

**THE PORT AUTHORITY OF NY & NJ**  
**PROCUREMENT DEPARTMENT**  
**ATTN: BID/PROPOSAL CUSTODIAN**  
**TWO MONTGOMERY STREET, 3RD FLOOR**  
**JERSEY CITY, NEW JERSEY 07302**

**REQUEST FOR PROPOSALS**

**ISSUE DATE: JANUARY 25, 2013**

**TITLE: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE CONSTRUCTION OF THE METROPOLITAN TRANSPORTATION AUTHORITY CORTLANDT STREET NO. 1-LINE SUBWAY STATION AT THE WORLD TRADE CENTER SITE DURING 2013-2015**

**RFP NO.: 32125**

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

**QUESTIONS DUE BY: February 4, 2013 TIME: 5:00 P.M.**

**PROPOSAL DUE DATE: February 8, 2013 TIME: 2:00 P.M.**

**CONTACT: IRANISS MOREL**

**PHONE: (212) 435-5502**

**FAX: (201) 395-3470**

**EMAIL: [imorel@panynj.gov](mailto:imorel@panynj.gov)**

January 25, 2013

**SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE CONSTRUCTION OF THE METROPOLITAN TRANSPORTATION AUTHORITY CORTLANDT STREET NO. 1-LINE SUBWAY STATION AT THE WORLD TRADE CENTER SITE DURING 2013-2015 (RFP NO. 32125)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to provide Expert Professional Integrity Monitoring Services for the construction of the Metropolitan Transportation Authority Cortlandt Street No. 1-Line Subway Station at the World Trade Center Site (the “Cortlandt Project”). The scope of the tasks to be performed by the Consultant are set forth in Attachment A to the Authority’s standard agreement (the “Agreement”), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

Upon completion of the solicitation process, the Authority may elect to enter into an Agreement with one or more firms, as it deems necessary and appropriate, or in the alternative, may elect to not award a contract or cancel any existing contract prior to the commencement of services thereunder.

RFP Contents

Request for Proposals Cover Letter
Attachment A: Scope of Services
Attachment B: Agreement on Terms of Discussion
Attachment C: M/WBE Participation Plan
Attachment D: Pricing and Compensation Proposal (in <a href="#">Excel format</a> )
Attachment E-1: Proposer Prerequisite A
Attachment E-2: Proposer Prerequisite B
Attachment F: Port Authority General Non-disclosure Agreement
Attachment G: The Port Authority of New York & New Jersey Information Security Handbook
Port Authority Standard Agreement

## **I. PROPOSAL FORMAT REQUIREMENTS**

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

- A. To be acceptable, the Proposal shall be of no more than 20 pages (double-sided using 12 point or greater font size), not including resumes. Each resume shall be two-page maximum, double-sided using 12 point or greater front size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Firm Name", and **RFP Number 32125** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section IV.
- C. All Proposals must be delivered in sealed envelopes and/or packages. Address Proposal to: The Port Authority of New York and New Jersey, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302, **Attention: RFP Custodian. Do not address your proposal to any other name.** Submit one (1) reproducible original and five (5) copies, along with one (1) compact disc copy, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc or any of the copies.

Consistent with environmentally preferable procurement practices, the 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.

- D. In your submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the Proposal, the Proposer should use its **full legal name without abbreviations**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- E. Your Proposals should be forwarded in sufficient time so that the Authority receives them no later than **2:00 p.m. on February 8, 2013**. The cover of your submittal must include the RFP Number (as stated above) and the RFP title. The Authority assumes no responsibility for delays caused by any delivery services.
- F. If your Proposal is to be delivered by messenger, please note that only individuals with valid photo identification will be permitted access to the Authority's offices. Messengers without valid identification shall be turned away and their packages not accepted.

## **II. PROPOSER PREREQUISITES:**

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

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

- A. The Proposer shall have a minimum of five (5) years of demonstrated experience in the performance of integrity monitoring services; and
- B. The Proposer shall have at least two (2) years experience performing integrity monitoring services on a minimum of two (2) construction projects, each with a construction value in excess of \$10 million.

Respondents shall submit at least three references, including affiliation, name, position and contact information. These references shall illustrate successful completion of projects and in the capacity of an Integrity Monitor for at least two (2) projects of scope and nature similar to this project within the past five years in a major U.S. City.

Proposer which is a joint venture, Limited Liability Company or other business form consisting of several entities, must collectively or individually satisfy the prerequisites.

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

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

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

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

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

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

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

**III. FINANCIAL INFORMATION**

The Proposer shall be required to demonstrate that it is financially capable of performing the required services as outlined in Attachment A. The determination of the Proposer's financial qualifications and ability to perform the required services will be the sole discretion of the Authority. The Proposer shall submit, with its Proposal, the following:

- A. Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss, and cash flow for the most recent calendar year or the Proposer's most recent fiscal year.
- B. Where the certified financial statements in paragraph A above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.
- C. Where the statements submitted pursuant to paragraphs A or B above do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.
- D. 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 of completion, and the name of an individual most familiar with the Proposer's work on these projects.

**IV. EVALUATION CRITERIA**

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

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

- A. Quality and depth of the experience and qualifications of the staff, including subconsultants, who will be performing services hereunder.
- B. Firm Qualification and Experience including subconsultants, who will be performing services hereunder.
- C. Technical and Management approach for the performance of services hereunder, including the M/WBE Participation Plan, as defined in the Port Authority Standard Agreement .

Award will be made to the responsible firm whose Proposal is most advantageous to the Authority. In determining which Proposal is most advantageous, the Authority will evaluate Proposals to determine which Proposal offers the greatest business value to the Authority based upon an analysis of the qualitative technical factors and price/cost in order to derive which Proposal represents the "most advantageous" to the Authority. In the event that two or

more Proposals are considered by the Authority to be basically equal in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, the Authority may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price proposal, if doing so would not be in the overall best interest of the Authority.

**V. PROPOSAL SUBMISSION REQUIREMENTS**

To respond to this RFP, the Proposer shall provide the following information:

- A. In the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion), signed by an officer of your company. If the Proposer is a joint venture, an authorized representative of each party shall sign the Agreement.
- B. All joint venture Proposers must provide documentation of their legal status. If the Proposal is submitted by a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this Proposal. Documents signed by a common law joint venture, in connection with this Proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally”.

NOTE: A common law joint venture is one whereby two or more companies join together for the purposes of submitting a proposal and performing the services required under the Agreement; a “partnership” of two separate entities for the purpose of performing the required services. A legal entity joint venture is a joint venture company whereby the joint venture members have created a new legal entity usually a corporation in which the joint venture members own all the stock.

