, which may be found on the Port Authority website at: <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

(Company)

(Signature)

(Title)

(Date)

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DO NOT RETYPE.

ATTACHMENT B - GENERAL CONTRACT PROVISIONS

1. GENERAL AGREEMENT

The undersigned (hereinafter referred to as the "Contractor" or "you") agrees to provide, and The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") agrees to accept to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Services required by this Contract as more fully set forth in the Scope of Work attached hereto and made a part hereof. The Scope of Work requires the doing of all things necessary or proper for or incidental to the requirements as set forth in the Scope of Work. All things not expressly mentioned in the Scope of Work but involved in carrying out their intent are required by the Scope of Work and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

2. DEFINITIONS

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

Authority or Port Authority - means the Port Authority of New York and New Jersey.

Contract, Document or Agreement - 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 - mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Director - means the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

Facility- Port Authority Facilities within the Port District.

Project Manager (or Manager) - means the individual with day-to-day responsibility for managing the project on behalf of the Port Authority. The Project Manager will be **Corwin Kong**.

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

Services or Work - 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, as set forth in the Scope of Work.

Specifications- mean all requirements of this RFP, technical and otherwise, for the performance of the Scope of Work and services hereunder.

Holidays: The following legal holidays will be observed at Port Authority offices and facilities:

New Year's Day	Columbus Day
Martin Luther King, Jr. Day	Veteran's Day
Presidents Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day
Labor Day	

Do not perform any Work unless authorized by the Authority on these days.

Minority Business Enterprise (MBE) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- (e) Month - unless otherwise specified, means a calendar month.

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.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;

- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - 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.

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

Women-owned Business Enterprise (WBE) - shall mean a business enterprise which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work Day- unless otherwise specified, means a day between Monday and Friday with Monday and Friday included.

3. GENERAL PROVISIONS

- A. Under no circumstances shall you or your subcontractors communicate in any way with any department, board, agency, commission, or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however, that data from manufacturers and suppliers of materials, devices and equipment shall be obtained by you when you find such data necessary unless otherwise instructed by the Authority.
- B. Any services performed for the benefit of the Authority at any time by you or on your behalf, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another expressly written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services except as provided under this Agreement.
- C. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further rules and regulations which may from time to time during the effective period of this Contract, be promulgated by the Port Authority for reasons of safety, health, preservation of property, or maintenance of a good and orderly appearance of the Facilities, or for the safe and efficient operation of the Facilities. The Port Authority agrees that, except in cases of emergency, it shall give notice to the Contractor of every rule and regulation hereafter adopted by it.
- D. This Contract does not constitute the Contractor as an agent or representative of the Port Authority for any purpose whatsoever. The Contractor shall perform all services hereunder

as an independent Contractor and the Contractor, its officers, and employees shall not be deemed to be agents, servants, employees or “special employees” of the Port Authority.

4. INTELLECTUAL PROPERTY

- A. Except as provided below: as between the Port Authority and the Contractor all process flows, codes including, but not limited to scripts, programs, routines, processes, procedures, documentation, estimates, reports, records, data, charts, documents, models, designs, renderings, drawings, specifications, photographs, computations, computer tapes or discs, and other documentation of any type whatsoever, whether electronic or in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the exclusive property of the Authority, and the Authority shall have the exclusive 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 for herein. With regard to training manuals or any other knowledge transfer documentation, communication or presentation prepared under this Agreement the Authority shall expressly have the right to use, alter and reproduce including electronically, said manuals for its internal business purposes. The Contractor hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties to this Agreement or not. Any information given to the Port Authority before, with or after submission of the Agreement on Terms of Discussion, either orally or in writing, is not given in confidence and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever except as otherwise set forth in the Agreement On Terms Of Discussion.

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 the Port Authority or its employees or agents, 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.

- B. All preexisting information or documentation including computer programs or code including source code, of the Contractor, utilized by the Contractor hereunder in the performance of his services hereunder shall be deemed licensed to the Authority for the duration and purposes of this agreement, but shall remain the property of the Contractor.
- C. 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 the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.
- D. Third party software not specially prepared for the purpose of this agreement but utilized by the Contractor hereunder in the performance of his services hereunder shall be licensed to the Contractor and the Authority for the duration and purposes of this agreement but shall remain the property of said third party.
- E. The above-described software shall be furnished by the Contractor without additional compensation.

5. PROPRIETARY RIGHTS IN SUBJECT MATTER NOT WITHIN THE INTELLECTUAL PROPERTY CLAUSE

If in accordance with this Contract the Contractor furnishes research, development or consultative services in connection with the performance of the Work and if in the course of such research, development, or consultation patentable or copyrightable subject matter or trade secrets or other proprietary matter is produced by the Contractor, its officers, agents, employees, subcontractors, or suppliers, not custom software, and not covered under clause 6 entitled Intellectual Property, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that as between the Contractor and the Authority the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by the Authority to its successors, immediate or otherwise, in the operations of or ownership of any facility now or hereafter operated by the Authority or the Authority but such license shall not be otherwise transferable.

The right of the Authority as well as the Contractor to use all patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction as well as any copyrightable matter, trade secrets or other proprietary matters, shall be obtained by the Contractor without separate or additional compensation whether the same is patented or copyrighted before, during or after the performance of the Work.

6. INDEMNITY IN REGARD TO INFRINGEMENT MATTER

The Contractor shall indemnify the Authority against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright, or other proprietary rights infringement arising out of or in connection with the Authority's use, in accordance with the preceding clause of such patentable subject matter or patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction, or copyrighted matter or other matter protected as intellectual property. If requested by the Authority and if notified promptly in writing of any such claims, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to the Authority. If the Authority be enjoined from using any of the facilities which form the subject matter of this Contract, and as to which the Contractor is to indemnify the Authority against proprietary rights claims, the Authority may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any proprietary rights and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove all such facilities and refund the cost thereof to the Authority and otherwise equitably adjust compensation and take such steps as may be necessary to ensure compliance by the Authority with such injunction, to the satisfaction of the Authority.

The Contractor shall promptly and fully inform the Director of any claims or disputes for infringement or otherwise, whether existing or potential, of which it has knowledge relating to any Intellectual Property used, developed or licensed in connection with the performance of the Work or otherwise in connection with this Contract.

7. 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 the Port Authority, and the Port Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

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 the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

8. COMPLIANCE WITH WEB SITE TERMS OF USE AND PRIVACY POLICIES

Subject to all of the provisions of this Contract including, without limitation, the obligations of the Contractor under the section hereof entitled “Indemnification,” the Contractor shall, and shall compel its employees, agents and subcontractors, to strictly abide by and comply with the policies established by the Authority governing the use of the Authority’s web sites as set forth in the Authority web sites Terms of Use and Privacy Statement as the same may be supplemented or amended. The Contractor shall immediately implement all procedures in connection with such policies and in furtherance thereof as directed by the Authority.

9. TIME IS OF THE ESSENCE

The Contractor's obligations for the performance and completion of all work within the time or times provided for in this Contract are of the essence of this Contract.

