

September 6, 2017

**SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL RAIL PLANNING/EXPANSION SERVICES FOR JOHN F. KENNEDY INTERNATIONAL AIRPORT AIRTRAIN CAPACITY ENHANCEMENTS PROGRAM ON AN “AS-NEEDED” BASIS DURING 2017-2018 (RFP #49247)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to perform the subject services on an “as-needed” basis during 2017-2018. 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 forms the basis for the submission of Proposals.

In January 2015, New York Governor Andrew Cuomo created an Airport Advisory Panel (the Panel) to advise the State of New York and the Authority on the modernization of LaGuardia and JFK Airports. Subsequently, the Panel developed *A Vision Plan for John F. Kennedy International Airport, Recommendations for a 21<sup>st</sup> Century Airport for the State of New York* (the *Vision Plan*) (<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/JFKVisionPlan.pdf>.) The *Vision Plan* highlights several challenges facing JFK, among them is a need for mass transit improvements, citing JFK as being behind other world class international airports when it comes to rail mass transit. The Advisory Panel has recommended that JFK AirTrain, the on-airport rail mass transit, be “expanded” to provide additional capacity and more frequent service.

The Authority is seeking a Consultant to assess the existing system and develop a comprehensive plan that addresses the challenges highlighted in the *Vision Plan*, and to provide related on-airport mass transit program planning and project support services.

**I. PROPOSER REQUIREMENTS:**

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

- A. Successfully completed at least two (2) Rail System development or expansion studies, within the last ten (10) years, each valued at a minimum of \$5 million, with at least one having been for a for a large hub airport serving at least 15 million annual air passengers.
- B. Provided program planning and design services, within the last fifteen (15) years, for rail mass transit at an international airport (with a construction value of at least \$500 Million) serving at least fifteen (15) million annual air passengers and containing at least three (3) terminals. For the purposes of this requirement, program planning and design services shall have included, at minimum: (1) performing demand analyses and determining facility requirements; (2) performing rail system modeling analyses; (3) determining the preliminary basis of conceptual functional design for the system expansion infrastructure; (4) performing support facilities and utilities infrastructure planning.

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 shall 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 H 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 #49247** 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 **eight (8) CD copies** of your Proposal for review. Each electronic copy of the Proposal shall be made into one (1) complete, searchable PDF file, and each CD copy shall be conspicuously marked or labeled with the Proposer’s name and **RFP #49247**. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the CD.

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 shall 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 will only be made 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 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 flash drive and information on the reproducible original 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 October 4, 2017**. 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. AGREEMENT ON TERMS OF DISCUSSION**

In accordance with Authority policy, you are required to include in the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each firm in the joint venture must sign a copy of Attachment B.

#### **B. 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.
2. All the qualification information required for a single entity shall be submitted for each participant in the joint venture. If a common law 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 joint venture is deemed qualified to receive an invitation to deliver a formal presentation of how it proposes to provide the services outlined herein, the joint venture shall be composed of the same participants as were in the joint venture when it submitted the Proposal. No substitution of participants will be allowed without the express prior written permission of the Authority.
3. Submit as part of your Proposal a copy of any written agreement or understanding which exists between each party to the joint venture. If no written agreement or understanding exists, the Lead Proposer shall be identified and the joint venture shall include in its Proposal a written statement explaining how the joint venture will fulfill the requirements of the Agreement. Such explanation shall fully discuss and identify the responsibility of each party to the joint venture for performing the Work, and for providing the required insurance.

#### **C. COMPANY PROFILE**

Complete a copy of Attachment C (Company Profile).

#### D. STAFF QUALIFICATIONS AND EXPERIENCE

The Firm's team shall include staff with expertise in a wide range of sectors and fields, including but not limited to: planning, architectural, engineering, constructability, estimating services, and business case analysis.

Note that the Authority has already retained the services of a financial advisor. The Authority does not require or expect prospective proposers to include financial advisors in their proposed teams.

