

July 31, 2014

**SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR THE TUNNELS, BRIDGES AND TERMINALS E-ZPASS<sup>®</sup> AND E-ZPASS PLUS<sup>®</sup> PROGRAMS AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2015 – 2019 (RFP # 38657)**

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 perform expert professional technical support services for the E-ZPass<sup>®</sup> Program, and for on-going operation and maintenance of several revenue collection initiatives at the Authority’s facilities, as requested on an as-needed basis during 2015-2019.

The scope of the services to be performed by you 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.

**I. PROPOSER REQUIREMENTS:**

The Authority will only consider Proposals from those firms demonstrating compliance with the following prerequisites:

The Proposer shall have a minimum of five (5) years of experience in performance of toll collection services similar in size, scope and complexity as the subject project.

Satisfaction of the foregoing requirements does not assure that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements shall not be considered further for performance of the subject services.

**II. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, the Proposal shall be of no more than 40 pages single-sided or 20 pages double-sided, using 12 point or greater font size. The page limit pertains only to Letters F and G in Section III below. Each resume shall be 2-page maximum, single-sided or 1-page double-sided, using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name” and **RFP Number 38657** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider labeled in accordance with the letter of the requirements specified below.
- C. All proposals must be delivered in sealed envelopes and/or packages addressed to: The Port Authority of New York and New Jersey, Two Montgomery Street, 3<sup>rd</sup> Floor, Jersey City, NJ 07302, **Attention: RFP Custodian**. Do not address your Proposal to any other name. You are required to submit one (1) reproducible original and four (4) copies,

along with five (5) compact disc copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.

- D. In each submission to the Authority, including any return address label, information on each compact disc and information on the reproducible original and hard copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in agreement awards and payments, which shall be the responsibility of the Proposer.
- E. Your Proposal shall be received in sufficient time so that the Authority receives it **no later than 2:00 p.m. on August 21, 2014**. The outermost cover of your submittal must include the RFP Number and the RFP title as indicated in the “Subject” above. 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 proper identification (e.g., photo identification) will be permitted access to the Authority’s offices. Messengers without proper identification will be turned away and their packages not accepted

### **III. SUBMISSION REQUIREMENTS:**

To respond to this RFP, 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.
- B. A completed copy of Attachment C (Company Profile).
- C. The “multipliers” referred to in the second and fifth lines of subparagraph 9.A of the accompanying Agreement including a breakdown of said multipliers, indicating all of their components (e.g., vacation, holiday, sick pay, workers’ compensation, office rent, insurance, profit).
- D. The name(s), title(s) and hourly rate(s) for technical personnel who will be assigned to perform any services requested. Indicate billing rates for partners or principals and actual hourly rates for all other billable employees. Provide a company policy for compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments must be included).

If proposing the use of subconsultant(s), include the terms and conditions for their compensation (including their multiplier, and/or billing rates as appropriate) and their Minority-Owned Business and/or Women-Owned Business Enterprise (M/WBE) status.

- E. Staff Qualifications and Experience

List the name(s), title(s) and provide resumes of personnel (including subconsultants, if any) who will be assigned to perform the required services. Include copies of certifications/licenses for verification. Resumes shall include educational backgrounds and years of experience.

Demonstrate that proposed staff has experience working on large-scale toll collection systems and tasks similar to those indicated in Attachment A. Such experience shall

include projects with multiple vendors and implementations that are made in multiple locations.

Demonstrate that proposed staff has experience in the following, as appropriate:

1. developing software and/or reports utilizing Oracle, C/C++, and UNIX/Linux/Solaris
2. electronic and manual toll collection equipment, systems, operations and maintenance;
3. electronic payment systems applications and standards, including specific experience and knowledge of E-ZPass, All-Electronic Tolling and E-ZPass Plus operations;
4. detailed knowledge and experience in tolling subsystems, including but not limited to automated vehicle classification, violations enforcement, dedicated short-range communications (DSRC) technologies, toll transponders, video equipment and cameras, optical character recognition, treadles and axle-counting technologies, etc.;
5. in-depth knowledge and experience with tolling business functions and practices including those that are undertaken at Customer Service Centers and back office operations, as well as those undertaken through separate agreements and processes, including financial reciprocity, customer/account validation procedures, violations processing and collections processes; and
6. database management and querying and system administration skills on large complex systems.