10. FINAL PAYMENT

After satisfactory completion of all services required hereunder, and upon receipt from the Contractor of such information as may be required, the Director shall certify in writing to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon furnish to the Authority a detailed sworn statement of all claims, just and unjust, of subcontractors, materialmen and other third persons then outstanding which he has reason to believe may thereafter be made on account of the services provided under this Agreement.

Within thirty days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required and if such date is later), the Port Authority shall pay to the Contractor by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the

Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Agreement called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of the Final Payment shall be and shall operate as a release to the Authority of all claims and of all liability to the Contractor for all things done or furnished in connection with this contract and for every act and neglect of the Authority and others relating to or arising out of the this contract, including claims arising out of breach of the contract and claims based on claims of third persons.

The Contractor's agreement as provided in the immediately preceding paragraph shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment.

11. DEFAULT, REVOCATION OR SUSPENSION OF CONTRACT

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

1. If fire or other event shall destroy all or a substantial part of the Facility, asset or infrastructure necessary to perform the Scope of Work.

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 the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation 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 revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

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, the Port Authority 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.

C. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, 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 the Port Authority (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, the Port Authority 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.

- D. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority 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.
- E. No payment by the Port Authority 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 the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority 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 the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- F. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- G. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority 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 such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from 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.
- H. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to 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 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 the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between 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 the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall 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.

- I. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations 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 the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- J. If the Port Authority 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 the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- K. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

12. WITHHOLDING OF PAYMENT

If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Authority and the Contractor (including his obligation to the Authority to pay any claim lawfully made against him by any materialman, subcontractor or workman or other person which arises out of or in connection with the performance of this Contract or any other agreement with the

Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor is made against the Authority or (3) any subcontractor under this Contract or any other agreement between the Authority and the Contractor fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third person which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor or if in the opinion of the Authority any of the aforesaid contingencies is likely to arise, then the Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Authority 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 the Port Authority may deem proper to protect it against delay or loss or to satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Authority 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 the Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Authority shall create any obligation of any kind to such materialman, subcontractors, workman or other third persons.

Until actual payment to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Authority under this clause.

13. CONTRACTOR PERSONNEL STANDARDS OF PERFORMANCE

The Contractor shall furnish sufficiently trained management, supervisory, technical and operating personnel to perform the services required of the Contractor under this Contract. If, in the opinion of the Director, any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder, the Contractor shall remove such personnel and replace them with personnel satisfactory to the Director.

At the time the Contractor is carrying out its operations there may be other persons working physically in the vicinity or in the same logical or technical infrastructure. The Contractor shall so conduct its operations as to work in harmony and not endanger, interfere with or delay the operations of others, all to the best interests of The Authority and others and as may be directed by the Director.

14. DESIGNATED SECURE AREAS

Services under the Contract may be required in designated secure areas, as the same may be designated by the 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 Manager. The Contractor shall conform to the procedures as may be established by the 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 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 Manager during the term of the Contract.

15. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the 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.

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

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 of 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.

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 Port Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Port Authority. The Contractor and subcontractors may also be required to use an organization designated by the Port Authority to perform the background checks.

In accordance with the Port Authority's Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority or PATH facility
- 4) Mission critical system

The Contractor shall perform background checks through the Port Authority's personnel assurance program provider. 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). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located 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 may be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Port Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Port Authority. If the Port Authority requires facility-specific identification credentials for the Contractor and the subcontractor's staff, the Port Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Port Authority and shall be returned to the Port Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractors to immediately report to the Port Authority the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor will 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 Port Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractor shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority 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 construction sites or

facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. 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 information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, 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 Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Port Authority 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.

16. INSURANCE PROCURED BY THE CONTRACTOR

Insurance Procured by the Contractor

The Contractor and its subcontractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the covering the obligations assumed by the Contractor under this Contract including but not limited to premise-operations, products and completed operations and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract, with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

Commercial General Liability Insurance - \$ 5 million combined single limit per occurrence and in the annual aggregate for bodily injury and property damage liability.

Automobile Liability Insurance - \$ 3 million combined single limit per accident for bodily injury and property damage liability.

Cyber and Technology Errors and Omissions - \$5 million per claim and in the annual aggregate and including cyber liability coverage for (i) liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form, and (ii) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer-related property and the data, software and programs stored thereon. Technology Errors & Omissions insurance. including cover for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of the Agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration

(5) outsourcing including outsourcing development and design (6) systems design. consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification. verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor. This policy shall include coverage for loss, disclosure and theft of data in any form: media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year. Coverage shall contain severability for the insured organization for any intentional act exclusions. If this coverage is provided on a claims-made basis, then it must be maintained for a period of five (5) years after acceptance of the deliverables and/or services provided in connection with this Agreement. Additionally, such policy shall cover consequential or vicarious liabilities (e.g., claims brought against the Authority or its Affiliated Companies and their respective directors, officers. and employees due to the wrongful acts and failures committed by you) and direct losses (e.g., claims made by the Authority and its Affiliated Companies and their respective directors, officers, and employees against you for financial loss due to your wrongful acts or failures). This policy shall have the "Insured v. Insured" exclusion amended to allow an "Additional Insured" to bring a claim against the Named Insured.

The insurance shall be written on an occurrence basis, as distinguished from a “claims made” basis, and shall not include any exclusions for “action over claims” (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Contract;
- Independent Contractor’s Coverage;
- Premise-Operations, Products and Completed Operations Liability Insurance for a period of 6 years;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policy;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or provisions, such language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law.

In addition, the liability policy (ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) and endorsed to and name “The Port Authority of New York and New Jersey and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns, and all entities listed under schedule 1 below” as Insured (as defined in the policy or in an additional insured endorsement amending the policy’s “Who is An Insured” language as the particular policy may provide). The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between the parties. The liability policy (ies) and certificates of insurance shall contain separation of insured and severability of interests clauses for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Contractor is responsible for all deductibles or losses not covered by insurance. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

If any of the Work is to be done on or at Port Authority facilities by subcontractors and, if the Contractor requires its subcontractors to procure and maintain such insurance in the name of the Contractor, then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this section known as “Insurance Procured by the Contractor”.

All insurance coverage shall be provided by the Contractor and/or by or for any of its subcontractors at no additional expense to the Port Authority and its related entities. A copy of this section titled “Insurance Procured by the Contractor” shall be given to your insurance agent and subcontractors and shall form a part of the covered contract or subcontract for insurance purposes in furtherance of the insurance requirements under this Contract.

Further, it is the Contractor’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all subcontractors are accurate, adequate and in compliance with the Port Authority requirements; and the Contractor is to retain a copy of its subcontractors’ certificates of insurance. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, including subcontractors’ work, and upon completion of the Contract.

The Contractor, its subcontractors, and its insurers shall not, without obtaining the express advance written permission from 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, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

The Contractor and its subcontractor(s) shall also take out, maintain, and pay premiums on Workers’ Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer’s Liability Insurance with limits of not less than \$1 million per each accident. Such a policy shall include a waiver of subrogation in the benefit of the Port Authority and all Additional Insureds.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days’ prior written notice to the Port Authority Att: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after the award of this Contract and prior to the start of work, the Contractor must submit an original certificate of insurance to the Port Authority Facility Contract Administrator, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), including, but not limited to, the cancellation

notice endorsement and stating the contract number prior to the start of work. The Contractor is also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors or assigns. The General Manager, Risk Finance must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Finance, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Contractor and all subcontractors shall suspend performance of the Contract at the premises until a satisfactory insurance policy (ies) and certificate of insurance is provided to and approved by Risk Finance, unless the Facility or Project Manager directs the Contractor, in writing, to continue to performing work under the Contract. If the Contract is so suspended, no extension of time shall be due on account thereof.

