

May 6, 2016

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR AIRTRAIN AT NEWARK LIBERTY INTERNATIONAL AIRPORT AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2016-2019 (RFP #45721)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (“Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to perform expert professional engineering and operations and maintenance technical support services for the AirTrain at Newark Liberty International Airport for a term of three (3) years (2016-2019). The Authority reserves the right to extend the agreement for an additional one (1) year, through 2020, at its sole discretion.

The scope of the tasks 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 it forms the basis for the submission of Proposals.

I. PROPOSER REQUIREMENTS

The Authority will consider only those firms able to demonstrate that they meet the following qualification requirements:

- A. Three (3) years experience in providing engineering services for automated people movers, including major system overhaul to (but not limited to) vehicle, automatic platform doors, wayside equipment, communications, power distribution and guideway structure subsystems in the last five (5) years.
- B. Project Managers must have a minimum of three (3) years experience with automated rail transit systems and with design, build, operations and maintenance (DBOM) contract oversight.
- C. Experience on at least one (1) monorail technology system in the last five (5) years.

A determination that a Proposer meets the forgoing requirements is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements will not be further considered.

II. PROPOSAL FORMAT REQUIREMENTS

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

- A. To be acceptable, the Proposal shall be 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 E, F, and G in Section III below. Each resume shall be two-page maximum, single-sided or one-page double-sided, using 12-point or greater font size. The Proposal pages shall be numbered and bound, with “Your Firm Name,” and **RFP Number 45721** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21st Floor, New York, NY 10007, Attention: RFP Custodian. You are requested to submit one (1) reproducible original and five (5) copies, along with six (6) USB copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the USB.

If your proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles may be made only via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the above listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each business day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

- D. In each submission to the Authority, including any return address label, information on the USB, and information on the reproducible original and 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 contract award and contract payments, which shall be the responsibility of the Proposer.
- E. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on May 27, 2016**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.

III. SUBMISSION REQUIREMENTS

To respond to this RFP, provide the following information:

- A. a transmittal letter;

Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with each of the aforementioned "Proposer Requirements". Your transmittal letter shall also include, but not be limited to, the following:

- 1) A statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).

- 2) If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

B. in the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion), signed by an officer of your company;

C. a completed copy of Attachment C (Company Profile)

D. Qualifications and Experience of Staff

In this section, detail the experience of key individuals (including subconsultants, if any) to be responsible for the successful completion of the contemplated services. Prepare an organization chart for this project that identifies key individuals, their titles, their firm and office address, their function, task responsibility and reporting relationships. Attach a detailed resume for each key individual that includes his/her educational background, chronological history of employment, relevant licenses and certifications. The resumes shall clearly identify the years of experience in the field related to the tasks for which the individual will be responsible, as well as his/her specific role if any, in performance of the project(s) identified in response to Section I, above.

For the Project Manager, identify similar projects that the individual has managed in the past five (5) years.

E. Specific relevant experience of your firm.

Provide documentation of Firm's (including sub-consultants) Qualifications and Experience, which shall include projects similar in size and scope to that of this RFP, including, but not be limited to, a list of entities for which similar services of automated people movers have been provided. Services shall include operations and maintenance technical support services to systems which typically consist of automated trains, operating in a cold-winter climate on an elevated double lane guideway the design, condition, and performance investigations, inspections and maintenance requirements of vehicle, wayside and structural facilities, including, but not limited to, monorail vehicles,

automatic train control equipment, communications systems, supervisory data acquisition and control systems, power distribution systems, signal rail, power rail, guideway switches and guideway structures.

Provide a list of no more than three (3) projects and contacts for the Authority to confirm provided information. Information shall be presented in a table prepared by you, to include but not be limited to, the following for each project:

- 1) Project Title
- 2) Client
- 2) Other entities assisting in project
- 3) Project Manager
- 4) Key personnel participants
- 5) Specific services provided
- 6) Project Statistics including: length of system, number of stations, fleet size, technology utilized, vendor that provided the system.