#### F. Firm Qualifications and Experience

Provide your firm's qualifications and experience in providing the services contemplated herein. For each project identified, indicate:

1. Description of services provided by your firm;
2. Start and end dates of services performed;
3. Indicate whether said projects were completed on schedule and within budget;
4. Hiring entity and contact person (name, title, phone number, email address).

#### G. Management Approach

Provide a detailed description of the proposed management approach to performing the required services. Factors addressed in your management approach shall include, but are not limited to: a) your proposed organizational structure to be responsive to the Authority's needs; b) your proposed approach and schedule for keeping the Authority apprised of the project status and to maintain project schedule compliance; and c) your proposed approach to ensuring the quality of the services to be provided.

#### H. Affiliates

Include a complete list of your firm's affiliates and their involvement in the performance of services contemplated hereunder. Affiliates shall be as defined in paragraph 33 of the attached Standard Agreement.

#### I. Conflict of Interest

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

#### J. Agreement Exceptions

The Proposer is expected to agree with the standard agreement and its terms and conditions. You should therefore not make any changes in this standard 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. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of the tasks to be performed by you are set forth in Attachment A to the Authority's standard agreement.

### **IV. SELECTION PROCESS**

The qualifications based selection process shall take into consideration the technical qualifications presented below in order of importance, and subsequently cost, as appropriate.

- A. Qualifications and experience of the proposed staff, including sub-consultant(s) staff;
- B. Qualifications and experience of the firm; and
- C. Management Approach

After consideration of these factors the Authority may enter into negotiations with the firm (or firms) deemed best qualified to perform the required services.

### **V. ORAL PRESENTATIONS**

After review of all proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. Firms selected to make presentations may be given only short advance notice. The presentation will be limited to 30 minutes, and shall include 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 senior staff members who are proposed to work on this project. Notification of presentation scheduling will be made via e-mail. **Provide the name and e-mail address of the person who should be contacted for presentation scheduling**, if applicable, as well as an alternate in the event that person is unavailable.

### **VI. ADDITIONAL INFORMATION**

The selected Consultant will be expressly precluded from working on or being involved in any work effort for the tasks described in Attachment A, Section III for any entity other than the Authority. Additionally, the Consultant will be precluded from working on E-ZPass Technology Procurement and development of defined National Tolling Standards.

During the Agreement period, the Consultant shall work primarily at Four World Trade Center in New York City, or any other designated Authority facility. On occasions, the Consultant shall work at their offices, locations of other consultants and contractors performing work for the Authority, or at the locations of other agencies in the E-ZPass Interagency Group.

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 Proposer shall be deemed to have made the certifications contained therein unless said Proposer submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked “CERTIFICATION STATEMENT”.

It is Authority policy that its consultants, 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 consultants, 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 Authority’s Standard Agreement in which the Authority has stated the goals for Minority Business Enterprise participation. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

After a review of all proposals received, the Authority will forward two copies of the Agreement and Attachment A thereto to the selected firm who shall sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

All questions, if any, must be received at least five (5) working days prior to the proposal due date to Ms. Isabel Amado at [iamado@panynj.gov](mailto:iamado@panynj.gov). Neither Ms. Amado nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or to give additional information as to their 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 accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to monitor the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6> as required to ensure that they are aware of such changes.

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/become-vendor.html>.

Proposal preparation costs are not reimbursable by the Authority. 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 unqualified right, in its sole and absolute discretion, to reject all Proposals, to waive defects in proposals, to undertake discussions and modifications with one or more consultants 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.

Sincerely,

David Gutiérrez  
Manager, Construction Procurements  
Procurement Department

Attachments

## ATTACHMENT A

### **PERFORMANCE OF EXPERT PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR THE TUNNELS, BRIDGES AND TERMINALS E-ZPASS<sup>®</sup> AND E-ZPASS PLUS<sup>®</sup> PROGRAMS AS REQUESTED ON AN “AS NEEDED” BASIS DURING 2015 – 2019**

#### **I. BACKGROUND**

The Port Authority of New York and New Jersey (the “Authority”) is a municipal corporate instrumentality and political subdivision 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 (EWR), John F. Kennedy International (JFK), Teterboro (TEB), LaGuardia (LGA) and Stewart International (SWF) Airports), marine terminals in both New Jersey and New York (Ports Newark and Elizabeth, Howland Hook (HH) and Brooklyn Piers (BP)); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels (LT and HT); the George Washington (GWB), Bayonne (BB), Goethals Bridges (GB); and the Outerbridge Crossing (OBX)), which are vital “Gateways to the Nation.”