Any self-insured retention shall cover any liability imposed upon the Contractor and any and all subsidiaries with respect to all operations and obligations assumed by the Contractor and any and all subsidiaries. The Contractor represents that such program provides the Insureds (as defined in the insurance policy) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

Renewal certificates of insurance or policies shall be delivered to the Port Authority Facility Contractor Administrator, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

Failure by the Contractor to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Contract without limitation, shall be deemed a material breach of contract and may be a basis for termination of this Contract by the Port Authority.

The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract **[CITS #5801N]**.

Schedule 1

Indemnitees and Additional Insureds:

b* The Port Authority of New York and New Jersey

c* WTC Retail LLC
d* 1 World Trade Center LLC
e* The Port Authority Trans-Hudson Corporation
f* STV Construction, Inc.
g* NYS Department of Transportation
h* Tishman Construction Corporation
i* Tishman Realty & Construction Co., Inc.
j* Tishman Construction Corporation of New York
k* Silverstein Freedom Tower Development LLC, and its Affiliates
l* 2 World Trade Center LLC
m* 3 World Trade Center LLC
n* 4 World Trade Center LLC
o* World Trade Center Properties LLC
p* 1 WTC Holdings LLC
q* 2 WTC Holdings LLC
r* 3 WTC Holdings LLC
s* 4 WTC Holdings LLC
t* Silverstein Properties, Inc.
u* Silverstein East WTC Facility Manager LLC
v* WTC Redevelopment LLC
w* Silverstein WTC Mgmt. Co. LLC
x* Silverstein WTC Mgmt. Co. II LLC
y* Silverstein WTC Properties LLC
z* Silverstein WTC LLC
{* Silverstein 2/3/4 WTC Redevelopment LLC
bb*Spring World Inc.
cc*Spring WTC Holdings Inc.
dd*WTC Investors LLC
ee*Net Lessees' Association of the World Trade Center
ff*WTC Management and Development LLC
gg*Silverstein WTC Management and Development LLC
hh*WTC Investors Management and Development LLC
ii*Larry A. Silverstein

jj*World Trade Center Hold Co. Ltd
kk*3 WTC Mezz LLC.
ll*The City of New York
mm*The Lower Manhattan Development Corporation
nn*The World Trade Center Memorial Foundation
oo*Metropolitan Transportation Authority
pp*New WTC Retail JV LLC
qq*PA Retail Newco LLC
rr*New WTC Retail Member LLC
ss*New WTC Retail Owner LLC
tt*Capital Properties NY LLC
uu*Capital Properties Services LLC
vv*Cushman & Wakefield, Inc.

17. ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any monies due or to become due hereunder and any delegation of any of his duties hereunder without the express written consent of the Director shall be void and of no effect as to the Authority, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Director, may, from time to time, expressly approve in writing. For each individual, partnership or corporation proposed by the Contractor as a subcontractor, the Contractor shall submit to the Authority a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the "Integrity" Section entitled "Certification of No Investigation Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage Contingent or Other Fee". All further subcontracting by any subcontractor shall also be subject to such approval of the Director

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve the Contractor of any of his obligations; no subcontract, no approval of any subcontractor and no act or omission of the Authority or the Director shall create any rights in favor of such subcontractor and against the Authority; and as between the Authority and the Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontractors and all approvals of subcontractors, regardless of their form, shall be deemed to be conditioned upon performance by the subcontractor in accordance with this Contract; and if any subcontractor shall fail to perform the Contract to the satisfaction of the Director, the Director shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved subcontractors.

18. CERTAIN CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. That it is financially responsible and experienced in, and competent to perform this Contract; that no representation, promise or statement, oral or in writing, has induced it to submit its Proposal, saving only those contained in the papers expressly made part of this Contract; that the facts stated or shown in any papers submitted or referred to in connection with his Proposal 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, 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 investigations was adequate;
- A. 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;
- B. That no Commissioner, officer, agent or employee of the 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 Authority, its 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, existence or location of materials, structures, obstructions, utilities or conditions, which may be encountered at the installation sites; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) 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.
- F. That, notwithstanding any requirements of this Contract, any inspection or approval of the Contractor's services by the Authority, or the existence of any patent or trade name, the Contractor nevertheless warrants and represents that the services and any intellectual property supplied to the Authority hereunder shall be of the best quality and shall be fully fit for the purpose for which they are to be used. The Contractor unconditionally guarantees against defects or failures of any kind, including defects or failures in design, workmanship and materials, excepting solely defects or failures which the Contractor demonstrates to the satisfaction of the Authority have arisen solely from accident, abuse or fault of the Authority occurring after issuance of Final Payment hereunder and not due to fault on the Contractor's part. In the event of defects or failures in said services, or any part thereof, then upon receipt of notice thereof from the Authority, the Contractor shall correct such defects or failures as may be necessary or desirable, in the sole opinion of the Authority, to comply with the above guaranty.

Moreover, the Contractor accepts the conditions at the sites of 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 Scope of Work or any other part of the Contract is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Contract or any part thereof. Moreover, the Authority does not warrant or represent either by issuance of the Scope of Work or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Contract prior to execution of 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 clause (though not only such provisions) are essential to the Authority's consent to enter into this Contract and that without such provisions; the Authority would not have entered into this Contract.

19. RIGHTS AND REMEDIES OF THE AUTHORITY

The Authority shall have the following rights in the event the Director shall deem the Contractor 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 other Contractors;
- 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 other 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 The Authority indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his 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 he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses hereof entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Required Information" and "Non-Collusive Bidding and

Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fee”, or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor’s incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

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

Neither the acceptance of the work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Agreement or otherwise issued by the Authority, or any officer, agent or employee of the Authority, nor any permission or direction to continue with the performance or work, nor any performance by the authority of any of the Contractor's duties or obligations, nor any aid provided to the Contractor by the Authority in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Authority, its Commissioners, officers, agents or employees shall be deemed to be a waiver of any provision of this agreement or of any rights or remedies to which the Authority may be entitled because of any breach hereof, excepting only a resolution of its Commissioners, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach.

20. 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 the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Director shall so direct) to suspend or abandon performance.

21. TAX EXEMPTIONS

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

22. TITLE TO EQUIPMENT

Title to all equipment to be furnished hereunder by the Contractor shall be transferred to the Authority upon its delivery to the installation site.

The Contractor shall furnish such bills of sale and affidavits of title as the Authority shall reasonably request.