C. Staff Qualifications and Experience

Provide the name(s) and title(s) of personnel who will be responsible for the performance of the requested services in addition to providing resumes for each, clearly indicating their relevant experience and specific areas of expertise. This shall include, but not be limited to, investigators, accountants, auditors, engineers, reviewers and various trade or professional titles. Each resume, limited to two (2) pages, shall include their education, professional credentials and employment histories. Also, include the resumes of subconsultants that will be involved in the provision of services required under this Agreement.

D. Firm Qualification and Experience

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

In addition, provide a statement from a principal of your Firm identifying your Firm’s specific relevant experience in the performance of services similar to those contemplated herein. For all projects referenced, include the name of the customer or client, the date the services were provided, the nature of the services performed, the name of a contact person and current telephone number for verification purposes.

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

Provide a complete list of your Firm's affiliates and their involvement in the performance of the service contemplated hereunder.

E. Technical and Management Approach

1. Provide a detailed description of the proposed technical approach to be taken for the performance of the required services for each task in Attachment A. Demonstrate in detail the technical adequacy and feasibility of the approaches, audit and analytical techniques, methods and/or models proposed for the successful execution and completion of required tasks and the development and implementation of corruption prevention programs. Discuss proposed strategies to utilize subconsultants to perform any of the required services. Include a detailed statement indicating that the firm has the capacity to take on this additional work and that the proposed staff have the availability to perform this assignment if your firm is selected.
2. Provide a detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in your management approach shall include, but are not limited to the following: your proposed organizational structure to be responsive to the Authority's needs; your proposed approach and schedule for keeping the client apprised of the project status; and your proposed approach to ensuring the quality of the work product to be produced, as well as the practices and procedures your firm follows to control the costs of the project and stay within budget, including the costs associated with any subconsultants you may utilize to perform the required services.

F. M/WBE Participation

Provide your Minority/Women Business Enterprises ("M/WBE") Participation Plan, in accordance with the M/WBE Subconsulting Provisions hereunder. Proposers are directed to use form PA3749B as the recording mechanism for the M/WBE Participation Plan, annexed hereto as Attachment C. This form may also be downloaded at:

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

The M/WBE Participation Plan ("Plan") submitted by the Proposer to the Port Authority shall contain, at a minimum, the following:

- Identification of M/WBE's: Provide the names and addresses of all M/WBEs included in the Plan. If none are identified, describe your plan and process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan and in accordance with the requirements stated in the Standard Agreement.
- Scope of Work: Describe the specific scope of work each M/WBE firm will perform.

- Previous M/WBE Participation: Describe any previous or current M/WBE participation that the Proposer has utilized in the performance of its contracts.

All M/WBE subconsultants listed on the M/WBE Participation Plan must be certified by the Port Authority in order for the Proposer or Consultant to receive credit toward the M/WBE participation goals set forth in this Agreement. Port Authority M/WBE certified vendor information is available to all vendors who are registered with the Port Authority. Please log on to <https://panynjprocure.com/VenLogon.asp> to search for M/WBE firms by a particular commodity or service and <http://www.panynj.gov/business-opportunities/mwsbe-search.cfm> for construction firms. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform work under this Agreement.

Proposed M/WBE Participation Plans will be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights ("OBDCR"). Proposers may request a waiver of the M/WBE participation goals set forth in this Agreement by providing with its Proposal, information in accordance with this provision and Section 19 of the Standard Agreement attached hereto.

The Director has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent by qualified and certified WBEs on technical service projects.

If the Proposer/Consultant wishes to subcontract a portion of the work through a firm not listed in the Directory, but which the Consultant believes should be eligible for certification by the Authority because it is (1) an M/WBE, as defined above and in the Standard Agreement and (2) competent to perform portions of the work, the Proposer/Consultant shall submit an M/WBE Uniform Certification Application to the Port Authority of New York and New Jersey, Office of Business Diversity and Civil Rights ("OBDCR"), 233 Park Avenue South, 4<sup>th</sup> Floor, New York, NY 10003. The application is available online at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>. In addition, to update a previously-certified firm's certification file and to advise OBDCR of changes to any information, please email these changes to [OBJOcort@panynj.gov](mailto:OBJOcort@panynj.gov). Credit toward applicable goals will be granted only to Port Authority certified vendors. For more information about M/WBE Programs, call (212) 435-7808.

#### G. Pricing and Compensation Proposal

The Proposer shall complete and submit the Proposer's Pricing and Compensation Proposal forms (Attachment D) in accordance with Attachment A. The cost proposal shall be submitted in a separate, sealed package clearly labeled "PRICING AND COMPENSATION PROPOSAL" and shall include the following for the initial two(2) year period commencing in 2013 and (1)one (1) year option period:

1. The Consultant's fully loaded (All-Inclusive) Hourly Rates in accordance with Section 7.A of the Standard Agreement.
2. Cost of Subconsultants, in accordance with Section 7.B of the Standard Agreement.

3. Reimbursable expenses, in accordance with Section 7.C of the Standard Agreement.
  4. A staffing analysis for performance of Tasks outlined in Attachment A, inclusive of the Consultant's and subconsultants' staff. The staffing analysis shall identify the names, titles, and billing rates of specific staff, including principals and partners, to be assigned to the performance of each task, including an itemized estimate of anticipated out-of-pocket expenses for all tasks, by task. Please note that out-of-pocket expenses shall not include daily commutation or housing costs or any relocation costs that may be incurred by your staff in the performance of services under this Agreement. Typical job titles may include, but are not limited to:
    - a. Principal
    - b. Project Manager
    - c. Legal (e.g. Attorney, Paralegal)
    - d. Auditor (Forensic)
    - e. Investigator
    - f. Specialist (e.g. Engineering, Environmental and Safety)
  5. Provide a written narrative of any assumptions and other information that forms the basis of the proposed price.
  6. If your firm has been recently audited by the Federal government or the states of New York or New Jersey, provide documentation of rates negotiated/accepted.
  7. The Proposer should submit any backup material deemed appropriate, including but not limited to the computation of the Fully Loaded Hourly rates and the firm's Certified Overhead Statement along with the Attachment E - Pricing and Compensation Proposal for consideration of costs. Failure by a Proposer to submit such material as requested may deem such Proposer as ineligible for award.
- H. A complete list of your firm's affiliates.
- I. The Proposer is expected to agree with the form of agreement and its terms and conditions. The Proposer should therefore not make any changes in the Agreement nor restate any of its provisions in your Proposal or supporting material. *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.* The Authority is under no obligation to entertain or accept any such specific exceptions. Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.
- J. **CONTRACTOR'S INTEGRITY PROVISIONS**  
 If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees". By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with his Proposal explaining why any such certification(s) cannot be made.

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

K. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Background Qualifications Questionnaire (BQQ), required for all consultants, subconsultants, contractors and vendors providing services at the World Trade Center Site. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

[http://www.panynj.gov/wtcprogress/pdf/PANYNJ\\_OIG\\_WTC\\_BQQP.zip](http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BQQP.zip)

A BQQ is also to be submitted for any subcontractor, subconsultant or vendor known to the Proposer at the time of Proposal submission.