The Authority’s facilities also include its wholly owned subsidiaries, such as but not limited to The Port Authority Trans-Hudson Corporation (PATH), a heavy rail rapid transit system, operating 24 hours a day, seven days a week, and serves as a critical link in the New York – New Jersey transportation network.

The Authority’s toll collection operations at the HT, LT, GB, GWB and OBX consist of <sup>1</sup>E-ZPass<sup>®</sup> (“E-ZPass”) and cash collections. The BB operates a manual cash collection system, with plans to implement All-Electronic Tolling (AET), utilizing E-ZPass and image-based tolling. The Authority also operates the E-ZPass Plus<sup>®</sup> (“E-ZPass Plus”) program at its airports’ parking facilities, allowing electronic payments for airport parking charges through qualifying E-ZPass accounts. E-ZPass equipment is also deployed at the New York Container Terminal (NYCT) to identify truckers entering the Container Terminal for partial SIB toll reimbursement purposes.

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<sup>1</sup> NOTE: E-ZPass<sup>®</sup> is a registered trademark of the E-ZPass Interagency Group and such mark may not be used without the written permission of the owner.

There are six principle areas comprising the toll collection effort:

A. Integrated Toll Collection System

The Authority's Integrated Toll Collection System (ITCS) was deployed in 1997, consisting of in-lane systems and equipment, central systems, and a telecommunications network accountable for the collection of over \$1.3 billion annually at the Authority crossings from manual cash collection and E-ZPass transactions. The Electronic Central Host (ECH) computers aggregate E-ZPass transactions and video images, used for invoicing and capturing toll violators, and send all data to the E-ZPass New York Customer Service Center (NYCSC) for appropriate management and operating reporting.

Overall, there are a total of seventy-two (72) lanes at the Authority's tunnel and bridge crossings, including a two-lane Open Road Tolling (ORT) Plaza at the OBX, since its deployment in June 2005.

B. E-ZPass Plus

Customers wishing to pay for airport parking at JFK, EWR, and LGA can use E-ZPass by obtaining a ticket when entering the parking lot, and exiting the lot via a lane marked with the "E-ZPass Plus" logo in a dedicated E-ZPass Plus lane or in a staffed lane. After inserting the parking lot entry ticket into the in-lane equipment designed to accept the ticket, the parking payment is debited from the prepaid E-ZPass account for charges under \$20 and charged directly to the customer's credit card for charges in excess of \$20. Parking fees account for over \$230 million annually.

C. All-Electronic Tolling Operating Environment

In Q3-Q4 2015, the Authority will begin AET operations at the BB as part of the overall Bayonne Bridge Navigational Clearance Project. Under AET, cash will no longer be a payment option at the toll point. Instead, a customer who does not have an E-ZPass tag will receive a bill for the toll in the mail, based on an image taken of the license plate.

During construction, there will be a single toll lane configuration under a temporary gantry structure. For the permanent installation, the BB will have a gantry installed with three (3) ORT lanes that will be capable of creating either an E-ZPass or image-based toll transaction.

D. The E-ZPass New York Customer Service Center

E-ZPass customers establish and fund pre-paid accounts from which toll charges are deducted for transactions at Authority bridges, tunnels and airports, and at E-ZPass toll facilities operated by the E-ZPass Interagency Group ("E-ZPass Group" or "IAG"), which is comprised of 26 toll operators in 15 states.

In October 2007, the New York toll agencies, including the Authority, entered into a ten-year unit-based performance agreement with a private contractor, which operates the NYCSC. The NYCSC is responsible for all customer service operations and account management related to E-ZPass and the initial pursuit of toll violators, as well as E-ZPass Plus, and AET operations. The NYCSC is also responsible for managing financial reciprocity among the NY toll agencies, and all the other E-ZPass agencies. Recently, the New York toll agencies began the process of developing a request for proposals (RFP) for a new NYCSC.