1. List the name(s), title(s) and resumes of personnel who will be assigned to perform any services requested. Resumes should detail educational background, chronological history of employment, previous work relevant to this assignment along with length of time on the relevant assignments, and any relevant licenses and/or certifications.
2. Prepare an organizational chart that identifies the key individuals who will be assigned to perform the services requested in Attachment A, their firm affiliations and office addresses, functions, task responsibilities and reporting relationships.
3. Include a profile of persons identified in the organizational chart that describes how their experience and technical capabilities will assist in the successful completion of the proposed project.
4. Provide a profile for the proposed Project Manager that demonstrates that said individual has the necessary experience to complete the services outlined in Attachment A. Identify the aviation-related projects the proposed Project Manager has managed in the past ten (10) years that required the type of planning services requested in Attachment A. Include the percentage of time the individual will dedicate to this project as well as other projects, if any.
5. Identify subconsultants, if any, and indicate their experience and qualifications.

#### E. FIRM QUALIFICATIONS AND EXPERIENCE

Provide documentation of Firm's (including proposed subconsultants) qualifications and experience, on projects similar in size and scope to that of this RFP, including, but not limited to, a list of entities for which similar services (rail system development or expansion) have been provided.

Provide a list of no more than five (5) 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 entity and contact person (name, title, phone number, email address)
3. Other entities assisting in project
4. Project Manager
5. Key personnel participants
6. Specific services provided
7. Contract value
8. Date of completion

F. TECHNICAL APPROACH

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. 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.

Prepare a staffing analysis for performance of each task in Attachment A, using the Excel spreadsheet in the following link: [Attachment D \(Staffing and Cost Analysis Sheet\)](#). Include names, titles, multipliers (if applicable), 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. Provide a breakdown of said multipliers, indicating all of its components (e.g., vacation, holiday, sick pay, workers' compensation, office rent, insurance, profit). 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. Include the estimated total hours and cost per task and sub-task, and grand total cost in sum.

If proposing the use of subconsultant(s), include the terms and conditions for their compensation (including their multipliers and/or billing rates as appropriate), their Minority/Women-owned Business Enterprise (MBE/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. Include a proposed organizational chart for this project, with the names and office locations of all employees assigned to the project.

H. Your attention is directed to Paragraph 20 of the Agreement in which the Authority has stated the MBE/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 can be viewed at <http://www.panynj.gov/business-opportunities/supplier-diversity.htm>. A directory of MWBEs certified by Empire State Development Corporation's Division of Minority and Women Owned Businesses (DMWBE) may be viewed at: <https://ny.newnycontracts.com>.

The Consultant shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposals, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan 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 or DMWBE 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> and <https://ny.newnycontracts.com> 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 subconsultant of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its Proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest.

Proposer is required to disclose all work performed at JFK for a period of three (3) years prior to the date of submission. Proposer should include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the proposer performed work, and a short description of the nature of the work or project.

Proposers are advised that, while not currently anticipated, nothing herein shall preclude the Authority from determining at a subsequent point in time, that performance of the services contemplated hereunder gives rise to the existence of, or the appearance of, a conflict of interest, and thereby conclude that a firm(s) selected for performance of the subject services, is/are expressly precluded from participation in, or the performance of other procurement opportunities for any project on which the firm has provided such services. Proposers are directed to paragraph 31 of the attached Standard Agreement. Proposers are further advised that under this Agreement, firms must provide, upon receipt of a Task Order issued by the Authority, written notice to the Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

The Authority's determination regarding any question(s) of conflict of interest shall be final.

- K. The Proposer is expected to agree with the form of Agreement and all of its terms and conditions. The Proposer should therefore not make any changes in the Agreement nor restate any of its provisions in your Proposal or supporting material. ***However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP.*** The Authority is under no obligation to entertain or accept any such specific exceptions. ***Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.***

#### **IV. SELECTION PROCESS:**

The review, rating and ranking of Proposals shall first be based upon the technical qualifications as indicated below. The qualifications-based selection shall take into consideration the following technical qualifications and subsequently cost, as appropriate:

- A. Qualifications and experience of the staff, including subconsultants, contemplated to perform services hereunder;
- B. Qualifications and experience of the firm;
- C. Technical Approach for the performance of the contemplated services; and
- D. Management Approach for the performance of the contemplated services.

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

#### **V. ORAL PRESENTATIONS:**

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given short advance notice. The total time allocated to your presentation, including opening and closing statements and questions and answers, is ninety (90) minutes. 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 is made by email. Please 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](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/business-opportunities/bid-proposal-advertisements.html> for RFP updates and addenda.