L. GENERAL CONFLICT OF INTEREST

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

In the opinion of the Authority, any Proposer performing construction management, general contracting, design, environmental, integrity monitoring 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, but not limited to, the Lower Manhattan Development Corporation (LMDC), the New York State Department of Transportation (NYSDOT), or the 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 Consultant shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

The Authority reserves the right to disqualify the Proposer if, in 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.

#### **M. ORGANIZATIONAL CONFLICT OF INTEREST**

1. This Agreement 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 Consultant.

a. The Consultant shall have access to confidential and/or sensitive Authority information in the course of Agreement performance. Additionally, the Consultant may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Consultant 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 Consultant 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 Consultant 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 Consultant was ineligible to complete.

2. The Consultant, 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 the Consultant 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 limited to, requiring the Consultant to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority, determining the Consultant ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Consultant’s actions under this Agreement or violations of this numbered clause, or terminating this Agreement, in whole or in part.

## **VI. ORAL PRESENTATIONS**

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested by the Authority. It should be noted that Proposers selected to make presentations may be given only short advance notice. Presentations will be limited to 45 minutes and should include only the material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer’s staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than three (3) other staff members who are proposed to work on this project. Notification of presentation scheduling will be made by e-mail. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate contact person in the event that the primary contact person is unavailable.

**VII. ADDITIONAL INFORMATION:**

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

Your attention is directed to Paragraph 23 of the Agreement regarding nondisclosure/confidentiality agreements (Exhibit A of the Port Authority Standard Agreement). If utilizing subconsultants and are selected to perform the required services, your firm will be requested to complete the Statement of Subcontractor Payments, included herein as Attachment F of the Port Authority Standard Agreement.

**VIII. CITY PAYROLL TAX**

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

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

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

**IX. SALES TAX EXEMPTION**

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

**X. DISPOSAL OF CONTRACT DOCUMENTS**

The Proposers shall ensure that all recipients of Contract documents through them, including those who do not propose, and any prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must secure and appropriately dispose of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as cross shredding or arrangements with refuse handlers which ensure that third persons will not have access to the documents’ contents before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3<sup>rd</sup> Floor, 3 Gateway Center, Newark NJ 07102 or the office of the Director of Procurement,

The Port Authority of New York and New Jersey, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.

**XI. PROTEST PROCEDURES**

The information found at the following link is the sole administrative remedy for protesting procurement decisions:

[http://www.panynj.gov/DoingBusinessWith/contractors/pdfs/Protest\\_Procedures.pdf](http://www.panynj.gov/DoingBusinessWith/contractors/pdfs/Protest_Procedures.pdf)

**XII. NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT(S)**

All Proposers are required to Sign and Submit along with their Proposal, the Non-Disclosure and Confidentiality Agreement(s) (NDAs), as attached to the Port Authority Standard Agreement as Exhibit A of the Port Authority Standard Agreement, or an Acknowledgment of an existing NDA, provided by the Authority.

Following award of this contract, the Authority will forward two (2) copies of the Agreement to the selected firm, which must sign and return both copies. The return to you of one (1) copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please e-mail them to Iraniss Morel, Contract Specialist at [imorel@panynj.gov](mailto:imorel@panynj.gov) or (212) 435-5502. All such emails must have "RFP 32125" in the subject line. All questions should be submitted no later than 4:00 P.M. four days prior to the Proposal Due Date. Neither Ms. Morel nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to its requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

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.

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

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

The Authority reserves the qualified right, to reject all Proposals, to undertake discussions and modifications with one or more Proposers/Consultants, to waive defects in Proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information may be found on the Authority website at <http://www.panynj.gov/business-opportunities/vendor-information.html>. Also, Proposers are encouraged to periodically access the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> for RFP updates and addenda.

Sincerely yours,

Richard Perez  
Manager, FTA/WTC Site Projects  
Procurement Department

## ATTACHMENT A

### **PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR CONSTRUCTION OF THE METROPOLITAN TRANSPORTATION AUTHORITY CORTLANDT STREET NO. 1-LINE SUBWAY STATION AT THE WORLD TRADE CENTER SITE DURING 2013-2015**

#### **I. BACKGROUND**

The Port Authority of New York and New Jersey (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. The Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

The Consultant (also referred to herein as the “Project Integrity Monitor”) shall work with the Authority Inspector General in designing an appropriate integrity monitorship program for the construction of the Metropolitan Transportation Authority (“MTA”) Cortlandt Street No. 1-Line Subway Station At The World Trade Center Site (the “Cortlandt Project”).

The Cortlandt Street station was destroyed during the terrorist attacks on September 11, 2001. In 2004, the station was reconstructed, following the original station plans, in order to quickly restore subway service to Lower Manhattan. As the World Trade Center (“WTC”) Site Master Plan was developed, the MTA and all participating parties agreed that the Cortlandt Street Station would require expansion and allocation of additional space to integrate the new station with the surrounding facilities.

In order to effectively monitor for integrity risks, the Project Integrity Monitor must understand the type of corruption and fraud that might occur in the course of constructing the Cortlandt Street Station, as well as the safety and environmental violations that can be committed by construction contractors. The Project Integrity Monitor must also have the expertise and industry knowledge to allow it to create proactive, customized solutions to prevent or deter fraud, corruption and/or safety/environmental violations from occurring, while not inhibiting the Cortlandt Street Station’s schedule, cost, or contractor performance. The Project Integrity Monitor will have to work cooperatively with numerous construction contractors and be able to coordinate its work accordingly.

It is anticipated that the Project Integrity Monitor will have sophisticated legal, forensic auditing, investigative and loss prevention skills with particular expertise in the investigation and prosecution of construction, labor, and environmental fraud schemes. The Project Integrity Monitor would also include individuals with expertise in construction management, engineering, architecture, and safety compliance.

#### CORTLANDT STREET PROJECT DESCRIPTION

The scope of work to construct/reconstruct the Cortlandt Street Station will be broken up into two components: Cortlandt Street Station superstructure and Cortlandt Street Station finishes and will include the demolition and reconstruction of platforms and tracks, rail alignment, architectural finishes and mechanical/electrical/plumbing work, creation of vault space along Liberty Street for Consolidated Edison utility service and construction of back-of-house (i.e., non-public) space for station operations.

The completed station will conform to MTA standards and guidelines, New York State building codes and National Fire Protection Association 130 Standard for smoke control, will be Americans with Disabilities Act compliant, and will provide below-grade access to the WTC Hub and Silverstein Properties, Inc. Towers 2 and 3 as the Cortlandt Street Station project interfaces with the WTC Hub and Towers 2 and 3. The station completion is also on the critical path for completion of utilities and Greenwich Street.