#### E. E-ZPass Interoperability, Standards and New Technology Deployment

The Authority is a member of the E-ZPass Group, which is comprised of 26 toll operators in 15 states, that work together to realize common goals of the E-ZPass program by providing the traveling public with a simple, accurate, interoperable, electronic method of paying tolls and transportation fees with “One Tag, One Account.” The E-ZPass Group is committed to developing a regionally compatible system by providing participating customers with a seamless travel payment system in a highly mobile region. By promoting common operating protocols and policies to advance customer service without affecting the traveler, the E-ZPass Group seeks to expand the services available to its users within our region and by expanding the region itself.

The Authority will also be moving toward national interoperability in electronic tolling as required by MAP21, the federal surface transportation funding law, which calls for national interoperability in electronic toll systems by 2016.

#### F. New York Container Terminal Toll Reimbursement Program

This program was developed to provide truckers using the NYCT on Staten Island with a partial reimbursement of their tolls on the Staten Island bridges. The truckers are registered by the NYCT. Each day, a program compiles transaction data of registered truckers based upon a query of the ECH. This data is then transmitted to the NYCT. The program that queries the ECH is written in Java.

## **II. SCOPE OF WORK**

The services of the Consultant shall generally consist of providing technical support services for the Authority’s toll collection and parking programs, including on-going operation and maintenance of those programs, and the revenue collection initiatives. The services shall include technical support services relating to the Authority’s toll collection, E-ZPass and E-ZPass Plus, AET, and parking payments at the Authority airports.

## **III. DESCRIPTION OF CONSULTANT’S TASKS**

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

### **TASK A - TOLL COLLECTION AND E-ZPASS SYSTEMS, AND EQUIPMENT AT TUNNEL AND BRIDGE FACILITIES**

The aggressive management of the ITCS maintenance program and associated contracts is required until completion of the planning, development, and deployment of a replacement toll collection system. Monitor maintenance support services, including the testing of changes to the system, equipment monitoring, management reporting, troubleshooting, system administration oversight, and performance management in all traditional and open road and/or AET lanes. Specific tasks may include, but are not limited to:

1. Supporting ongoing operations and maintenance of toll lane equipment, facility systems and components, and ECH systems. This work includes developing and running reports to analyze system performance and identify equipment in need of replacement. Ensure that the installed E-ZPass system performs according to contractual performance criteria. Notify the Authority of performance problems and recommend solutions. The performance criteria to be monitored include, but are not limited to:

- a. Automatic vehicle classification
  - b. Image capture
  - c. Vehicle violations
  - d. Flush transactions (defined as transactions that could not be properly framed by the lane controller software)
  - e. Cross lane reads
  - f. Image rejects
2. Monitoring and evaluating E-ZPass system performance by reviewing in-lane subsystems to identify problems that may occur as a result of the malfunction of one or more components of the in-lane system, including, but not limited to: loops, treadles, vehicle separators, toll collector terminals, violation equipment, and dedicated short-range communications equipment (i.e. antennas, readers, etc.). Notify the Authority of identified performance problems and recommend solutions to those identified problems. Conduct special analysis of system performance as needed to address specific departmental projects, initiatives and management reporting requirements.
  3. Supporting the testing of equipment system modifications and enhancements by developing and conducting field-testing of software and hardware modifications made to the E-ZPass system. Support services shall include managing change orders, developing and reviewing test plans, overseeing testing, reviewing results, and recommending technical and business solutions to address findings. Support services shall encompass:
    - a. Subsystem testing
    - b. Field testing
    - c. Integrated system testing
    - d. Documentation verification
  4. Providing assistance with understanding technical or operational problems with E-ZPass equipment and the associated impacts on facility operations, business results, and customer service. Provide services for troubleshooting and remediation for the E-ZPass system, its subsystems and related components.
  5. Monitoring the interfaces of the toll collection system with the NYCSC to ensure integrity of file transfers between the two entities including, but not limited to:
    - a. Tag file transfers
    - b. Transaction file transfers
  6. Reconciling file transfers and Image file transfers. Conduct annual evaluation of the toll system performance by collecting and analyzing data from the toll system and comparing that data to in-lane observation.

#### **TASK B - NYCSC E-ZPASS, IMAGE-BASED TOLLING AND RELATED SERVICES**

1. Perform contract management, data and performance reviews to ensure compliance with contract terms and performance levels.