F. Technical Approach

Submit a detailed description of the proposed technical approach to be taken for performance of the required services for each task in Attachment A, and a schedule for completion of said tasks, including milestones associated with each task. The schedule shall be developed based on the overall Program Milestones noted in Attachment A. Factors addressed in your technical approach shall include, but are not limited to, your proposed methodology and strategy for performing the services in Attachment A, as well as any specific software or other technology you may employ in the performance of these services.

As part of your technical approach, prepare a staffing analysis for performance of each task in Attachment A, using the Excel spreadsheet in the following link: [Attachment D \(Staffing Analysis Sheet\)](#). Include names, titles, multipliers, actual hourly pay rates and billing rates (for principals and partners) of staff to be assigned to the performance of each task, and the total number of hours to be spent by each of them in the performance of each task, including out-of-pocket (direct) expenses, if any. Please note that allowable out-of-pocket expenses shall not include daily commutation or housing costs or any relocation costs that may be incurred by proposed staff in performance of the contemplated services.

The “multipliers” referred to in the second and fifth lines of subparagraph 7A of the accompanying Agreement, including a breakdown of said multipliers, indicating all of its components (e.g., vacation, holiday, sick pay, workers’ compensation, office rent, insurance, profit).

If proposing the use of subconsultant(s), include the terms and conditions for their compensation (including their multiplier and/or billing rates as appropriate), their Minority/Women-owned Business Enterprise (M/WBE) status and the technical qualifications of their key personnel to be assigned to the subject project.

G. Management Approach

A detailed description of the proposed management approach to be taken for performance of the required services for each task in Attachment A. Factors addressed in your management approach shall include, but are not limited to: your proposed organizational structure to be responsive to the Authority’s needs; your proposed approach and schedule

for keeping the Authority apprised of the project status; and your proposed approach to ensuring the quality and timeliness of the work product to be produced.

- H. Your attention is directed to Paragraph 22 of the Agreement in which the Authority has stated the M/WBE goals for participation in this project. Submit details on how you intend to meet these goals. A listing of Port Authority certified MBE/WBE firms will be provided upon request.

The Consultant shall include its MBE/WBE Participation Plan with its Proposals, to be reviewed and approved by the Authority's OBDCR.

The MBE/WBE Plan (Form PA 3760C) submitted by the Consultant to the Authority shall contain, at a minimum, the following:

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

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

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

MBE/WBE Conditions of Participation

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

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

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

3. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

Counting MBE/WBE Participation

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. **Subconsultants:** One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When a MBE/WBE subcontracts part of the work

of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

- I. A complete list of your firm's affiliates, if any.
- J. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of, a possible conflict of interest, or circumstances which may give rise to an appearance of impropriety, the Proposer shall include in its Proposal a statement indicating the nature of the conflict or circumstances which may give rise to an appearance of impropriety. 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 or appearance of impropriety. The Authority's determination regarding any question(s) of conflict of interest or appearance of impropriety shall be final.
- K. The Proposer is expected to agree with the form of agreement and its terms and conditions. The Proposer should therefore not make any changes in this standard agreement, nor restate any of its provisions in its 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.

IV. SELECTION PROCESS

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

- A. Staff Qualifications and Experience
- B. Firm Qualifications and Experience
- C. Technical Approach
- D. 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. Such negotiations shall be conducted between the Authority's contact person as identified herein, or the undersigned, and the individual contact person identified by your firm.

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 short advance notice. Presentations should be limited to 30 minutes and should include the material contained in your Proposal. The presentation may be followed by an approximately thirty (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 four (4) other senior staff members proposed to work on this project. Notification of presentation scheduling will be made by email. Provide the name and email address of the person who should be contacted for presentation scheduling, as well as an alternate in the event that person is unavailable.