The anticipated hard construction costs for the Cortlandt Street Project is estimated to be approximately \$150 million. Necessary demolition work will commence in the first quarter of 2013 and continue through the second quarter of 2013. Reconstruction of track, platforms and creation of program space will continue through 2013. The fit out work including fan plants will follow this work as space is available and is expected to be completed in the first quarter of 2015.

## **II. SCOPE OF WORK**

The services of the Consultant shall generally consist of performing integrity monitor services for the Cortlandt Street Project by creating, implementing and monitoring policies and procedures to ensure that the entities engaged in Authority-funded construction projects comply with relevant laws and regulations, as well as, the Consultant shall have the proven ability to prevent, deter, uncover and report unethical and illegal conduct for a term of two (2) years commencing in 2013. The term of the Agreement may be renewed at the discretion of the Authority for up to one (1), one-year period. The Project Integrity Monitor may also have to coordinate its work with other integrity monitors assigned by the Port Authority's Office of Inspector General at the WTC Site. The Authority Inspector General will direct this coordination among integrity monitors.

The Consultant shall report to the Authority Inspector General, through a designated representative, and with the consent of the Authority Inspector General, to other persons or

entities and appropriate law enforcement authorities, any suspicious, improper or criminal activity on the part of any contractor, subcontractor, consultant, supplier, labor official, Authority or other government employees, or any other persons or entities in connection with the performance of the Cortlandt Street Project.

### **III. DESCRIPTION OF TASKS**

Tasks to be performed by the selected Consultant may include, but not be limited to:

#### **TASK A: PROCEDURE AND PROCESS REVIEW**

Conduct a review of all existing procedures and processes for fraud, corruption, cost abuse, safety, and environmental risks. At the outset, the Project Integrity Monitor would obtain information on all entities performing work on the Cortlandt Street Project. The Project Integrity Monitor would review and analyze the risks inherent in all pre-construction, construction, and post-construction procedures, including but not limited to the procurement process, invoice procedures, and the environmental and safety compliance programs. A review and understanding of all contracts, union and trade agreements would be necessary. To perform this task, the Project Integrity Monitor shall be able to draw upon the analyses that have already been performed by other monitors working on WTC projects.

#### **TASK B: DESIGN AND IMPLEMENT CORRUPTION PREVENTION PROGRAM**

Work in consultation with the Authority Inspector General, and the Authority WTC Construction Department, to design and implement corruption prevention programs. Based on its findings from Task A, the Project Integrity Monitor would recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review.

#### **TASK C: BUDGET REVIEW AND MONITORING**

Review the general contractor's or construction manager's budget, including specific budgetary amounts allocated for each trade, general condition and contingency costs, and any changes in scope, holds, contingency, allowances, change orders, or other miscellaneous additions or credits.

#### **TASK D: RECORDS REVIEW AND COMPLIANCE**

Review the construction manager/general contractor's records maintenance, with specific attention to documentation and records keeping related the bidding process, change-orders, payment applications, insurance certifications, and environmental and safety records.

#### **TASK E: FORENSIC REVIEW AND OVERSIGHT**

Conduct forensic reviews of project/program cost, including the analysis of requisitions and supporting documentation, payments, change-orders, change-order requisitions and supporting documentation, payments to vendors, equipment invoices, bond payment reconciliation, certified

payroll reports, and site logs, trucking manifests, etc. This work will be done in coordination with the Authority's Audit Department.

#### **TASK F: INVESTIGATIONS AND OVERSIGHT**

Provide ongoing forensic auditing and investigative services, as necessary and directed by the Authority Inspector General, to include, but not be limited to: a minimal amount of background investigations on contractors, suppliers, consultants; conducting in-field investigations and on-site monitoring of construction work; investigating and evaluating construction contractor use of the labor, compliance with collective bargaining agreements, and compliance with state and federal labor laws; review and monitoring of worker safety and environmental plans and procedures for integrity-related concerns and issues; compliance with M/WBE requirements and goals; and conducting investigations into illegal conduct by Authority contractor staff, and others.

The Project Integrity Monitor will provide written reports of its audits and/or investigations, and may be called upon to meet with law enforcement officials as appropriate. The following are not required services: Telephone Hotline and security.

#### **IV. CONDITIONS AND PRECAUTIONS**

1. The Consultant shall immediately inform the Authority of any unsafe condition discovered at any time during the course of this work.
2. Vehicular traffic at the site shall always have priority over any and all of the Consultant's operations.

\* \* \*

**ATTACHMENT B**

**AGREEMENT ON TERMS OF DISCUSSION**

The Port Authority’s receipt or discussion of any information (including information contained in any proposal, vendor qualification, 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. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure (FOI Code) adopted by the Port Authority’s Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

\_\_\_\_\_  
**(Company)**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Date)**

**ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.  
DO NOT RETYPE.**

**ATTACHMENT C**

**PROCUREMENT M/WBE PARTICIPATION PLAN**

PA3749B / 03-09

**Office of Business Diversity and Civil Rights**

PAGE: \_\_\_\_\_ OF \_\_\_\_\_

**NOTE: The Proposer/Bidder shall submit to the Manager, Line/Facility Dept. Form PA 3749C - MODIFIED PLAN for any changes to the original plan: i.e.; subcontractor, dollar amount or work performed. If more than 1 page is used, complete totals on last page.**

**Purchase Order #:** \_\_\_\_\_  
**Proposer/Bidder Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Contract Description:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Contract Goals:** MBE \_\_\_\_\_ WBE \_\_\_\_\_

Name, Address, Phone Number of PA Certified M/WBE subcontractor (including name of contact person)	Indicate MBE or WBE	Description of Work, Services to be provided. Where applicable, specify, "supply" or "install" or both "supply" and "install."	Anticipated date work will start and finish	Approximate \$ amount of M/WBE Subcontract	M/WBE % of Total Contract Amount
<b>TOTAL:</b>					

Signature of Contractor: \_\_\_\_\_

Print Name: \_\_\_\_\_

<b>FOR OBDCCR USE ONLY</b>		
Contract Goals:	<input type="checkbox"/> Approved	<input type="checkbox"/> Waived <input type="checkbox"/> Rejected
Reviewed by:	_____	

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

OBD CR Business Development Representative

Print Name: \_\_\_\_\_ Date \_\_\_\_\_

Distribution: Original – OBD CR; Copy 2 – Manager, Line/Facility Department; Copy 3 – Proposer/Bidder, Copy 4 – Procurement Dept – Award File

## INSTRUCTIONS

**PROPOSER INSTRUCTIONS:** In accordance with Section 6. M/WBE Subcontracting Provisions, the proposer shall submit this form as the M/WBE Participation Plan and/or good faith documentation as part of Section 7. Proposal Submission Requirements.