2. Ensure adherence to change management processes throughout the term of the NYCSC contract.
3. Develop quality assurance controls and provide technical support for system testing and evaluation as changes are introduced to the NYCSC.

Specific tasks may include, but are not limited to:

- a. Assisting as a non-voting subject matter expert member to the evaluation committee for the technical evaluation of customer service vendors for associated contracts and providing industry knowledge and technical support for agreements awarded.
- b. Undertaking tasks associated with agreements with the NYCSC, involving E-ZPass transponder exchanges, procurement and disposal, toll violation processing and toll violations collections via collection agencies and law firms, and other toll collection business contracts. Activities may include, but are not limited to, data reviews, financial analysis, quality assurance checks for standard enforcement, dispute resolution, developing toll system queries, etc.
- c. Reviewing, developing and monitoring NYCSC process changes and test procedures, reviewing performance metrics and their calculations, and identifying areas for cost reduction, including, but not limited to:
  - 1) Documentation review and analysis;
  - 2) Assessment of performance standards and Contractor performance;
  - 3) Developing an internal change order process;
  - 4) Providing technical assistance and analysis to ensure that the components of the NYCSC system perform according to contractual performance criteria.
- d. Supporting NYCSC operations, including but not limited to:
  - 1) Violations analysis and auditing;
  - 2) System performance tracking and assessment;
  - 3) Image review quality assurance;
  - 4) Developing SQL queries for information needed by the law firms and other authorized entities related to violations and accounts;
  - 5) Auditing and analyzing settlement distributions to ensure they are applied appropriately in the system and working with the Authority and Xerox to develop solutions when system problems are found. Xerox is the Contractor that currently operates the NYCSC, ITCS and RTCS systems;
  - 6) Performing analysis in a vehicle class mismatch program. This program is where there is a discrepancy between the transponder class read and the classification of the vehicle by the toll system;
  - 7) Developing and implementing a tracking system for the Authority's tag swap program;
  - 8) Providing technical assistance with testing of modifications and enhancements to the NYCSC system, including managing change orders, reviewing test plans,

overseeing tests and reviewing results, recommending technical and business solutions, etc.

- e. Providing technical support with the transition from the current NYCSC Contractor to the selected Contractor of a new RFP, if applicable, including, but not limited to:
  - 1) Participating in testing for the new NYCSC Contract;
  - 2) Reviewing key documents from the successful RFP Proposer, if applicable, including but not limited to the NYCSC Transition Plan, Work Plan, etc.;
  - 3) Working with Authority staff during the initial roll-out to ensure a seamless transition to customers.
- f. Implementating the ongoing testing of NYCSC Disaster Recovery and Business Continuity and Resumption Plans.
- g. Developing and implementing department/agency revenue-generating initiatives relating to the NYCSC.
- h. Assisting with the Authority's forecasting processes for budget preparation.
- i. Attending regular meetings with Authority staff and representatives from other E-ZPass Group members, providing project status reports and updates on activities, and advancing specific business and technical analysis as directed.
- j. Providing technical assistance for core NYCSC functions including, but not limited to reciprocity, file transfers, and transaction reconciliation.
- k. Providing technical assistance in resolving and implementing audit recommendations.

#### TASK C - E-ZPASS PLUS FOR AIRPORT PARKING AND AIRPORT CENTRAL HOST

The Airport Central Host (ACH) is responsible for processing E-ZPass Plus transactions.

Tasks may include but are not limited to:

- 1. Providing assistance with the ACH computers technical issues associated with NYCSC operations and business issues including, but not limited to:
  - a. ACH system upgrades and modifications
  - b. ACH and NYCSC interoperability
- 2. Developing and conducting testing of software and hardware modifications made to the E-ZPass Plus ACH system. Support services shall include managing change orders, developing and reviewing test plans, overseeing testing and reviewing results, recommending technical and business solutions to address findings. Support services will encompass:
  - a. Subsystem testing
  - b. Field testing
  - c. Integrated system testing
  - d. Documentation verification

3. Providing assistance with understanding technical or operational problems with the E-ZPass Plus ACH and the associated impacts on business results and customer service. Provide technical support services for troubleshooting and remediation for the E-ZPass Plus ACH system and monitor file transfers between the ACH and the NYCSC.