23. NOTICE REQUIREMENTS

No claim against the Authority shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice and of information with respect to such claim as provided in this clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of this agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to execution of this Agreement and claims of a type which are barred by the provisions of this agreement) for damages, payment or compensation of any nature or for performance of any part of this Agreement.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

- A. In the case of any claims for which requirements are set forth elsewhere in this Agreement as to notice and information, such requirements shall apply.
- B. In the case of all other types of claims, notice shall have been given to the Director, as soon as practicable, and in any case within forty eight (48) hours after occurrence of the act, omission, or other circumstances upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made which records shall be submitted to the Authority.

The above requirements for notices and information are for the purpose of enabling the Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstance as they occur and the requirements herein for such notice and information are essential to this Agreement and are in addition to any notice required by statute with respect to suits against the Authority.

The above referred to notices and information are required whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Authority has indicated it will consider a claim.

No, act, omission or statement of any kind shall be regarded as a waiver of any of the provisions of this clause or may be relied upon as such waiver except only either a written statement signed by the Executive Director of the Authority or a resolution of the Commissioners of the Authority expressly stating that a waiver is intended as to any particular provision of this clause, and more particularly, no discussion, negotiation, consideration, correspondence or requests for information with respect to a claim by any Commissioner, officer, employees or agent of the Authority shall be construed as a waiver of any provision of this clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Authority representative above designated to receive it may not be sufficient to come to the attention of the representative of the Authority with the knowledge and responsibility of dealing with the situation, only notice

and information complying with the express provisions of this clause shall be deemed to fulfill the Contractor's obligation under this Agreement.

24. SERVICE OF NOTICES ON THE CONTRACTOR

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office box, enclosed in a postpaid wrapper addressed to the Contractor at his/her office, or its delivery to his/her office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Authority the Contractor's office will be that stated in his/her Proposal. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director or managing or general agent; or if a partnership upon any partner.

25. NO THIRD PARTY RIGHTS

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

26. INDEMNIFICATION AND RISKS ASSUMED BY THE CONTRACTOR

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its 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 under 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, omissions or negligence of the Contractor, the Port Authority, its 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 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, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify 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 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 the Port Authority, repair, replace or

rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions (negligent or not) of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to 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 or the Port Authority, 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 of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of 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 or the Port Authority.

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 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, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority 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.

27. APPROVAL OF METHODS

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority 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.

28. PORT AUTHORITY TECHNOLOGY STANDARDS AND GUIDELINES AND SUPPLEMENTAL GUIDELINES FOR THE PORT AUTHORITY TECHNOLOGY SERVICES DEPARTMENT

The Contractor and any subcontractors shall follow the Port Authority Technology Standard and Guidelines and the Supplemental Guidelines for the Port Authority Technology Services Department attached hereto and made a part hereof, and shall comply with any updates to or changes in best practices related to such Standards and Guidelines.

29. 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 the Port Authority, 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.

30. APPLICABLE LAW

This Contract shall be construed in accordance with the laws of the State of New York. The Contractor hereby consents to the exercise by the courts of the States of New York and New Jersey of jurisdiction in personam over it with respect to any matter arising out of or in connection with this Contract and waives any objection to such jurisdiction which it might otherwise have; and the Contractor agrees that mailing of process by registered mail addressed to it at the address of the Contractor set forth in the Proposal, shall have the same effect as personal service within the States of New York or New Jersey upon a domestic corporation of said State.

31. AUTHORITY OF THE DIRECTOR

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which the Authority, acting through the Director deems best, the Director shall have absolute authority to determine what is or is not necessary or proper for or incidental thereto and the Specifications shall be deemed merely the Director's present determination on this point. In the exercise of this authority, the Director shall have power to alter the Specifications, to require the performance of Work not required by them in their present form, even though of a totally different character from that not required, and to vary, increase and diminish the character, quantity and quality of, or to countermand any Work now or hereafter required. If at any time it shall be, from the viewpoint of the Authority, impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Authority, the Director shall have authority to suspend performance of any part or all of the Contract until such time as the Director may deem it practicable

or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of the Authority impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof for reasons within or beyond the control of the Authority, the Director 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 satisfactorily 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 Director to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) and such decision shall be conclusive, final and binding on the parties. The Director's decision may be based on such assistance as she may find desirable. The effect of the decision shall not be impaired or waived by any negotiation or settlement offers in connection with the question decided, whether or not she participated therein, or by any prior decision of her 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 Director for a 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 Authority relating to any such question the Contractor must allege in the 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 Director.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Director and shall perform the Contract to her satisfaction at such times and places, by such methods and such manner and sequence as she may require, and the Contract shall at all stages be subject to her inspection. The Contractor shall employ no equipment, materials, methods or men to which she objects, and shall remove no materials, equipment or other facilities from the Authority site without permission. Upon request, she shall confirm in writing any oral order, direction, requirements or determination.

The enumeration herein or elsewhere of particular instances in which the opinion, judgment, discretion or determination of the Director shall control or in which the Contract shall be performed to her satisfaction or subject to her inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and performed.

This provision shall be construed in accordance with the laws of the State of New York excluding its conflict of law provisions.

32. APPROVALS BY THE DIRECTOR

The approval by the Director of any service required hereunder, shall be construed merely to mean that at that time the Director knows of no good reason for objecting thereto and no such approval shall release the Contractor from its full responsibility for the satisfactory performance of the services to be supplied. "Approved equal" shall mean approved by the Director.

33. CONTRACT REVIEW AND COMPLIANCE AUDITS

The Contractor, and any subcontractors, shall provide system access and reasonable assistance to the Authority's External and Internal Audit staff or its consultants in their performance of work under the contract, including producing specific requested information, extraction of data and reports. The Contractor, and any subcontractors, shall support requests related to audits of the agreement and administration tasks and functions covered by this Contract.

The Authority reserves the right to use and load security and system software to evaluate the level of security and vulnerabilities in all systems which control, collect, dispense, contain, manage, administer, or monitor revenue "owned" by the Port Authority.

The Authority reserves the right to use as required and load security and system software to evaluate the level of security and vulnerabilities in any applicable environment-covered under this Contract. If such right is exercised, then both parties shall work in good faith to ensure there is no access or potential access to third party proprietary data within the applicable environment or access to other systems not covered under this Contract.

34. AUTHORITY ACCESS TO RECORDS

The Authority shall have access during normal business hours to all records and documents of the Contractor relating to any service provided under this Agreement, amounts for which it has been compensated, or claims he should be compensated, by The Authority above those included in the lump sum compensation set forth elsewhere herein. All Contractor records shall be kept in the Port District. The Contractor shall obtain for The Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three (3) years after Final Payment to the Contractor, provided, however, that if within the aforesaid one year period The Authority has notified the Contractor in writing of a pending claim by The Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of his subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six (6) 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 shall provide, at no cost to the Authority, access for and reasonable assistance to such auditors from the Authority or the Authority's external auditors that may, from time to time, be designated to audit detail records which support Contractor charges to the Authority. The Authority shall have access to the detail records that support Contractor charges to the Authority for up to three (3) years following the termination of the Contract.

No provision in this Contract giving The Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents that The Authority would have in the absence of such provision.

35. 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 the Port Authority 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 the Port Authority, 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 the Port Authority, 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, the Port Authority 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 the Port Authority deems necessary and without cost to the Port Authority. 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 the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority 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 the Port Authority 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 the Port Authority and the public as may be directed by the Port Authority.