**BIDDER INSTRUCTIONS:** In accordance with Part VI of the contract book, the bidder shall submit a M/WBE Participation Plan and/or best efforts documentation to the Manager or designee identified in the contract book within 10 days of contract award.

**MANAGER/DESIGNEE INSTRUCTIONS:** After a review of the submitted M/WBE Participation plan, forward to the Office of Business Diversity and Civil Rights via fax at (212) 435-7828 or PAD to 233PAS 4th Floor for review and approval. Approved/waived/rejected plan will be returned within 5 business days of receipt of this document. Manager/Designee will advise vendor of the results of the M/WBE Participation Plan review.

PROPOSER NAME: \_\_\_\_\_

SUMMARY OF PRICING AND COMPENSATION PROPOSAL

RFP NO. 32125

	BASE (Years 1& 2)	OPTION 1	Total (Base + Option)
Labor (Billing Rates x Hours)	\$	\$	\$
Other Direct expenses (Out-of-Pocket)	\$	\$	\$
	\$	\$	\$
<b>Total</b>	\$	\$	\$

Proposal price is to be filled out both words and in figures.

Total Amount (Base + Option):

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**ATTACHMENT D- PRICING AND COMPENSATION PROPOSAL**

**PRICE SCHEDULE  
STAFFING**

RFP NO. 32125

**PROPOSER NAME:**

Term	Staffing Category	Hourly Billing Rate	TASK A		TASK B		TASK C		TASK D		TASK E		TASK F		TOTAL \$ PER YEAR
			HOURS	AMOUNT											
Year 1	Sr. Project Manager														
	Project Manager														
	Legal														
	Audit														
	Investigator														
	Specialist														
	<b>TOTAL YEAR 1</b>														
Year 2	Sr. Project Manager														
	Project Manager														
	Legal														
	Audit														
	Investigator														
	Specialist														
	<b>TOTAL YEAR 2</b>														
Option Year 1	Sr. Project Manager														
	Project Manager														
	Legal														
	Audit														
	Investigator														
	Specialist														
	<b>TOTAL OPTION PERIOD</b>														
<b>TOTAL BASE AND OPTION PERIOD</b>															\$

Other Direct Costs/Out-of-Pocket Expenses	
Year	Amount*
1	
2	
Option Year 1	

\* Only include total amount for term indicated. In the attached worksheet, itemize all expenses that make up the total amount.

**RFP NO. 32125**

IF THE STAFFING CATEGORIES LISTED BELOW DIFFER FROM YOUR FIRM'S, LIST YOUR FIRM'S STAFFING TITLES WITHIN THE CATEGORY THAT BEST MATCHES.

Staffing Category	PROPOSER'S STAFFING TITLES		Hourly Billing Rate
PRINCIPAL	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		
PROJECT MANAGER	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		
LEGAL	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		

<b>AUDIT</b>	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		
<b>INVESTIGATOR</b>	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		
<b>SPECIALIST</b>	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		



**Attachment E-1**

**Proposer Prerequisite A.**

The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of five (5) years of demonstrated experience in the performance of integrity monitoring services

\* Note - Duplicate form as necessary \*

*Reference RFP Section II – Proposer Prerequisites*

**If Proposer is a common law joint venture, specify which entity's experience is being cited below to satisfy Prerequisite A.**

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

Note – Client Contact must be employee of Company

**Attachment E-2**

**Proposer Prerequisite B.**

The Proposer shall have at least two (2) years experience performing integrity monitoring services on a minimum of two (2) construction projects, each with a construction value in excess of \$10 million.

\* Note - Duplicate form as necessary \*

*Reference RFP Section II – Proposer Prerequisites*  
**If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite B.**

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Construction Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Construction Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

<b>Client Name</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Construction Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	
<b>Contracting Entity</b>	

Note – Client Contact must be employee of Company

Template: Port Authority Non-Disclosure and Confidentiality Agreement (NDA)

Please fill in the NDA as described below. All original NDA's must be forwarded to the Port Authority contact with a copy to the Port Authority Law Department (as described on Page 8 of the NDA).

<b>Field Form Number</b>	<b>Description of Data to be Entered</b>
[1]	Insert Name of Company (All caps)
[2]	Insert Calendar Day
[3]	Insert Month
[4]	Insert Name of Company (All caps)
[5]	Insert Company's full street address (no P.O. boxes) – city, state, and zip code
[6]	Insert Scope of Work
[7]	Insert Name of Port Authority Contact
[8a]	Insert Full Street Address including Floor/Suite (if applicable)
[8b]	Insert City, State, and Zip code
[9]	Print Name
[10]	Print Title
[11]	Insert Date Signed

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
BETWEEN**

---

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 225 Park Avenue South, New York, New York, 10003, and \_\_\_\_\_ having an office and place of business at \_\_\_\_\_ (“**Recipient**”).

**WHEREAS**, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to Recipient Confidential Information (as defined below) in connection with \_\_\_\_\_ (insert description of project/work) (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

**WHEREAS**, the Recipient acknowledges that the Port Authority, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

**WHEREAS**, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, the Port Authority has collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the Project site, including the physical construction and current and future operations; and

**WHEREAS**, the Port Authority and Recipient (collectively, the “**Parties**”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, the Port Authority may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or its occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to the Port Authority, the Project, its occupants, and the surrounding communities; and

**WHEREAS**, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and

prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

**WHEREAS**, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, the Port Authority requires, as a condition of its sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

**WHEREAS**, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the provision by Port Authority of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **“Authorized Disclosure”** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Confidential Information, only to a Related Party that has a need to know such Confidential Information strictly for Project Purposes and that has agreed in writing to be bound by the terms of this Agreement by executing a form of Acknowledgment as set forth in Exhibit A; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority, and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project.

(b) **“Confidential Information”** means and includes collectively, Confidential Proprietary Information, Confidential Privileged Information, and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term Confidential Information shall also include all work product that contains or is derived from any of the forgoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others. The following Information shall not constitute Confidential Information for the purpose of this Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority, provided that such source is not subject to a confidentiality agreement, or similar obligation, or understanding with or for the benefit of the Port Authority, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.

(c) **“Confidential Privileged Information”** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York, and/or New Jersey state laws or Federal laws, (ii) certain Critical Infrastructure Information, (iii) certain Sensitive Security Information, and (iv) Limited Access Safety and Security Information.

(d) **“Confidential Proprietary Information”** means and includes Information that contains financial, commercial or other proprietary, business Information concerning the Project, the Port Authority, or its facilities.

(e) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.

(f) **“Critical Infrastructure Information”** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations and any amendments thereto.

(g) **“Information”** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.