VI. ADDITIONAL INFORMATION

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/DoingBusinessWith/contractors/html/other_info.html. Additionally, Proposers are encouraged to periodically access the Authority website at http://www.panynj.gov/DoingBusinessWith/contractors/html/current.php#prof_ad for RFP updates and addenda.

If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, 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" (see paragraphs 26-27 of the form of Agreement). By submitting a Proposal, the Firm shall be deemed to have made the certifications contained therein unless said Firm submits a statement with his Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, and clearly marked "CERTIFICATION STATEMENT."

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

Following selection of a Consultant, the Authority will forward two copies of the Agreement to the selected firm, which must sign and return both copies. The return to you of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions please contact Ekatherina E. Carrera, Senior Contract Specialist, by email at ecarrera@panynj.gov. All such emails must have "RFP 45721" in the subject line. The Authority must receive all questions no later than 4:00 P.M., seven (7) calendar days before the RFP due date. Neither Ms. Carrera nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to 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 the accompanying documents, as appropriate.

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

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

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

Sincerely,

David Gutiérrez, CPPO
Assistant Director
Procurement Department

Attachments

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR AIRTRAIN AT NEWARK LIBERTY INTERNATIONAL AIRPORT AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2016-2019

I. BACKGROUND

For background with respect to The Port Authority of New York and New Jersey (the “Authority”) see www.panynj.gov. Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://corpinfo.panynj.gov/pages/annual-reports/>

The Authority owns and operates the AirTrain System (System), which opened for service in 1996 at Newark Liberty International Airport (EWR). The System consists of 18 trains (with six cars per train), Automated People Movers (APM) that provide passenger service between the three (3) airline terminals, four (4) stations featuring parking and/or rental car facilities and a connection to the Northeast Corridor (NEC) Station where passengers can connect to New Jersey Transit and Amtrak Systems.

The Authority has in place an Operations and Maintenance (O&M) Contract (“Contract”) with a third party Operator of the System (“Operator”) to operate and maintain the System, and to undertake the overhaul of the System at specified intervals. A copy of this Contract is included under Section IV of this attachment as an available document.

Based on the design lives set forth in the Contract, a mid-life overhaul of the following subsystems is to be performed by the Operator. The subsystems to be overhauled under the program may include but are not limited to the following:

- A. Power Distribution System and Back-Up Power Supply Systems
- B. Command, Control and Communication Systems
- C. Vehicle Body Components and Related Systems
- D. Guideway Systems

The portion of the guideway under the Contract consists of structures from column base plates and up. This includes base plates, columns, longitudinal structure, guidance and running surfaces, guideway and guideway equipment heating, emergency walkways and lighting, all conduits and vehicle interfaces.

- E. Vehicle Systems

The Operator is required to prepare a proposed outline of tasks necessary to complete the overhaul. The outline shall include a justification for the need of an overhaul, an estimate of time for each overhaul task and a fixed fee proposal.

II. SCOPE OF WORK

The services of the Consultant shall generally consist of, but shall not be limited to, providing expert engineering support services to the daily oversight of the operations and maintenance services by the Operator for the System, on an “as-needed” basis.

Other AirTrain areas of concern that may require services of the Consultant, as determined by the Authority, may include but are not limited to the following:

- Maintenance vehicle overhaul and upgrade.
- Review of system upgrade / replacement.
- Additional system(s) evaluations based on current best practices and industry innovations.

Life cycle and condition analysis of various re-lived systems

It is anticipated that at least one member of the Consultant's staff shall provide the required services directly and reside in the Authority's offices for a continuous period of approximately three (3) years, unless otherwise required by the Authority.

The Consultant shall document all recommendations and findings in conjunction with the above scope in draft and final reports, and meet with Authority staff, Operator staff and others, as required, and as requested by the Authority.