36. CLAIMS OF THIRD PERSONS

The Contractor undertakes to pay all claims lawfully made against him by subcontractors, materialmen and workmen, and all claims lawfully made against him 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.

37. 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 11 of these Terms and Conditions entitled “Default, Revocation, or Suspension of Contract.”
- 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.”

38. 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. received a less than satisfactory rating on a public or government contract;
- d. 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;
- e. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- f. 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;

- g. 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
- h. 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

- a. 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;
- b. 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;
- c. 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;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the 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
- f. 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.

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

6. Obligation to Report

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by the section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Contractor knows or should reasonably know that a principal, employee, or agent of the Contractor or of its subcontractor(s) has committed a violation of federal, New York or New Jersey law addressing or governing: antitrust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information 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 how to report information to the Office of Inspector General). Failing to

report such conduct may be grounds for a finding of non-responsibility. The Contractor shall not take any Retaliatory Action against any of its employees for reporting such conduct.

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.

7. 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.

8. Integrity Monitor

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Contract, the Contractor and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Contract. Any failure to cooperate may result in the termination of this Contract. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

9. Right to Audit

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Contractor with respect to the Work and the Contract, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Contract. The Contractor shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

The Contractor agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Contractor or any of its employees, or subcontractors or any of its employees, are discovered. The Contractor shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Contractor an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

10. Definitions

As used in this section, 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, the Port Authority of New York and New Jersey and its wholly owned subsidiaries 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.

Retaliatory Action- Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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; except and until the Contract has been awarded, then it shall mean Contractor;

Bidding - shall mean executing this Contract.

39. 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, revised as of April 2, 2018, and as may be further amended)*, 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 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 the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

40. 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.

41. 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.

42. NO ESTOPPEL OR WAIVER

The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Director or any officer, agent or employee of The Authority, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and The Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any monies which may be paid to him or for his account in excess of those to which he is lawfully entitled.

43. NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES

Neither the Commissioners of the Authority, nor any officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

44. MODIFICATION OF CONTRACT

No change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

45. M/WBE GOOD FAITH PARTICIPATION

The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority Business Enterprises (MBEs) and Port Authority Certified Women-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. If this Contract contains participation goals, the Contractor shall use good faith efforts to achieve the goals.

Good faith efforts to include participation by Port Authority certified MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into small portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from a Port Authority certified MBE/WBE. To access the Port Authority's Directory of MBE/WBE Certified Firms go to www.panynj.gov/supplierdiversty
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs on a timely basis.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

46. 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 Manager of the Facility, 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 the Port Authority. No equipment or facilities of the Port Authority 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.

47. CODE OF ETHICS FOR PORT AUTHORITY VENDORS

Pursuant to the Code of Ethics for Port Authority Vendors (the “Code”), Contractors must execute a Compliance Certification, and provide it to the Port Authority, prior to beginning Work under this Contract. This Compliance Certification, once executed, is a material and integral part of the Contract. A copy of the Compliance Certification must be retained by the Contractor, unless and until the Port Authority indicates that the Certification may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor’s Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, the Port Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Port Authority will have no further commercial dealings with the Vendor. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

48. ENTIRE AGREEMENT

This Contract shall be comprised of the documents as set forth in the award letter.

ATTACHMENT C
CONTRACT SPECIFIC TERMS AND CONDITIONS

1. General Agreement 2

2. Duration..... 2

3. Payment 3

4.. MBE/WBE Subcontracting Provisions..... 4

1. **General Agreement**

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter called the “Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract, and fully set forth in the Scope of Work (Attachment A) and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the provisions of the Contract and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Scope of Work, but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Scope of Work, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

2. **Duration**

- a) The initial term of this Contract (hereinafter called the “Base Term” or “Base Period”) shall commence on date specified in the Contract award letter (hereinafter called the “Commencement Date”), and shall remain in effect for a period of three (3) years, unless otherwise terminated in accordance with the Contract.
- b) The Port Authority shall have the right to extend this Contract for two (2) additional one (1) year period(s) (hereinafter collectively referred to as the “Option Period(s)”), through the exercise of an option (the “Option(s)”) following the Expiration Date of the Base Term, upon the same terms and conditions as this Contract. If the Port Authority shall elect to exercise the Option(s) to extend this Contract, then, no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.
- c) The Port Authority shall have the absolute right to extend the Base Term for an additional period of up to one hundred and twenty (120) days subsequent to the Expiration Date of the Base Term, or the Expiration Date of the final exercised Option Period (hereinafter called the “Extension Period”), subject to the same terms and conditions of this Contract. The prices quoted by the Contractor for the Base Term shall remain in effect during this Extension Period without adjustment. If it so elects to extend the term of Contract, the Port Authority will advise the Contractor, in writing, that the term is so extended, and will stipulate the length of

the extended term, at least thirty (30) days prior to the expiration date of the previous contract period.

3. **Payment**

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder, a compensation calculated from the actual quantities of services performed and the respective prices inserted by the Contractor in the Cost Proposal(s) (Attachment E), forming a part of this Contract, exclusive of compensation under the clause hereof entitled "Extra Work". The manner of submission of all bills for payment to the Contractor by the Port Authority for services rendered under this Contract shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the agreed upon project milestones:

- a) Payment shall be made in accordance with the prices for the applicable service as they appear on the Cost Proposal(s), as the same may be adjusted from time to time as specified herein, minus any deductions for services not performed and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified, or as designated by the Manager.
- b) The Contractor shall submit to the Manager by the fifth (5th) day of each month following the month of commencement of this Contract (including the month following the termination, revocation, or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Manager for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice.

- c) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to (1) release the Contractor from any obligation under or upon this Contract, or to (2) estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to (3) preclude the Port Authority from recovering any monies (a) paid in excess of those lawfully due or (b) to which the Port Authority may be entitled on account of and any damage sustained by the Port Authority.
- d) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

“Final Payment”, as the term is used throughout this Contract, means the final payment made for services rendered in the last month of the Base Term or any extended term. However, should this Contract be terminated for any reason prior to the last month of the Base Term or any extended term, then Final Payment shall be the payment made for services rendered in the month during which such termination becomes effective. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment, however, final or otherwise shall operate to release the Contractor from any obligations in connection with this Contract.

4.. MBE/WBE Subcontracting Provisions

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority Business Enterprises (MBEs) and Port Authority Certified Women-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

The Contractor shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Contract price for Port Authority certified MBEs and ten percent (10%) of the total Contract price for Port Authority certified WBEs.

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from a Port Authority certified MBE/WBE. To access the Port Authority's Directory of MBE/WBE Port Authority certified firms go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html>.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs as defined in the prompt payment provision below.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Bidders are directed to use form PA3760A as the recording mechanism for the MBE/WBE Participation Plan, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

Bidders shall include with their bids, a MBE/WBE Participation Plan for each MBE/WBE subcontractor, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

Each MBE/WBE Participation Plan submitted by the Contractor to the Port Authority shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of MBE/WBE included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subcontractors listed on the MBE/WBE Participation Plans must be certified by the Port Authority in order for the Contractor to receive credit toward the MBE/WBE goals set forth in this Contract. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Contract.