#### TASK D - E-ZPASS INTEROPERABILITY, STANDARDS AND NEW TECHNOLOGY

The Authority interacts with other agencies in the E-ZPass Group for reciprocity and other related matters. The Authority will require technical information in dealing with the IAG and other agencies on matters including, but are not limited to:

1. Reviewing technical documents about interoperability including the file specification among the Back Offices operated by E-ZPass member agencies, commenting on performance specifications, reviewing test results, and participating in testing activities as a representative of the Authority.
2. Providing an array of technical and business support services including development and document reviews on a task order basis to support the Authority's participation in industry projects and initiatives associated with advancing interstate toll interoperability.

#### TASK E - "AS-NEEDED" SERVICES

For each of the foregoing tasks, the Authority may request additional services including, but not limited to:

1. Providing draft and final reports documenting findings and recommendations, as well as other ad-hoc reporting that may be required;
2. Running queries from Authority and NYCSC data servers for data collection, extraction and manipulation services;
3. Attending meetings and giving presentations to Authority staff and others as appropriate;
4. Preparing Minutes of these meetings and distributing to attendees for review (as approved by the Authority). Incorporating comments and redistributing as final;
5. Monitoring transfer files between the ECH and the NYCSC and the ACH and the NYCSC;
6. Analyzing anomalies associated with all file transfers;
7. Reviewing any recommending changes to the NYCSC processes;
8. Reviewing any changes proposed by the E-ZPass Group to modify the file transfer among the NYCSCs operated by the member agencies in the E-ZPass Group;
9. Reviewing any changes proposed to implement national tolling interoperability;
10. Monitoring the program that interfaces with the ECH to provide transaction data to the NY Container Terminal Program, and take corrective action as required.

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

1. General

The Consultant shall immediately inform the Authority of any unsafe condition discovered at any time during the course of work.

2. Work Areas

The Consultant shall limit its work to the area necessary for the performance of such inspection and shall not interfere with the operation of the facility without first obtaining specific approval from the Project Manager.

3. Work Hours

The Consultant shall coordinate its work at the site(s) with the Project Manager.

In any case, no work shall be performed at the site on a legal holiday of either the State of New York or the State of New Jersey.

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**ATTACHMENT B**

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL  
TECHNICAL SUPPORT SERVICES FOR THE TUNNELS, BRIDGES AND  
TERMINALS E-ZPASS® AND E-ZPASS PLUS® PROGRAMS AS REQUESTED ON AN  
“AS-NEEDED” BASIS DURING 2015 – 2019 (RFP # 38657)**

**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 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 or is maintained for the regulation or supervision of commercial enterprise 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**  
**COMPANY PROFILE**

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL  
TECHNICAL SUPPORT SERVICES FOR THE TUNNELS, BRIDGES AND  
TERMINALS E-ZPASS® AND E-ZPASS PLUS® PROGRAMS AS REQUESTED ON AN  
“AS-NEEDED” BASIS DURING 2015 – 2019 (RFP # 38657)**

1. Company Name (print or type):

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2. Business Address (to receive mail for this RFP):

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3. Business Telephone Number: \_\_\_\_\_

4. Business Fax Number: \_\_\_\_\_

5. Firm website: \_\_\_\_\_

6. Federal Employer Identification Number (EIN): \_\_\_\_\_

7. Date (MM/DD/YYYY) Firm was Established: \_\_\_\_/\_\_\_\_/\_\_\_\_

8. Name, Address and EIN of Affiliates or Subsidiaries (use a separate sheet if necessary):

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9. Officer or Principal of Firm and Title:

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10. Name, telephone number, and email address of contact for questions:

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11. Is your firm certified by the Authority as a Minority-owned, Woman-owned or Small Business Enterprise (M/W/SBE)?  YES  No

If yes, please attach a copy of your **Port Authority** certification as a part of this profile.

If your firm is an M/WBE not currently certified by the Authority, see the Authority’s web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, to receive information and apply for certification.

**P.A. AGREEMENT # \*\*\*-15-\*\*\***

DATE

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR THE TUNNELS, BRIDGES AND TERMINALS E-ZPASS® AND E-ZPASS PLUS® PROGRAMS AS REQUESTED ON AN "AS-NEEDED" BASIS DURING 2015 – 2019**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain <FIRM NAME>. (the "Consultant" or "you") to provide expert professional technical support services for the Tunnels, Bridges, and Terminals E-ZPass® and E-ZPass Plus® Programs as requested on an "as needed" basis during 2015 - 2019 as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority reserves the right to extend this Agreement for up to two one-year terms, thereby modifying the Agreement term to include the performance of services requested during 2020 and 2021. Said extensions shall be in writing by the Director to the Consultant for each additional year. A letter extending the Agreement term into each additional year shall be sent to the Consultant, as noted above, at least 30 days prior to the end of the current term.