III. DESCRIPTION OF THE CONSULTANT'S TASKS

Specific tasks to be performed by the Consultant may include, but are not limited to, the following:

TASK A. O&M OVERSIGHT AND AUDITING

Oversee and audit the daily operations and maintenance for all aspects of the System (i.e., vehicles, automatic train control, power distribution systems, communication systems, guideway structures). Such oversight and audit shall include but not be limited to:

1. Perform audits to ensure that the Operator follows preventative maintenance programs in accordance with its Contract (EWR-305.502, 4600009160 or subsequent contracts) and Authority approved System Maintenance Plan, as well as with the approved detailed Maintenance Procedures. Make recommendations, as required, to improve Operator's performance.
2. Audit for accuracy all automatically generated daily availability and operations reports generated by the Operator.
3. Review data and reports prepared by the Operator as required to develop trend information; use automated reports to measure Mean Distance Between Failures (MDBF), and Mean Time Between Failures (MTBF); and make recommendations to decrease equipment failures.
4. Audit all aspects of the safety and security system are functioning as per Contract requirements and per Authority approved Operator System Safety Program Plans; and make recommendations to mitigate and/or resolve contract compliance issues.
5. Review and provide comments and recommendations on Operator plans and procedures related to the operations and maintenance of the AirTrain, including but not limited to:
 - a) Maintenance Plan and detailed Maintenance Procedures
 - b) Operations Plan
 - c) Standard Operating Procedures
 - d) System Safety Program Plan
 - e) Training Plan
 - f) Configuration Management Plan

- g) Other plan documents as needed

TASK B. TECHNICAL OVERSIGHT & SUPPORT

Provide technical support to the Authority in its management of the Contract in all areas, including, but not limited to:

1. Provide technical oversight of Operator's O&M standards and operations necessary for the continued maintainability and reliability of AirTrain operations; ensure compliance with established operations and maintenance processes and procedures; and provide experience and technical expertise to ensure best industry practices are followed and integrated into current plans and procedures.
2. Review and comment on ongoing Operator technical submittals, including, but not limited to:
 - a) Risk Assessments for proposed corrective and preventative maintenance work which could impact passenger service or damage the AirTrain asset
 - b) Engineering Investigation reports generated by the Operator due to system and component failures and incidents
 - c) Accident and Incident Investigation reports submitted by the Operator
 - d) Temporary Change Authorization requests from the Operator to modify and or replace any system component
 - e) Engineering Change Notice requests from the Operator to implement system modifications
3. Provide recommendations to the Authority on any proposed AirTrain staffing changes to support the operations & maintenance program.
4. Track, monitor and report on Operator's ability to maintain O&M readiness by conducting audits, upon request by the Authority.
5. Use technical expertise in APM to provide recommendations on improvements to the operations of AirTrain. Recommendations shall include but not limited to improvements to the various subsystems, such as propulsion, automatic train control, Power Distribution System, etc., and System familiarity.
6. Review monthly Operator invoices for compliance with Authority Contracts EWR-305.502 and 4600009160 (or subsequent contracts) regarding availability and performance, and identifying areas within the invoice where availability standards are not being met.
7. Provide technical expertise in oversight of proposed capital asset replacement programs.
8. Review proposed scopes of work and cost estimates, oversee work being performed and assist in review of capital asset replacement invoices submitted by the Operator.
9. Review and comment on any revised documentation and drawings submitted by the Operator in conjunction with capital asset replacement work.

TASK C. CAPITAL ASSET OVERSIGHT & SUPPORT

1. Review overhaul work scope proposal(s) submitted by the Operator. Determine if the overhaul work elements have been correctly identified as: inspect and repair; rebuild;

replace; or upgrade, as appropriate. Identify elements that may require overhaul that have not been included in the Operator's proposal, giving your reasons therefor.