If your firm is selected for performance of the subject services, you will be required to have your employees, subconsultants, and their employees execute Authority-approved Non-Disclosure and Confidentiality Agreements and Acknowledgements. No documents, studies, or information provided to you by the Authority may be used by your firm or its employees or subconsultants for any purposes other than development of the JFK AirTrain Capacity Enhancements.

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." By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant

submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT."

It is Authority policy that its 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.

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, or to request access to information and/or materials referenced in Attachment A, Section V., that are not available on the Authority's website, please contact Ms. Mary Lou Rivera, Solicitation Manager, by email at [mlrivera@panynj.gov](mailto:mlrivera@panynj.gov). All such emails must have "RFP #49247" 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. Rivera 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 RAIL PLANNING/ EXPANSION SERVICES FOR JOHN F. KENNEDY INTERNATIONAL AIRPORT AIRTRAIN CAPACITY ENHANCEMENTS PROGRAM ON AN “AS-NEEDED” BASIS DURING 2017-2018

#### I. BACKGROUND

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

The Authority’s wholly owned and subsidiary facilities are vital “gateways to the Nation”. John F. Kennedy International Airport (“JFK” or “the Airport”) itself serves as the international gateway to the State of New York and to the nation, welcoming more international passengers to the United States than any other airport in the nation. In 2016, JFK accommodated over 80 airlines serving nearly 60 million passengers. Air passenger demand continues to grow, with a 22% growth rate in passenger demand over the past 5 years. Moreover, JFK continues to be the region’s gateway for air cargo, and is an important economic engine for the region, generating \$15 billion in wages and nearly 285,000 jobs.

As JFK continues to grow, the JFK AirTrain, a vital link between terminals and to public transit, also is experiencing increased ridership. The JFK AirTrain system at times currently reaches capacity and needs to undergo capacity enhancements to continue to meet demands. The Authority is seeking a professional technical services support consultant to provide expert professional and technical rail planning and fleet expansion services for JFK AirTrain. The services shall generally consist of all planning, design and engineering disciplines, and other subject matter experts as required to develop conceptual plans, concepts of operation as well as procurement strategies for all elements of the JFK AirTrain Capacity Enhancements Program (“Program”). The work shall include but not be limited to track and maintenance facility layout and conceptual planning, site planning, utility provisions, infrastructure relocation requirements, ridership demands, performance requirements, estimating, construction staging, technology assessments and recommendations.

The planning for the AirTrain must be completed in recognition of other ongoing development and study efforts at JFK, including but not limited to the JFK Redevelopment Program, JFK Visioning Plan, JFK Master Plan and Near Term Program Planning, the Airport System Capacity Planning Study, as well as other master planning efforts that are to be undertaken. The Consultant shall coordinate its work with the Authority and other third parties involved in these efforts at JFK.

#### II. SCOPE OF WORK

The services of the Consultant shall include, but not be limited to, providing:

- A. All planning, design and engineering disciplines, and other subject matter experts as required to develop conceptual planning and concepts of operation as well as procurement strategies for all elements of the Program; and

- B. All architectural and engineering services to complete conceptual design of the enhancements, including performance specifications and concept drawings for systems and infrastructure.
- C. All work will be issued on a Task Order basis. The Authority reserves the right to issue any portion of the tasks below and may not execute all tasks included. The Authority also reserves the right to perform any of the services with its own staff or with other consultants, as it deems appropriate. Anticipated Program scope includes but is not limited to:
  - 1. Ridership demands and performance requirements definition for the Program
  - 2. Technology assessments and recommendations
  - 3. AirTrain layout design, including guideway alignment and functional arrangement of major elements
  - 4. AirTrain System performance-based technical specifications
  - 5. Guideway, Station and Maintenance Facility layout and conceptual planning
  - 6. Site planning, utility provision and relocations requirements definition
  - 7. Environmental assessments/permitting
  - 8. Sustainable design achievement
  - 9. Cost estimating, construction staging and scheduling
  - 10. Value Engineering
  - 11. System procurement support, including development of procurement

Throughout the work, the Consultant shall coordinate and work with stakeholders, both internal and external to the Authority, including but not limited to airlines, rental car operators, Metropolitan Transportation Authority (MTA), local and federal agencies, and other consultants. In addition, the Consultant shall coordinate the Program elements with all other developments, current or future, at JFK to achieve a cohesive design concept and shall suggest improvements to the Authority in methodology and technology that might achieve cost savings, ease of implementation, etc. The Consultant shall work with the Authority staff or other consultants as needed and shall provide base design assumptions and drawings to Authority in-house design staff in a timely manner as appropriate. Under the direction of the Authority, the Consultant shall integrate any Authority work product into all aspects of the overall deliverables.