Subsequent to Contract award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the MBE/WBE Participation Plans, Contractors are directed to use form PA3760B, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subcontractors or suppliers for those named in their approved plan without the

Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices a Statement of Subcontractor Payments (PA3968) which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

Prompt Payment/Retainage

The Contractor agrees to pay each subcontractor under this Contract, for satisfactory performance of its subcontract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return retainage payments, if any, to each subcontractor within ten days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Authority.

MBE/WBE Conditions of Participation

MBE/WBE participation will be counted toward meeting the MBE/WBE contract goal, subject to all of the following conditions:

A. **Commercially Useful Function.** An MBE/WBE 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 MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Contractor shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE 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 MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

B. **Work Force.** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an

individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

C. Supervision. All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

D. Equipment: MBE/WBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the MBE/WBE obtains equipment from the Contractor, their affiliates and other subcontractors performing Work on the Contract, the MBE/WBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from 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.

Counting MBE/WBE Participation

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs 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 goal.

A. Subcontractors. One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subcontractor will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Contractor, other Subcontractors or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE goals only if the MBE/WBE subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

B. Manufacturers/Fabricators. One hundred percent (100%) of the expenditure to an MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.

C. Material Suppliers. Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE 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. Broker's/Manufacturer's Representatives. One hundred percent (100%) 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 an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE 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 of the materials and supplies themselves will not be counted.

E. Services. One hundred percent (100%) of fees or commissions charged by an MBE/WBE 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 the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Trucking Operations. If using an MBE/WBE firm for trucking operations, the MBE/WBE trucking firm of record is the firm that is listed on the MBE/WBE Participation Plan. The MBE/WBE 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 for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the MBE/WBE goal. The MBE/WBE trucking firm of record shall control the day-to-day MBE/WBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.

1. MBE/WBE Owned/Leased Trucks. One hundred percent (100%) of the value of the trucking operations the MBE/WBE provides for the performance of the Work using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the MBE/WBE using drivers it employs, will be counted toward the MBE/WBE goal.

2. MBE/WBE Short-Term Leased Trucks. The MBE/WBE may lease trucks on a short-term basis from another MBE/WBE, including an owner/operator who is Port Authority certified as an MBE/WBE. One hundred percent (100%) of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.

3. Non-MBE/WBE Trucks. The MBE/WBE may lease trucks on a short-term basis from a non-MBE/WBE, including an owner-operator. One hundred percent (100%) of the fee or commission the MBE/WBE receives as a result of the lease arrangement will be counted toward the MBE/WBE goal. The value of the trucking operations provided by the lessee will not be counted toward the MBE/WBE goal.

G. Joint Venture. Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE 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 MBE/WBE 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.

ATTACHMENT E - Cost Proposal Form

PART I		(A)	(B)	(C)		
LINE #	MODEL	DESCRIPTION	EST. QTY	UNIT PRICE	EXTENDED PRICE (A x B)	COMMENTS
1		Complete Portable Under Vehicle Surveillance System (inclusive system controller, power supply unit, storage, rugged scanner unit ramp, system cables, monitor, usb keyboard and mouse, durable storage/carrying case)	5	\$	\$	Equipment costs.
2		Installation/Implementation	1	\$	\$	This item should include all professional services required for installation and system setup for five (5) UVSS devices at World Trade Center Campus. Proposer shall submit a milestone payment schedule to accompany the Cost Proposal form, subject to PA approval, for the completion of this Phase.
3		Automatic Licenses Plate Recognition	4	\$	\$	Option to integrate with the Portable Under Vehicle Surveillance System
4		End-User Training	1	\$	\$	Costs associated with proposed training program.
5		Maintenance and Support	3 Years	\$	\$	Support and Maintenance costs for the Proposer's maintenance program. If Software and Hardware maintenance costs are separated, please indicate pricing for both.
6		SUBTOTAL		\$		\$

Instruction to Bidders: Column A times Column B = Column C (Items 1 through 5)

PART II		(C)	(D)
OPTION PERIOD - MAINTENANCE PRICING		Quarterly Cost	Annual Cost
6	Option Period One (1) - Maintenance Pricing	\$	\$
7	Option Period Two (2) - Maintenance Pricing	\$	\$
8	Total Option Period Costs - Two (2) Years	\$	\$

Instruction to Bidder: Column C (line 6 - 7) x 4 (Four Quarters in Calendar Year) = Column D (Annual Cost)

9	TOTAL PART I & PART II (line 6 + 8)	\$
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ATTACHMENT F - Certified Environmentally Preferable Products/Practices

Proposer Name: _____ Date: _____

In line with the Port Authority's efforts to promote products and practices which reduce our impact on the environment and human health, Proposers are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Proposers **must** complete this form and submit it with their response, if appropriate. Proposers **must** submit appropriate documentation to support the items for which the Proposer indicates a "Yes" and present this documentation in the proper sequence of this Attachment.

1. Packaging

Has the Proposer implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- _____ Use of corrugated materials that exceed the EPA recommended post-consumer recycled content
- _____ Use of other packaging materials that contain recycled content and are recyclable in most local programs
- _____ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- _____ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- _____ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals

If yes, a description of the practices being followed must be included with the submission.

2. Business Practices / Operations / Manufacturing

Does the Proposer engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates "Yes")

- _____ Recycles materials in the warehouse or other operations
- _____ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- _____ Use of energy efficient office equipment or signage or the incorporation of green building design elements
- _____ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- _____ Other sustainable initiative

If yes, a description of the practices being followed must be included with the submission.

3. Training and Education

Does the Proposer conduct/offer a program to train or inform customers and employees of the environmental benefits of the products to be offered under this contract, and/or does the Proposer conduct environmental training of its own staff?

- Yes No If yes, Proposer must attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications

Has the Proposer or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates "Yes")

- _____ ISO 14000 or adopted some other equivalent environmental management system
- _____ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- _____ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

If yes, Proposers must attach copies of the certificates obtained.

5. Other Environmental Criteria

Proposers are encouraged to respond to criteria specifically indicated in this RFP as "Management Approach" (and attach the appropriate documentation) to receive consideration in the evaluation.

I hereby certify, under penalty of the law that the above statements are true and correct.

_____ Name _____ Date

ATTACHMENT G - Audit Department Controls Requirement Contract Checklist

General

- Documented procedures, flowcharts and process maps for the application.
- Conduct regular audits, vulnerability testing, and security scanners.
- SSAE 16 SOC 2 (previously known as SAS 70 Level 2)
- Federal Risk and Authorization Management Program (FedRAMP) Certification
- ISO27001 Certification
- Criminal Justice Information Services security policies and procedures (CJIS) compliant for law enforcement information and systems.
- Background check should be performed on all personnel.

System/Security Administration

- Administrative personnel should receive training.
- Administrative staff should receive general security awareness training before access is provided. All security training must be reinforced at least every three years and must be tracked as per the PA Information Security Handbook.
- System and security administration procedures should be documented and distributed.
- Administrator(s) roles and responsibilities should be documented.
- Developers and/or programmers should not have access to the production server.
- Operating system administrators should not have access to the production database and application.