(h) **“Limited Access Safety and Security Information”** means and includes sensitive Information, the disclosure of which would be detrimental to the public interest and might compromise public safety and/or security as it relates to Port Authority property, facilities,

systems and operations, and which has not otherwise been submitted for classification or designation under any Federal laws or regulations.

(i) **“Port Authority Handbook”** means the Port Authority of N.Y. & N.J. Information Security Handbook, a copy of which is attached hereto as Exhibit B, as may be amended by the Port Authority, from time to time.

(j) **“Project Purposes”** means the use of Confidential Information strictly and only for purposes related to Recipient’s and its Related Parties’ participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.

(k) **“Related Party”** and **“Related Parties”** means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient’s outside consultants, advisors, accountants, architects, engineers or subcontractors or subconsultants (and their respective directors, employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.

(l) **“Sensitive Security Information”** has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

2. **Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:

(a) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook, receipt of which is acknowledged by Recipient and shall be acknowledged in writing by each Related Party by signing the Acknowledgment attached hereto as Exhibit A, and applicable legal requirements. Confidential Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

(b) Recipient and each Related Party acknowledges and agrees that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the

United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) Recipient and each Related Party covenants to the Port Authority that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Confidential Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that all Confidential Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. The Confidentiality Control Procedures shall, at a minimum, adhere to, and shall not be inconsistent with, the procedures and practices established in the Port Authority Handbook.

(d) The Port Authority reserves the right to audit Recipient's Confidentiality Control Procedures, and those of each Related Party, as applicable, to ensure that it is in compliance with the terms of this Agreement.

(e) The Port Authority may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. The Port Authority may decline any request by the Recipient or any of its Related Parties to provide such item of Confidential Information if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(f) Nothing in this Agreement shall require the Port Authority to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Confidential Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(g) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority's prior written consent, neither the Recipient, nor any of the Related Parties shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or the content or import of such Confidential Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by Related Parties pursuant to this Agreement. Recipient shall, at the Port Authority's request, provide the Port Authority a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(h) As to all Confidential Information provided by or on behalf of the Port Authority, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Confidential Information is received by the Recipient or any Related Party, Recipient shall notify the Port Authority thereof with sufficient promptness so as to enable the Port Authority to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Agreement, the Recipient shall immediately give the Port Authority written notice of that fact and a detailed account of the circumstances regarding such disclosure to the Port Authority.

4. **Retention Limitations; Return of Confidential Information.** Upon the earlier occurrence of either the Port Authority's written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or other form, such Confidential Information shall be completely removed so as to make such Confidential Information incapable of being recovered from all computer databases of the Recipient and all Related Parties. The Recipient may request in writing that the Port Authority consent to destruction of Confidential Information, writings and materials in lieu of delivery thereof to the Port Authority. The Port Authority shall not unreasonably withhold its consent to such request. If the Port Authority consents to such destruction, the Recipient and each Related Party shall deliver to the Port Authority a written certification by Recipient and such Related Party that such Confidential Information, writings and materials have been so destroyed within such period as may be imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain a copy of Confidential Information, provided that (a) the Port Authority is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Confidential Information.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual (unless otherwise provided in this Agreement) or until such time as the Confidential Information is no longer considered confidential and/or privileged by the Port Authority.

6. **Severability.** Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** Recipient and each Related Party acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its facilities (including, without limitation, the Project site), its patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by Recipient or its Related Parties. The Port Authority shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Agreement and its enforcement. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this Agreement. **“Port Authority Legislation”** shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a **“notice”**) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

Original to the Port Authority: \_\_\_\_\_  
The Port Authority of New York and New Jersey  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: The Port Authority of New York and New Jersey  
225 Park Avenue South - 14<sup>th</sup> Floor  
New York, NY 10003  
Attn: General Counsel's Office c/o Caroline Ioannou, Law  
DISO

If to the Recipient: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. **Entire Agreement.** This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

12. **Parties Bound.** This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Agreement or to execute and deliver an Acknowledgement hereof.

13. **Authority.** The undersigned individual(s) executing this Agreement on behalf of the Recipient below represent(s) that they are authorized to execute this Agreement on behalf of the Recipient and to legally bind such party.

14. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority of any rights by ownership, license or otherwise in any Information.

15. **No Liability.** Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

16. **Construction.** This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

**RECIPIENT:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

## **ATTACHMENT G:**

**The Port Authority of New York & New Jersey Information Security Handbook  
(October 15, 2008, corrected as of February 9, 2009) may be  
downloaded at:**

**[http://www.panynj.gov/business-  
opportunities/pdf/Corporate-Information-Security-  
Handbook.pdf](http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf)**

**P.A. Agreement #\*\*\*\*\***

DATE

FIRM

\*\*\*

\*\*\*\*

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE CONSTRUCTION OF THE METROPOLITAN TRANSPORTATION AUTHORITY CORTLANDT STREET NO. 1-LINE SUBWAY STATION AT THE WORLD TRADE CENTER SITE DURING 2013-2015**

Dear M\*. \*\*\*:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") hereby offers to retain <FIRM NAME> (hereinafter referred to as "the Consultant" or "you") to provide expert professional Integrity Monitoring services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, during 2013 - 2015. The term of the Agreement may be renewed at the discretion of the Authority for up to one (1) additional one (1)-year period. Said extensions shall be sent by letter from the Director of Procurement at least thirty (30) days prior to the end of the current term. This Agreement shall be effective as of\*\*\*\*\*.

2. This Agreement shall be signed by you and the Authority's Director of Procurement.

As used herein and hereafter:

"Agreement" shall mean the writings setting forth the Scope of Services, terms and conditions for the procurement of Services, as defined hereunder and shall include, but not be limited to the Request for Proposals (RFP), The Port Authority Standard Agreement and, if included, any other attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

"Director" shall mean the Authority's Director, Office of the Inspector General, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, the Director has designated \*\*\*\*\*, Title, to act as his duly authorized representative. The Project Manager for this project is \*\*\*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*, or e-mail address [\\*\\*\\*\\*\\*@panynj.gov](mailto:*****@panynj.gov).

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

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

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

6. Total compensation for performance of all services as identified in Attachment A, shall not exceed the amount of \$\*\*\*\*\*. The Consultant shall inform the Director in writing when the Consultant's compensation reaches eighty percent (80%) of said amount. The Consultant shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the combined total of each of the approved estimated costs unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed.

7. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, and C below, subject to the limits on compensation and provisions set forth in paragraph 6 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A and B hereunder.

Attachment D, Pricing and Compensation Proposal attached hereto, includes a schedule of the all-inclusive (fully loaded) hourly rates payable hereunder that have been approved by the Port Authority.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel times the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto as part of Attachment C is a schedule of names, titles and corresponding hourly billing rates. Clearly indicate if any of the employees, proposed by you to perform the requested services, are former Authority employees. Said schedule shall be the basis for determining compensation, subject to audit and shall be updated by you in writing as required until your services under this Agreement are completed. The Authority reserves the right of approval of all personnel and billing rates for said personnel performing services under this Agreement. For compensation purposes under this Agreement, no such salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the services under this Agreement that has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement it is the intention of the Authority to grant an increase if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates that are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to the Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall in all cases be finally determined by the Director or his designee, in their sole and absolute discretion.