All work performed by the Consultant shall comply with all applicable laws, ordinances, rules, regulations, codes and orders as well as with Authority standards, guidelines and requirements, and shall be subject to the Authority's review and approval at any time. The Consultant shall incorporate Authority comments as requested.

### **III. DESCRIPTION OF THE CONSULTANT'S TASKS**

Tasks shall include but not be limited to the following:

## TASK A. MEETINGS AND PRESENTATIONS

1. Attend meetings with Authority staff and other stakeholders, as identified by the Authority. In-person meeting duration is estimated at four (4) hours per meeting per person inclusive of travel time, as appropriate. The number of meeting attendees shall be restricted to only those with a justifiable reason for attending, and all attendees shall be approved in advance by the Authority. Meetings with the Authority shall include but not be limited to:
  - a. Project Kick-Off. Kick-off meeting shall include data coordination requirements and data source availability issues.
  - b. Weekly project progress/update meetings. The Consultant shall be responsible for arranging, coordinating, and leading these meetings.
  - c. Quarterly stakeholder meetings.
  - d. Minimum fifty (50) meetings for this effort. The meetings shall involve the review of project status, and include the participation of certain focus groups (e.g. JFK Rail Operation, Aeronautical, Terminal, Landside, Traffic, Environmental, Planning).
  - e. Project presentation(s) for the Authority and other stakeholders; public and stakeholder engagement may include user groups, business partners, civic and environmental groups, and key elected officials and other governmental agencies.
2. Prepare meeting agenda, sign-in sheets, meeting minutes, and presentations. Submit draft meeting minutes within three (3) days of meetings and submit final meeting minutes within three (3) days of receipt of the Authority comments on the draft minutes. Meetings shall take place at an appropriate location to be determined by the Authority. In the case of a telecom or WebEx, the Consultant shall be responsible for all arrangements.
3. For meetings that require a PowerPoint presentation or other presentation materials, submit to the Authority one (1) digital file of the presentation or materials at least two (2) days prior to the meeting for review, comment, and incorporation of comments, as appropriate.

## TASK B. PROJECT SCHEDULE AND PROGRESS REPORTS

1. Prepare and submit a draft of the detailed schedule for performance of all Tasks listed herein. The schedule shall include but not be limited to milestones and interdependencies, tasks and sub-tasks, review of all submittals by the Authority, and incorporation of the Authority's comments. The schedules shall be cost and resource loaded and prepared using the Critical Path Method in Gantt format using Primavera P6.
2. For each Task, prepare and submit one (1) digital file of the electronic version of the scope, schedule and budget. Incorporate Authority comments, as required, and re-submit one (1) digital file. For review and approval by the Authority, update and resubmit the schedule monthly to reflect project progress.
3. Monthly Progress Reports shall be prepared for each Task in accordance with the approved monthly schedule. At minimum, each report shall show (1) the planned task durations and actual percentages complete; (2) the budget status (actual and forecasted spending) of each Task and the identification of issues encountered; and (3) identification of activities anticipated to be accomplished in subsequent weeks/months. Progress Reports shall be in a format proposed by the Consultant and approved by the Authority and shall be submitted

in draft form to the Authority for review. Unless major issues and/or problems are encountered, Authority comments will be provided within two (2) weeks of receipt of the respective report. Monthly Progress Reports shall be submitted in final form with Authority comments incorporated along with each monthly invoice, by the 15<sup>th</sup> of the month.

At the Authority's discretion, the frequency of such progress reports may be revised to bi-weekly.