The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

This Agreement shall be signed by you, and the Chief Procurement Officer. As used herein "Director" shall mean the Director, Terminals, Bridges, and Tunnels Department, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in him unless specifically stated to mean acting personally.

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

2. 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.

3. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit, in writing, to the Director for approval, an estimated cost and

staffing analysis of such services. Approval of such cost and direction from the Director in writing to proceed shall effectuate the performance of services under this Agreement. After the point at which your expenditures for such services reach such approved estimated cost, you shall not continue to render any such services unless you are specifically authorized in writing to so continue by the Director and you shall submit to him for approval a revised written estimated cost of such services. If no such authorization is issued, the performance of the specifically requested services under this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to an amount equal to the approved estimated cost. Preparation of the cost estimate and staffing analysis mentioned in the first sentence of this paragraph shall not be a compensable service hereunder.

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

5. The Consultant shall meet and consult with Authority staff as requested by the Director in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Director. The Director may disapprove if, in his sole opinion said items are not in accordance with the requirements of this Agreement, sound engineering principles, or accepted professional standards, or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated construction, or services is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Director, but the Consultant 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 in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes therein which are best suited for the contemplated work, or services, are done in accordance with sound engineering principles and are signed and sealed by a licensed Professional Engineer.

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

the Director certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

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

8. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder 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.

9. 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, C, and D below, subject to the limits on compensation and provisions set forth in paragraphs 3 and 8 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, B, and C hereunder.

A. For work performed at the Consultant's offices, the Consultant will be compensated at an amount equal to \*.\* times the actual salaries paid by you to professional and technical personnel (but not partners or principals) for time actually spent by them in the performance of services hereunder; for work performed at Authority office(s), as mutually agreed upon, the Consultant will be compensated at an amount equal to \*.\* times the actual salaries paid by you to professional and technical personnel (but not partners or principals) for time actually spent by them in the performance of services hereunder, plus an amount equal to the number of hours actually spent by partners and principals in the performance of services hereunder times the billing rate (no multiplier applied) described below but in each case excluding premium payments for overtime work or night work or for performing hazardous duty. Attached hereto is a schedule of actual salaries and titles of architects, engineers, technical staff or other permanent professional and technical personnel employed by you, as well as rates customarily billed for partners and principals on projects such as this. Said staffing analysis shall clearly indicate any of your employees, proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said 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.

The Consultant shall verify that its employees, or subconsultants, working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide access to the Authority, federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority reserves the right of approval of all personnel, amounts, billing rates and salaries of said personnel performing services under this Agreement. 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 which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement it is the intention of the Authority to grant an increase only 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 which 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 will therefore in all cases be finally determined by the Director or his designee, in his sole and absolute discretion.

Notwithstanding the above, the multipliers set forth in the second and fifth lines of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Premium payments for overtime work or night work or for performing hazardous duty, actually paid to professional and technical employees, but not partners, principals for time actually spent by them in the performance of services hereunder when such overtime or other premium payments have been demonstrated to be in accordance with the Consultant's normal business practice and have been authorized in advance by the Director in writing. The Project Manager for the Authority shall have the right to authorize and approve premium payments up to a total amount of one thousand dollars (\$1,000) per occasion. Payments above said total amount shall be subject to the prior written authorization of the Director. Such premium payments to supervisory employees, who do not receive such payments in the Consultant's normal business practice shall not be given under this Agreement.

C. 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 (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

D. Out-of-pocket expenses, 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 Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, Telex and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses his personal vehicle to provide services within the Port District, the Consultant will 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 United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) 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 will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States General Services Administration for that locality.

General Services Administration (GSA) Rates:

*Domestic Rates:* <http://www.gsa.gov/portal/category/21287>

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 twenty-five dollars (\$25) with receipted bills and provide said receipts with the appropriate billing.

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

10. 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 will have the right to audit all such records.