Hardening of operating system/database that supports the application:

- Disable and/or remove unnecessary ports/services.
- Remove all manufacturer samples from the production system. Scripts must be removed from production systems, except those required for the operation and maintenance of the system.
- Default, public, and guest accounts should be secured/locked/removed.
- Change all default passwords; delete all default content and login scripts.
- Limit administrative and user account privilege and access.
- Document system accounts like administrator, root, oracle, and sys.
- Document user/group access rights
 - Users/groups should be setup with least access required to perform job responsibilities.
- Implement access control at the database level (i.e. user roles and permissions, passwords, secure links)
- Use secure encrypted remote access methods.
- If the application is a web application, log (and monitor) web traffic and trend the activity looking for abnormal activity.
- Ensure that appropriate security and vulnerability assessment tools are running.
- At login, last user login should not display.
- Inventory listing of hardware and software should be current and maintained.

License Management

- Ensure that application licensing requirements are documented, reviewed and maintained.
- Application licenses should be current/valid and individuals/groups with application access should have completed the necessary access request forms and adhere to licensing requirements.

Logical Access Controls

- All users are required to read the Agency Policy Computing Resource Administrative Instruction (AI 15-4.03) and sign an acknowledgement of the Agency IT Acceptable Use Code of Conduct policy prior to account activation.
- Procedures to grant/modify/delete access should be documented.
 - Access request forms for adding/modifying/deleting users should be used.
 - Account expiration for contractors and consultants.
 - Accounts adequately identify the user – no generic accounts
- Ensure that security administrator procedures exist to:
 - Create/remove application access in a timely manner
 - Review user roles/permissions
- Validate that all users have accessed the application within the past 90 days.
 - Review dormant accounts
 - Inactive accounts should be removed.
- Each user has a unique user ID as described in the Port Authority Standard and Guidelines.
 - All user accounts profile should include Employee ID# and full user name.
- Roles are setup with least access required to perform job responsibilities.
- Roles should have a segregation of duties/roles.
- All accounts must have an individual or business group assigned to be responsible for account management.
- Segregation of duties and areas of responsibility must be implemented where appropriate.
- Whenever segregation of duties is not technically feasible, other compensatory controls must be implemented, such as monitoring of activities, audit trails and management supervision. The PA must approve these compensating controls.
- Review of audit trails and system approvals must be performed independent and retained to document the implementation of these security controls
- Access Control List (ACL) should include:
 - Current list of ACL
 - Creation and updates to ACL
 - Testing and approvals of ACL
- The application should have the PA's warning banner on the login screen. The application has a warning banner, terms of use, and/or privacy statement that was approved by the Port Authority on the login screen.
- The system should have an access role that would allow read only access to all application, database and operating system screens, functions, logs and reports.
- Remote access should be approved, secured, and documented in accordance with PA policy. Remote access, at a minimum, must consist of multifactor authentication

mechanisms, secured communications (SSL/ VPN encryption methodology), access control mechanisms and logging of user activity.

Password Controls

- Ensure that password controls for the system are consistent with this requirements or more stringent
 - Passwords must be at least 10 alphanumeric characters long
 - Passwords must be changed every 90 days (administrators every 30 days)
 - Passwords must not be shared
 - Password complexity enable (capital letter, number, special character)
 - contain at least two upper and lowercase alphabetic characters,
 - contain at least one number (0-9)
 - contain at least one special character (e.g.-+}:>_?&\$%#).
 - Accounts should be locked after a three logon failures
 - Passwords should not be the same account name
 - No concurrent login capabilities
- End user accounts will be disabled (not deleted) after 60 days of non-use.
- Password file should be securely stored with limited access and encrypted.
- Application forces initial passwords to be changed and the initial passwords should not be easily guessable.
- Maintain a password dictionary and password history should be set to 5.
- Set “automatic session timeout” to 15 minutes of inactivity and require user to log back in with valid ID and password.
- Smartphones and smart device, where capable, shall leverage biometric access to provide the most security for the least inconvenience.

Application Controls

Data Validation & Input Controls

- The application should have input controls to verify the validity of the data entered.

Data Retention and Management

- All data should be classified according to its sensitivity (confidential, etc) and protected accordingly.
- Data archive strategy should be documented and in place.
 - Should specify how long active data is kept.

Data Integrity and Security

- Sensitive data, such as credit card #s and social security #s, should be encrypted.
- Data should be restricted and audit trails should be available to identify all user activity include view access to sensitive data.
- Sensitive data should be stored in the database encrypted and blocked from user views in the application unless it is authorized.
- Encryptions level at a minimum should be AES 256bit when encryption is used.

Application Interfaces

- Interfaces should have secured transmission and be archived.
- Reconciliation of data should be done on a batch record and totals. Detail data reconciliations should be completed on periodic basis.

Processing Controls

- Application databases/interfaces should have the necessary controls to prevent processing of inaccurate, duplicate, or unauthorized transactions and producing inaccurate outputs.
- Controls to ensure that all data is processed and accounted for should be in place.
- Rejected items should be logged, tracked and resolved in a timely manner.

Change Management

- Processes and tools should be used to report, track, approve, fix, and monitor changes on the application.
- The application and all changes to the application should be tested before being put into production.
 - Documentation of approval for change and evidence of testing should be in place.
 - Specific timetable/schedule should be documented.
- Emergency procedures should be documented and distributed.
- Separate environments are required for development, test, quality assurance, production.
- Procedures should require that no changes be made directly in the production environment without going through the development/test/quality assurance environments.
- Formal change control procedures for all systems must be developed, implemented and enforced.
- Where technically feasible, development software and tools must not be maintained on production systems.
- Source code for application or software must not be stored on the production system running that application or software.
- Privileged access to production systems by development staff must be restricted.

Application Logging, Audit Trails and Record Retention

- Audit trails for operating, application, and database systems should exist and reviewed.
- Users and roles should be tracked and reviewed
 - Maintain documentation
- All failed logon attempts should be logged.
- All sensitive transactions and changes should be logged and an audit trail created.
- Audit trails should contain who made the change, when it was made, and what was changed.
- Only the security administrator should have access to change or delete these logs or audit trails.
- Audit trails should be reviewed by the business owner(s) and security administrator.
- Management reporting should be produced through the application.

- Access reports by user and privilege should be produced and reviewed periodically including access violation reports.

Contingency Planning, Disaster Recovery and Backup Management

- A business contingency plan and a disaster recovery plan for the application should be documented and stored off-site, including escalation plan and current call tree.
- Plans should be tested and the outcomes of the tests (success/failure) should be documented.
- Regular backups of the application and the application data should be stored off-site.
- Application executables should be stored off-site or in escrow.
- Application configurations should be documented and backed-up.
- Full system backup should be encrypted.
- Backup procedures should be documented.
- Tape maintenance should include:
 - Periodically testing integrity of tape
 - Procedures for tape destruction due to faulty or scratched hardware.

Performance Monitoring

- Incident monitoring procedures should be documented and incidents logs should be reviewed to ensure that appropriate action is taken.
- Performance statistics should be examined and reviewed periodically by system administrators/business owner(s).
 - If vendor(s) support the application, a service level agreement for uptime, performance monitoring, updates, etc should be confirmed.
- Baseline tools or security products should be used and checked on a quarterly basis.