#### TASK C. GOALS AND OBJECTIVES

1. Meet with the Authority to identify goals and objectives of the Program as follows:
  - a. Fleet expansion options
  - b. Supporting infrastructure
  - c. Implementation scenario
2. Submit a Preliminary Draft Goals and Objectives Report (Report) documenting agreed-upon goals and objectives. Review, analyze and evaluate Authority comments to the Report and submit a revised report for acceptance by the Authority.

#### TASK D. CONDITION ASSESSMENT

Conduct a condition assessment of the existing JFK AirTrain. Assemble, review, organize, and summarize all information provided by the Authority (throughout the duration of the Agreement) and collect additional information as needed. This information includes, but is not limited to, all elements pertaining to the JFK AirTrain (e.g, stations, maintenance facility, existing utility systems, drainage infrastructure, and supporting ancillary facilities, as well as landside and interface with off-airport network) and mass transit and regional access systems. The Consultant shall:

1. Gather, review, research and organize basic information, data, and mapping, including, but not limited to, all plans, specifications, maps, photographs, drawings and other relevant data for airport work.
2. Identify information that, in the Consultant's opinion, might be outdated and determine the need for additional information not readily available but which is necessary to accurately determine inventory and existing conditions, giving the Consultant's reasons therefor. Compile/prepare new data and related documentation only when existing information is found to be incomplete or outdated, but only upon prior approval of the Authority.
3. As directed by the Authority, conduct on-site inspections/field visits and/or meetings with JFK senior staff or airlines/terminal operators to verify the accuracy of (and supplement if necessary) the information, data, and mapping information.
4. Identify, update/supplement available documents and integrate into an inventory that describes and documents existing facilities, noting type of facility.
5. Compile, review and summarize data that identifies JFK in the context of its regional setting and the land use characteristics around the Airport.
6. Identify planned infrastructure improvements (identified in the Authority's Capital Plan and other sources, as applicable) and commissioning date for input into Task I below.

7. Inventory data shall be summarized and presented in the context of the Panel's overall 21<sup>st</sup> century vision of the Airport in a narrative, graphic, and tabular form, as appropriate, in draft format and resubmitted as final draft after incorporating Authority comments.

#### TASK E. AIRTRAIN STATIONS AND BUS STOPS USAGE DATA COLLECTION PROGRAM

1. Conduct a data collection process, which shall be streamlined, organized and performed with a clear understanding that the information needs to support the demand/capacity analyses and determination of facility requirements.
2. Develop a data collection program to assess AirTrain and public transportation operations and current ridership demand at JFK. The data collected shall be use develop initial ridership demands and to develop AirTrain and Mass Transit planning parameters. Data collection involves:
  - a. Seven (7) days of AirTrain passenger counts at all AirTrain stations;
  - b. A one-day Origin-and-Destination (O-D) Survey at all AirTrain stations;
  - c. One Day (1) day of AirTrain users surveys at all AirTrain stations
  - d. One Day (1) day of AirTrain riders /Baggage Cart Counts at all AirTrain stations
  - e. A one-day count of mass transit users at all Airport bus stops;
  - f. A one-day O-D Survey at all Airport bus stops; and
  - g. Mass transit users sample surveys at all Airport bus stops.
3. Survey staff-counted passengers entering and exiting each AirTrain station. Conduct passenger counts for 24-hours-a-day for seven (7) consecutive days at the ten (10) AirTrain stations. All passengers entering or exiting the station shall be classified as either passengers or employees, a passenger with a baggage cart or a passenger without a baggage cart.
4. O-D Survey

Conduct a 24-hour postcard O-D survey at each of the ten (10) AirTrain stations at JFK, requesting AirTrain patrons to take a card as they enter the station. Distribute color-coded postcards to as many entering patrons as possible and ask them to deposit the cards in designated bins as they exit the AirTrain system. Take **total AirTrain patrons** counts at the ingress and egress points of each station to determine total entering and exiting pedestrian traffic. Use this data for expansion of survey samples to the total population using the system during the 24-hour survey period.
5. Document your findings and requirements noted through the review and meet with Authority staff and others, as required, to discuss your findings. Incorporate any comments as directed by the Authority and resubmit as a final report.