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

11. On or about the fifteenth (15<sup>th</sup>) day of each month, you shall render a bill 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 purchases 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 will, within fifteen days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

12. 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 three (3) 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 will pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Director through the date of termination, minus all prior payments to you.

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

14. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of 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.

15. 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 other rights or obligations shall arise out of such additional services.

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

17. Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority will have the right to use or permit the use of them and of any ideas

or methods represented by them for any purpose and at any time without compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, 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 in which it has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

18. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority will 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.

19. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees, or sub-consultants which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority will have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Engineering Department without express written authorization of the Director. The Authority will have the exclusive right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that

specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to insure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

20. You shall promptly and fully inform the Director, in writing, of any intellectual property 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.

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

22. 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.

23. 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 or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) 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.

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

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights.

In order to facilitate the meeting of this goal, the Consultant shall use every good-faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's Office of Business Diversity and Civil Rights for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

#### 24. 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, and to sensitive security sites and facilities (including rental spaces) to any person that declines to abide by Authority security procedures and protocols, and to 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, and to make any amendments with respect to such requirements as determined by the Authority.

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

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, you shall have your employees, subconsultants and their employees execute Authority approved non-disclosure agreements.

- Consultant/Subconsultant identity checks and background screening

The Consultant may be required to have its staff, and any subconsultant's staff, 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 subconsultant may also be required to use an organization designated by the Authority to perform the background checks.

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening 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.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as 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 is located at <http://www.secureworker.com>, or S.W.A.C. can be contacted directly at (877) 522-7922 for more information and the latest pricing. If approved by the Project Manager, the cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Staff may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, non-laminated social security card for identify and SSN verification.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of

certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Project Manager. The Consultant shall conform to the procedures as may be established by the Project Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Consultant shall request a description from the Project Manager of the Secure Areas, which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction sites or facilities (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained consultant security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant's and service suppliers at the Authority construction sites or facilities (including rental spaces). In addition, the Consultant, subconsultant or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction sites or facilities 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 Agreement may require access to Port Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The Handbook can be obtained upon request or at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section and the Handbook in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but which are not necessarily 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.

25. 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 the Consultant 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 his obligations under this clause. Moreover, neither the

enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that he 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 he would assume or the claims for which he would be responsible in the absence of such enumerations.

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

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

## 26. 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 Agreement, 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. Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is unescorted in the performance of any field services airside, or if so directed by the Authority, the Commercial General Liability Insurance and Automobile Liability Insurance must contain limits of not less than \$25,000,000 combined single limit per occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey and its related entities" as additional insured(s) and shall contain an endorsement 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 Consultant'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 Agreement 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 written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”*

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

- a) If the services of the Consultant, as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (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. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Director 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:**

The Consultant shall take out and maintain Professional Liability Insurance in limits of not less than \$5,000,000 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 basis or may be written on a claims made basis with a minimum of a three-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) Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

2) Renewal certificates of insurance or policies shall be delivered via e-mail to the Authority's Project Manager at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.

3) 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 General Manager shall so direct, the Consultant shall suspend performance of the Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on account thereof. If the Agreement is not suspended (whether or not because of omission of the General 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 Consultant to the Authority.

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 Agreement. 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 Agreement.

**27. 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.

28. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION,  
CERTIFICATION OF NO SOLICIATION 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 Authority), nor does this organization

have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

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

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

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

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

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in

paragraph "28G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority 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 certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications 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.

## 29. 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.

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

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

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense where the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and may pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

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

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

As used herein “anything of value” shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc. which might tend to obligate the Authority employee to the Consultant, and (b) gift, gratuity, money, goods, equipment, services, lodging, 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 ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

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

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant’s employees to keep confidential, a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

### 32. 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. The Chief Procurement Officer may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Agreement. 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. The Authority's determination regarding any conflict of interest shall be final.

### 33. DEFINITIONS

As used in sections 27 to 32 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.

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. References herein to the Port Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

FIRM NAME.

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DATE

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.

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Chief Procurement Officer  
Procurement Department

Date \_\_\_\_\_

ACCEPTED:

FIRM NAME

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

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

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

FIRM NAME.

- PAGE 25 -

DATE

### **INSTRUCTIONS**

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "37" to "38" and insert a new Paragraph "37" as follows:

37. 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.