2. Analyze the Operator's overhaul work plan to identify potential operational issues. If the duration of the overhaul of a subsystem is determined to have a possible negative effect on operations, provide analysis of diminished passenger capacity, platform queuing space, headway conflicts or other impacts prior to the approval of the Operator's implementation plan. Submit the analysis/report to the Authority for review and comment, and prepare in final form within seven days of receipt of the Authority's comments.
3. Submit an independent cost and staffing analysis for performance of the Operator's proposals. Incorporate Authority comments as required, and resubmit the analysis as final within seven days of receipt of the Authority's comments. Assist the Authority in negotiations as required.
4. Perform inspection and monitoring of the overhaul program implementation. Conduct inspections of the overhaul process, providing written reports on your findings. Post-Installation-Check-Out tests of the newly overhauled equipment performed by the Operator, shall be closely monitored by the Consultant. The Consultant shall keep the Authority apprised of the Operator's progress status. Review for approval all test plans and procedures and witness all testing. Upon completion of any subsystem testing, submit written acceptance/rejection of the subsystem, as appropriate, to the Authority. Review and comment on manual revisions resulting from changes to the overhaul scope.

TASK D. QUALITY ASSURANCE

Function as the on-site Quality Assurance Representative with responsibilities to include:

1. Review vehicle maintenance, wayside and facility processes.
2. Perform Audits to ensure timely and quality replacement of parts to maintain fleet availability needed for revenue service.
3. Review repairs and part replacements for: (a) quality and method of workmanship, (b) consistency with original system component or element, and (c) adherence to all required processes and procedures (including fabrication and installation requirements). Where processes and procedures need be revised or newly implemented, propose and/or review proposed modified methodologies, or alternative components.
4. Become familiar with the design, manufacturing, test and analysis processes and procedures as required to provide technical expertise for upgrades or enhancements, as appropriate.

TASK E. MISCELLANEOUS SERVICES

1. Monitor and review the Operator's safety and security-related activities, as follows:
 - a) Coordinate the activities of the Safety and Security Committee, which is comprised of staff from the following groups: PA, Bombardier, PAPD, NJTransit and Amtrak.
 - b) Schedule and assist the performance of the rolling audit program (an AirTrain Safety Oversight Board standard, which is based on a Federal Transit Administration model) for the implementation of the System Safety Program Plan, System Security Program Plan, etc.

- c) Provide oversight on reports, action plans and reporting findings to the Safety and Security Committee.
2. Conduct assessments, as requested by the Authority, regarding the AirTrain operations, industry standards and best practices in the area of airport monorail and transit systems.
3. At the Authority's discretion, maintain a document control system at the Authority's EWR offices.
4. Document all recommendations and findings in conjunction with the above Tasks A through D in draft form, submit to the Authority for review, and incorporate Authority comments into final reports.
5. Meet with Authority staff, Operator staff and others, as required and approved by the Authority.

IV. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY

The Authority will make available for the selected Consultant's information documents listed below. The documents specified under below form part of this Agreement:

- Operations and Maintenance Contract - Contract Number - EWR-305.502
- Operations and Maintenance (O&M) and Capital Asset Replacement Services – Contract Number 460009160
- EWR AirTrain Maintenance Plan

V. CONDITIONS AND PRECAUTIONS

A. General

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

Vehicular and/or pedestrian traffic shall have priority over any and all of the Consultant's operations.

B. Work Areas

The Consultant shall limit site visits to the area necessary for the performance of inspections and shall not interfere with the operation of Authority-owned facilities without first obtaining specific approval from the Authority's Project Manager.

The Consultant shall not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways or structures at any time.

C. Work Hours

Consultant staffing shall be scheduled as required to not incur overtime and to limit individual workweeks to not more than 40 hours per week, unless otherwise approved by the Director.

In any case, no work shall be performed at the work site on a legal holiday of either the State of New York or the State of New Jersey, unless otherwise directed by the duly authorized representative of the Authority.

VI. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Products-Completed Operations and Independent Contractor coverages in limits of not less than \$10,000,000 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 \$10,000,000 combined single limit per accident for bodily injury and property damage. (Auto and Commercial General Liability limit on airside: \$25 million per accident) In addition, the liability policies (other than Professional Liability) shall include "The Port Authority of New York and New Jersey and its wholly owned entities" as an additional insureds 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 separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured.