B. Cost of Subconsultants. An amount equal to the amounts actually paid to subconsultants hereunder who have been retained after the written approval by the Director of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation as well as an estimate of the number of hours required by the subconsultant to perform its services, as part of any request for approval of the subconsultant.

C. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense, approved in advance by the Director, necessarily and reasonably

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

Notwithstanding the above, the Authority will pay an amount approved in advance by the Director and computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement, expenses that are not reimbursable include, without limitation, amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided, cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses his personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Services) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Director. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as defined herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the Director. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality. See [www.gsa.gov](http://www.gsa.gov).

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

D. As used herein: "Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District

includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

8. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

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

9. On or about the fifteenth (15<sup>th</sup>) day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Director. Upon receipt of the foregoing, the Director will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you the Authority shall, within thirty (30) days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

10. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon five (5) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts

computed as above set forth for services completed to the satisfaction of the Director through the date of termination, minus all prior payments to you.

11. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Director. Such approval may be withheld if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

12. Under no circumstances shall you or your subconsultants communicate in any way with any Consultant, 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 material shall be obtained by you when you find such data necessary unless otherwise instructed by the Director.

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

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

15. All originals of technical specifications, estimates, reports, records, data, charts, documents, computations or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, or subconsultant, or an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way

connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

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

17. The Consultant shall defend, indemnify and hold harmless the Authority against all claims of intellectual property infringement arising out of or in connections with the Consultant's services hereunder.

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

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

For each proposed subconsultant, the Consultant shall ensure that the Background Qualification Questionnaire Package ("BQQP"), available at:

[http://www.panynj.gov/wtcprogress/pdf/PANYNJ\\_OIG\\_WTC\\_BQQP.zip](http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BQQP.zip), is completed and submitted as required.

19. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly as Consultants or as subconsultants. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of 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. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, 51 percent 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 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 Puerto Rican, Mexican, 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. American Indian 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.

To ensure maximum participation in the Project, to the extent feasible and consistent with the exercise of good business judgment, the Port Authority has established a contract goal of 12 percent participation by qualified and certified MBEs and 5 percent by qualified and certified WBEs for all procurement, construction subcontracting, architectural & engineering services and ancillary service opportunities for the Work performed by Consultants. The Port Authority has also established goals that the construction labor force reflect the minority and female participation goals that will be applicable to Trade Contracts, and any subcontracts thereto.

Consultant shall use its good faith efforts to achieve the goals and policies described in Paragraph for Consultant's Services. Consultant shall facilitate, oversee, and scrutinize achievement of the goals and policies described herein for its Work. Consultant shall also report monthly to the Port Authority regarding progress and issues with respect to compliance and progress regarding the provisions of this Paragraph.

The provisions of this Paragraph shall be available and applicable to all subconsultants, of any tier, if any.

In order to facilitate meeting the MBE/WBE goals, Consultant shall use every good faith effort, to the maximum extent feasible, to utilize subconsultants who are Port Authority-certified MBEs or WBEs.

- i. The Port Authority has a list of certified MBE/WBE service firms, which list is available to the Consultants upon request from the Office of Business Diversity and Civil Rights or may be downloaded at: <http://www.panynj.gov/business-opportunities/supplier-diversity.html>
- ii. Consultant will be required to submit to the Office of Business Diversity and Civil Rights for certification the names of MBE/WBE firms that Consultant proposes to use who are not on the list of Port Authority-certified MBE/WBE firms.
- iii. In order for a firm to be “certified” as an MBE or WBE, the Office of Business Diversity and Civil Rights must make the determination and so certify.

The Consultant may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Project Manager, for approval by the Port Authority’s Office of Business Diversity and Civil Rights, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subconsultants. The Consultant shall provide written documentation in support of its request to the Project Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority’s directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority’s Office of Business Diversity and Civil Rights, the Project Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Project Manager for review and approval by the Authority’s Office of Business Diversity and Civil Rights. For submittal of modifications to the M/WBE Plan, Consultants are directed to use form PA3749B, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Consultant shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subconsultants or suppliers for those named in their approved plan without the Project Manager’s prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant’s own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subconsultant Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subconsultant and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subconsultant or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

If, during the performance of this Contract, the Consultant fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Consultant has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Consultant's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

## 20. CHANGES TO AGREEMENT

The Authority reserves the right, at any time, by written order to make changes to any portions of the Work within the general scope of this Agreement.

The provisions of the Agreement relating to the Work Requirements and its performance of the Work shall apply without exception to any changed or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. The Authority's Director must authorize in writing the changed or additional Work or any change to the maximum amount, which the Authority is obligated to pay before it is performed and before the Consultant can be reimbursed for such Work.

The Consultant shall immediately notify the Authority, in writing, of any change in the work scope either requested by the Authority or desired by the Consultant. Such notice shall be in the form of an Initial Notice of Change and shall include a detailed Statement of Work. Upon the Authority's acknowledgment of the proposed Change Order, the Consultant will be requested to submit a Cost Proposal that must include the estimated hours by element of work and the applicable hourly billing rates, other out-of-pocket expenses, and subconsultant charges in the same detail as cost elements for the Consultant, in accordance with paragraph 7 as well as any schedule adjustment arising from the changed work scope. The amounts to which both parties agreed will be incorporated into the Contract by issuance of a Change Order.

If the Consultant does not agree with any schedule or cost decision of the Authority related to changed Work, the Consultant shall diligently perform all such work without delay. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. Upon receipt, the Authority may consider the claim. If accepted, in whole or part, the Authority will issue a Change Order.

The Authority reserves the right to delete any item of the Work in whole or in part. The Authority's Director must authorize such deletions in writing.

## 21. CLAIMS AND DAMAGES

The Consultant shall have no claim against the Authority for damage sustained through any act or omission of any other Contractor or Consultant or subconsultant thereof.

If the Consultant has any claim(s) as a result of a direction, order or requirement of the Authority, the Consultant shall give written notice to the Project Manager, with a copy to the Authority's Director of Procurement, no later than five (5) days after the claim arises. Failure of the Consultant to give such notice shall be deemed to be a waiver by the Consultant of all claims for additional compensation or damages by reason thereof.