Patch Management

- Patch management procedures and documentation
 - Procedures should include testing, approvals, and distribution.
 - Documentation should include emergency procedures.
- Apply all new patches and fixes to operating system and application software for security.
- All security patches must be reviewed, evaluated and appropriately applied in a timely manner. This process must be automated, where technically possible.

Physical Protection

- Physical access to the application hardware should be appropriately restricted.
 - Physical access secured by single authentication mechanism i.e. swipe card.
 - Physical security adequate for equipment (locked cabinets).
- Appropriate fire suppression systems should be in place.
- Environmental condition adequately controlled (no water, dirt, clutter) and monitored.
 - Temperature and humidity monitoring should be implemented.
- Security cameras installed in sensitive areas
- Power surge protection and emergency power backup are in place.
- All hardware and software assets must be inventoried.

- Visitors including maintenance personnel, to data center, server and network equipment storage facilities must be escorted at all times.

Anti-virus/Malware/ Integrity/Vulnerability Software Management

- Virus patch management procedures must be documented, including emergency update procedures.
- Anti-virus and software integrity checkers must be implemented to prevent and detect the introduction of malicious code or other threats.
- Virus software engines and definitions must be implemented and up-to-date.
- A remote distribution server should be implemented for virus software updates and documentation on remote distribution should be current and maintained.
- Intrusion detection system must be in place,
- All systems must have vulnerability scans performed before going into production and periodically thereafter. Appropriate action, such as patching or updating the system, must be taken to address discovered vulnerabilities.
- Host-based intrusion detection/ firewalls software must be installed and enabled on all systems to protect from threats and to restrict access. Incident response procedures must be in place to address any alerts identified and system owner should be notified of alerts and what action was taken to mitigate the issues.
- Monitoring systems must be deployed (e.g., intrusion detection/prevention systems) at strategic network locations to monitor inbound, outbound and internal network traffic.
- Monitoring systems must be configured to alert incident response personnel to indications of compromise or potential compromise.
- Procedures must be established to maintain information security during an adverse event.
- Firewalls should be implemented.
- Firewall rules documentation should be up-to-date.
- Network management connections must be performed from a secure, dedicated network.
- Network authentication is required for all devices connecting internal networks.

Wireless Device

- Devices should be using WPA/WPA2 and AES encryption or better.
- Devices should disallow broadcasting of the SSID.
- All default parameters should be changed.
- Devices should have MAC address filtering enable or some type of authentication mechanism in place.

Web Application Vulnerabilities and Controls

- The following best practice and standards from these three web sites shall be followed:
 - The Open Web Application Security Project (OWASP) - www.owasp.org
 - www.webappsec.org (a consortium of web application security professionals)
 - Center for Internet Security (CIS) – www.cisecurity.org
- Perform data validation & integrity checks for field values and ensure the HTML special characters are stripped for all HTML request.
- Do not allow site pages to be cached by user browsers.

- All sensitive, personal or confidential data (including SSN, passwords, session IDs for sensitive applications, confidential or sensitive business transactions, etc.) should be transmitted between browser and server within an SSL-encrypted session (or other encrypted transmission) and are encrypted in the database at rest.
- All sensitive and personal data should be masked and encrypted were possible.
- Legal Issues:
 - The site should have a privacy statement and term of usage.
 - American Disability Act – Section 508 should be consider during the development process due to the requirement that federal agencies’ electronic and information technology is accessible to people with disabilities.
- Web Authentication: To prevent passwords from being passed in the clear, have authentication occur within an SSL encrypted tunnel. Use SSL (certificate) to protect the password.
- Password Reset:
 - For internal applications, reset passwords via the helpdesk or security administrator of the site
 - For external applications, send temporary password to known e-mail address, that must be changed upon login and/or
 - Have customer service reset after the user has been validated.
 - If possible, use two factor authentications like Secure ID fobs.

Credit Card Processing Checklist

- If credit cards are accepted, PCI Standards (PCI DSS v3.0) should be followed and the process should be PCI compliant. Ensure all vendors and consultants are required to be PCI compliant. Attachment - The payment card application should be PCI compliant (PA-DSS v3.0).
- A segregated network and/or an approved Point of Sale terminal should be in place for the system or terminal used to process credit card transactions.
- The credit card processor standard and requirements should be followed, i.e. maintain transaction data for two years.
- Maintain the security of the customer information, including not storing credit numbers, the cardholder CVC/CVV numbers or any of the data from the magnetic strip on the credit card.
- Maintain the transaction data for contesting chargebacks, ensure that the processor fees are appropriate and do reconciliations of the transactions processed and the money deposited in the Port Authority bank accounts.
- The appropriate Port Authority functional areas should be made aware credit card processing activity and should be involved applying for the Merchant ID for MasterCard/Visa, Discover and American Express.
- Create a privacy policy and procedure for staff and consultants.
- Perform quarterly vulnerability scans of the network that contains the credit card processing, annual PCI reviews according to the PCI DSS, and annual system penetration testing.
- Perform the appropriate annual assessment and provide a report on compliance (ROC) which state shows compliance.

Disaster Recovery

- The Disaster Recovery plan should include at a minimum the following areas.
 - Business Impact Analysis
 - Critical Time Frame
 - Application System Impact Statements
 - Recovery Strategy & Approach
 - Recovery Time Objectives (RTO)/Recovery Point Objectives (RPO) for all critical systems.
 - Disaster Definition
 - Detailed Recovery Steps for each Disaster Definition
 - Escalation Plans and Decision Points
 - System Components- An inventory of the criticality of systems (including but not limited to software and operating systems, firewalls, switches, routers and other communication equipment).
 - Disaster Recovery Emergency Procedures
 - Plan Procedure Checklist
 - Disaster Recovery Team Organization
 - Salvage Team & Team Responsibilities
 - Disaster Recovery Responsibilities
 - Essential Position – Require back-up personnel to be assigned.
 - Contacts information Disaster Recovery Team and critical vendors - this area should be reviewed semi-annually for updates and changes.
 - Post-Disaster – Detail what steps need to be taken to move from disaster mode back to normal operations.
- Contingency plans (e.g., business continuity plans, disaster recovery plans, continuity of operations plans) must be established and tested regularly.
- Backup copies of procedures, software, and system images should be taken regularly and moved offsite.
- Backups and restoration must be tested regularly.

ATTACHMENT H – Proposer Reference Form

Name of Proposer:.....

Please provide a list of references on the firm’s performance of similar work within the last five years, including all current contracts. Use additional sheets as necessary.

Include the following information for each reference:

Reference #1

Customer Name:.....

Address:.....

Contact Name and Title:.....

Phone and Fax Numbers of Contact:.....

Contract date(s):

Contract cost:.....

Description of work:

.....

.....

Reference #2

Customer Name:.....

Address:.....

Contact Name and Title:.....

Phone and Fax Numbers of Contact:.....

Contract date(s):

Contract cost:.....

Description of work:

.....

.....

Reference #3

Customer Name:.....

Address:.....

Contact Name and Title:.....

Phone and Fax Numbers of Contact:.....

Contract date (s):

Contract cost:.....

Description of work:

.....

.....