Further, the certificate of insurance and the liability Policy (ies) shall be specifically endorsed that "*The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*"

B. Workers' Compensation Insurance:

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.

C. Professional Liability Insurance:

Not less than \$5 million 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 Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
2. The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Contract.
3. The General Manager, Risk Management must approve the certificate(s) of insurance before work. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Contractor shall promptly obtain a new and satisfactory certificate and/or policy.
4. The Authority may at any time during the term of this agreement change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, The General Manager, Risk Management for the Authority may consider such cost as an out-of-pocket expense.

P.A. AGREEMENT #AVI-16-***

DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention: CONTACT NAME, TITLE

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL * SERVICES FOR *****

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 ***** services, as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority reserves the right, at its sole discretion, to extend this Agreement term for one additional year period (20**). A letter extending the Agreement term shall be sent to the Consultant at least 30 days prior to the end of the term signed by the Director.

The Authority shall have the unilateral right to extend the term of this Agreement for up to one (1) additional three (3) year period, upon the same terms, conditions and pricing, unless otherwise agreed to by the Authority. The Authority will send written notification of the extension to you at least thirty days prior to expiration of the current term that the Agreement shall be extended.

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.

2. This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director, Department/Office of the Authority, or duly authorized representatives acting within the scope of the particular authority vested in them.

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.

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

4. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws,

ordinances, rules, regulations, and orders which would affect or control said services 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 any service to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Director. The Director may disapprove if, in his sole opinion, said items are not in accordance with the requirements of this Agreement or accepted professional standards or are impractical, uneconomical or unsuited in any way for the purpose for which they are intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Director, but the Consultant will 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 its responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

6. 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 amount of \$***,***.00 (*****) unless you are specifically authorized in writing to so continue by the Director ~~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. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

7. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, D, and E below, subject to the limits on compensation and provisions set forth 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 and/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 schedule 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 the Authority access to 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 cost 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, the Authority will 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 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 or 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 will be reimbursed by the Authority when they 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 will 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 under 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, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its 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 GSA for that locality.

GSA 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 one thousand dollars (\$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 shall provide said receipts with the appropriate billing.

E. As used herein:

"Port District" is a geographical area 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, 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 multiplier referred to in Subparagraph A above.

8. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute 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.

9. On or about the fifteenth (15th) 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 purchase order number provided by the Director. Upon receipt of the

foregoing, the Director will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority will, within thirty (30) days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

10. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon 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.

11. You shall not issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Authority or 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.

12. 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 you are otherwise instructed by the Director.

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

14. No certificate, payment (final or otherwise), acceptance of any work or any other act or omission of the Authority or the Director shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

15. Originals of 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 such claims presently exist or arise in the future and they are 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, by a subconsultant or by 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.

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

17. 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 and/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 Project

Management Office without express written authorization of the Director. The Authority will have the exclusive 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 for herein. You agree to contract with your employees for the benefit of the Authority to ensure 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.

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

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

20. This Agreement 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, to impose any obligation on the Authority to such subconsultant or to give the subconsultant any rights against the Authority.

21. 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 five percent (5%) 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.

22. NON-DISCRIMINATION REQUIREMENTS

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

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

B. Consultant agrees that these "Non-Discrimination Requirements" are a binding part of this Agreement. Without limiting the generality of any other term or provision of this Agreement, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Agreement in accordance with Section 10 of this Agreement.

C. Consultant agrees to cooperate fully with the Authority's investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question

employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

23. 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 who 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 pose 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 personal identity verification checks. 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 (1) 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, (2) screening of federal, state, and/or local criminal justice agency information databases and files, (3) screening of any terrorist identification files and (4) 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. Costs for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the 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. Consultant shall 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 identity 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 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 any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. 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, the presence of Port Authority Police or Authority retained consultant security guards shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultants and service suppliers at the Authority 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 any Authority site or facility (including any rental space), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to 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. Consultant shall protect sensitive information by applying uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the 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.