## 22. 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 poses a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs depending upon the level of security required, or 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:

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

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only 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 the Transportation Worker Identification Credential for personnel performing in secure

areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, 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 Consultant or Subconsultant shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultants and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Consultant, subconsultant or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or 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 Confidential Information (“CI”) as defined in the Port Authority Information Security Handbook (“Handbook”) attached hereto, dated October, 2008, corrected as of February, 2009, 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 CI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to CI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

- (1) require that the Consultant and subconsultants, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to CI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.
- (3) require Consultants and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;
- (4) specific guidelines and requirements for the handling of CI to ensure that the storage and protection of CI;
- (5) restrictions on the transfer, shipping, and mailing of CI information;
- (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing CI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to CI, from viewing such information;
- (7) require that CI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
- (8) require the Consultant to mandate that each of its subconsultants maintain the same levels of security required of the Consultant under any Port Authority awarded contract.
- (9) prohibit the publication, exchange or dissemination of CI developed from the project or contained in reports, except between Consultants and subconsultants, without prior approval of the Port Authority;
- (10) require that CI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- 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, Confidential 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.

### 23. CONFIDENTIAL INFORMATION

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

B. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of

which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Consultant's obligations with respect to confidentiality and document security are set forth in a Non-Disclosure and Confidentiality Agreement, between the Authority and Consultant (the "Confidentiality Agreement"; Exhibit A of the Port Authority Standard Agreement). Consultant hereby agrees to execute the Confidentiality Agreement, and hereby agrees the Confidentiality Agreement is and remains in full force and effect in accordance with its terms.

E. Without the express written approval of the Director, you shall keep confidential, and shall require your subconsultants and your employees to keep confidential (a) all information disclosed by the Authority or its consultants or contractors to you or (b) developed by you or your subconsultants in the performance of services hereunder. At the direction of the Authority, you will be required to have your employees, subconsultants and their employees execute, non-disclosure agreements. Disclosure of any such information shall constitute a material breach of the Agreement.

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

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

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

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

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

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

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

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

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

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

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

## 25. COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

### A. Commercial Liability Insurance:

1) The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. In addition, the policy (ies) shall include the Authority and its wholly owned entities as an additional insured as per **schedule 1** below and the policy (ies) and **its certificate must be specifically endorsed to contain a provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager as noted below.** Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if

any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Contractor's insurance shall be primary insurance as respects to the above additional insured (s), its representatives, officials, and employees. Any insurance or self insurance maintained by the above additional insured (s) shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

Further, the certificate of insurance and the liability Policy (ies) shall be specifically endorsed that “ *The insurance carrier(s) shall not, without obtaining the 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 provisions of any statutes respecting suits against the Port Authority*”

2) **Additional Coverages:** The Consultant shall have the policy endorsed when required by the Project Manager for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Endorsement to eliminate any exclusions applying to the underground property, explosion and collapse hazards.
- b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- c) Coverage for work within 50 feet of railroad

**B. Workers' Compensation Insurance:**

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**C. Professional Liability Insurance:**

1) Not less than \$2,000,000 each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence form or may be written on a claims-made basis with a minimum of a three (3) year reporting/discovery period.

**D. Compliance:**

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail to the Project Manager.

1) Renewal certificates of insurance or policies shall be delivered to the Facility Contractor Administrator, Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing 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.

2) 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, if the Project Manager shall so direct, the Contractor shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Project Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Contractor to the Port Authority.

3) Upon request of the Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

4) The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Contract.

**Schedule 1 – Indemnitees and Additional Insureds:**

- a) The Port Authority of New York and New Jersey

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

- hh) Larry A. Silverstein
- ii) World Trade Center Hold Co. Ltd
- jj) 3 WTC Mezz LLC.
- kk) The City of New York
- ll) The Lower Manhattan Development Corporation
- mm) The World Trade Center Memorial Foundation
- nn) Metropolitan Transportation Authority
- oo) New WTC Retail JV LLC
- pp) PA Retail Newco LLC
- qq) New WTC Retail Member LLC
- rr) New WTC Retail Owner LLC

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

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

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

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

**27. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES**

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Consultant's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

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

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

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

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

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

In any case where the Consultant cannot make the foregoing certifications, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "27G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority 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-responsibility.

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the

Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

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

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

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

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

#### 29. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

During the term of this Agreement, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, Consultant, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, Consultant, construction manager or other

person or firm representing the Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or any other Authority agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

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

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

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

### 30. CONFLICT OF INTEREST

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

the full details thereof. Unless the Consultant receives the specific written approval of the Director, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements which result, directly or indirectly, from the services provided by the Consultant hereunder.

Any entity performing services for Owner (the "Port Authority") is presumed to have a potential conflict of interest if the same entity or an affiliate also provides services to other World Trade Center stakeholders/owners (e.g., LMDC, NYSDOT, WTC Net Lessees) or their affiliates responsible for building portions of the World Trade Center site. However, if Consultant desires to provide services to such a third party and Consultant believes that Consultant can provide a mitigation plan that would address the perceived conflict of interest, Consultant, before agreeing to provide services to such a third party, shall give written notice to Owner and submit such plan for evaluation to Owner. Owner will evaluate the submitted mitigation plan and notify Consultant of whether such plan is acceptable in the Owner's sole discretion. If Owner determines that a potential conflict of interest exists that, in Owner's sole opinion would make Consultant's providing services to such a third party inappropriate, Consultant hereby agrees not to agree to provide services to such a third-party. This Section is a material component and is of the essence of the Agreement.

### 31. THE WORLD TRADE CENTER SITE SAFETY, HEALTH AND ENVIRONMENTAL PROGRAM

During execution and performance of the Consultant's services, the Consultant shall review and comply with the current "Downtown Restoration Program, The World Trade Center Site Safety, Health and Environmental Program", Revision Number 2.0 dated 5/3/2010, or later, which can be obtained at the Authority's website through the following link:  
<http://www.panynj.gov/wtcprogress/pdf/pa-wtc-shep.pdf>.

### 32. DEFINITIONS

As used in sections 26 to 29 above, the following terms shall mean:

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

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

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

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

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

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

34. The entire Agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

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

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

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

38. List of Attachment/Exhibits

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

Attachment A: Scope of Services

Attachment B: Intentionally Omitted

Attachment C: Consultant's M/WBE Participation Plan

Attachment D: Consultant's Pricing and Compensation Proposal

Attachment E: Statement of Contractor Payments

Exhibit A: Non-Disclosure and Confidentiality Agreement

Exhibit B: The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February 9, 2009)

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

To Owner:                   The Port Authority of New York and New Jersey  
                                  Attention: Steven A. Pasichow  
                                  Assistant Director  
                                  Office of the Inspector General  
                                  Five Marine View Plaza, Suite 502  
                                  Hoboken, NJ 07030

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

To Consultant:

Very truly yours,

FIRM NAME

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DATE

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Director  
Procurement Department

Date \_\_\_\_\_

ACCEPTED:

FIRM:

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

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

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