24. The Consultant assumes the following distinct and several risks to the extent they may arise 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 against 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 against 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 against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or 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 the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed by the Authority, 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 the 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 the Consultant 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 the Consultant 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.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, 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 fifty thousand dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, 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, including an inspector general of a governmental agency or public authority.

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

By proposing on this Agreement, each Consultant and each person signing on behalf of any consultant certifies, and in the case of a joint 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 March 11, 2014, or as may be revised, (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 "26G", 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 will take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the 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, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future 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, Consultant is 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.). Consultant is also advised that the inability to make such certification will not in and of itself disqualify the 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 award of this Agreement to enter into a Monitoring Agreement under which the Consultant 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. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the

Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might, under this clause, make it unable to make the foregoing certifications, or might require disclosure.

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of 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 of the State of 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.

28. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

During the term of this Agreement, the Consultant shall remain responsible. To be "responsible" shall mean (1) to have legal authority to do business in the State of New Jersey and/or the State of New York and (2) to possess, in the Authority's opinion, integrity, experience, ability, financial capacity and a satisfactory record of prior performance sufficient to perform the services required under this Agreement. The Consultant agrees, if requested by the Authority, to present evidence that the Consultant is responsible.

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. The Authority may exercise this right to suspend the Consultant by giving the Consultant written notice outlining the particulars of such suspension. Upon receipt of such notice, the Consultant shall comply with the notice's terms. Agreement activity may resume at such time as the Authority issues another 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 when the Consultant is determined by the Authority not to be responsible (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.

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

At all times, the Consultant shall not offer, give or agree to give anything of value either to 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, or discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. “Anything of value” 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 constitute grounds for a finding that the Consultant is non-responsible.

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 March 11, 2014, or as may be revised, (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.

30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, nor shall the Consultant 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 any other 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 other 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 any other consultant or potential consultant of the Authority, and if the Consultant's participation in the preparation, negotiation or award of any agreement with such other 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 Authority in writing of such situation, giving the full details thereof. Unless the Consultant receives the specific written approval of the Authority, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Authority may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, and such mitigation plan shall be subject to the approval of the Authority and shall become a requirement imposed on the Consultant, as though fully set forth in this Agreement. In the event the Authority 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 if a portion of the Consultant's said services is determined by the Authority to be no longer appropriate because of such preclusion, then the Authority 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 that result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any conflict of interest shall be final.

31. DEFINITIONS

As used in sections 25 to 30 above, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or if 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 inquiry made by any federal, state or local criminal prosecuting agency and any inquiry 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 investigation for employment, or federal, state or 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.

32. 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 by his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

33. 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.

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

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

FIRM NAME

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DATE

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

Sincerely,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

Lillian D. Valenti
Chief Procurement Officer

Date _____

ACCEPTED:

FIRM NAME

By: _____

Print Name: _____

Title: _____

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 "36" to "37" and insert a new Paragraph "36" as follows:

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

ATTACHMENT B

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT
PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR AIRTRAIN AT
NEWARK LIBERTY INTERNATIONAL AIRPORT AS REQUESTED ON
AN “AS-NEEDED” BASIS DURING 2016-2019 (RFP # 45721)**

AGREEMENT ON TERMS OF DISCUSSION

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

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

(Company)

(Signature)

(Title)

(Date)

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

ATTACHMENT C
COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT
PROFESSIONAL TECHNICAL SUPPORT SERVICES FOR AIRTRAIN AT
NEWARK LIBERTY INTERNATIONAL AIRPORT AS REQUESTED ON AN
“AS-NEEDED” BASIS DURING 2016-2019 (RFP #45721)**

1. Company Legal Name (print or type):

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

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):

9. Officer or Principal of Firm and Title:

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

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.