#### TASK F. PRELIMINARY RIDERSHIP DEMAND AND PERFORMANCE REQUIREMENTS DEFINITION

1. Develop initial ridership demands for the AirTrain and mass transit, taking into account both airline passengers and airport employees. Ridership must also consider current and future demands and capacities of feeder transit systems, including but not limited to MTA, hotel and courtesy van drop offs, etc.
2. Incorporate information gathered from all stakeholders as well as the ridership analysis and any previous ridership study that document the Systems Performance Requirements as well as the design criteria, including all applicable design codes for the system and infrastructure, that must be followed.

#### TASK G. BENCHMARKING TO WORLD CLASS AIRPORTS TRANSIT STANDARDS

1. Identify the customer service experience standards that contribute to a world class airport transit experience, to be used as a benchmark for the development of a world class transit experience at JFK.
2. Provide a list of transit parameters that will be included in the design standard benchmarking for review and acceptance by the Authority before proceeding with the analysis. Develop and describe key elements of the overall design intent for JFK redevelopment. As necessary, use photographs, suggested typologies, renderings, and other graphical tools to clearly communicate design criteria. For review by the Authority, develop a design criteria implementation plan, identifying:
  - a. The purpose of the criteria;
  - b. Potential obstacles to implementation; and
  - c. Strategies to ensure AirTrain redevelopment proceeds in accordance with design criteria and to enable JFK to grow over time as an integrated airport experience (i.e. mitigating implementation obstacles).

#### TASK H. COORDINATION WITH JFK MASTER PLAN

1. Throughout the execution of any tasks, coordinate with any redevelopment efforts that may be undertaken by the Authority for JFK, including JFK Redevelopment Program, JFK Master Plan and Near Term Program Planning, the Airport System Capacity Planning Study.
2. As appropriate, incorporate JFK Master Plan terminal and landside concepts into Task I (AirTrain Alignment and Supporting Facilities Development). Prepare and submit a brief summary of the AirTrain Capacity Enhancement and its relationship to the JFK Master Plan after concurrence on the appropriate Enhancement concept to be executed.

#### TASK I. AIRTRAIN ALIGNMENT AND SUPPORTING FACILITIES DEVELOPMENT

1. Develop various alternative alignments that will meet the demands of the Program. The alignments shall also include locations and functional arrangement of stations, Traction Power substations, Rail yard and maintenance control facility. Proposed alignments shall consider all other ongoing and future development at JFK.

2. Prepare a simulation model to reflect the proposed AirTrain route (normal and failure mode operations as well as maintenance assignments), project peak-hours traffic and final configuration of stations. The model shall be used to recommend final alignment and facility siting for selecting alternatives.

#### TASK J. TECHNOLOGY ASSESSMENT AND RECOMMENDATIONS

1. Perform a review of available technologies that meet the performance requirements of the Program and assess the attributes and deficiencies of each.
2. Develop order of magnitude costs for each technology, along with implementation phasing and construction schedules. Assessments shall include design and construction costs as well as long-term operation and maintenance costs, technology risks, competition factors and other differentiating factors.
3. Summarize the findings and submit a recommendation to the Authority for applicable technologies to incorporate under the Program.

#### TASK K. INFRASTRUCTURE DESIGN CRITERIA

1. Develop Infrastructure Design Criteria to define requirements for all infrastructure components of the Program, including guideway, stations, Traction Power substations, Rail yard and maintenance control facilities and to define interfaces between the system and related facilities. Confirm and document what space is available and feasible regarding clearances to existing infrastructure and facilities at JFK. Define space requirements, clearances, adjacencies, functions, circulation requirements as well as architectural, civil, structural, geotechnical, electrical and mechanical requirements for stations, guideways, maintenance facilities, etc., that must be maintained by the entity implementing the AirTrain infrastructure improvements.
2. Incorporate the following into the Infrastructure Design Criteria:
  - a. Provide criteria relative to the required vehicle dynamic envelope, guideway alignment, guideway loads (static and dynamic), lighting, drainage and emergency access requirements, among others.
  - b. Provide criteria relative to the recommended maintenance facility location, size, and configuration. Additional information shall include: required utility services, access, lighting, structural, functional and space allocations.
  - c. Provide recommended location, size, functional layout and other unique requirements for a central control facility.
  - d. Provide criteria relative to Automatic Train Control System and integration requirements.
  - e. Develop space, functional and services requirements for wayside electronics rooms and station equipment rooms. The AirTrain will require a limited amount of space for electronic equipment, dispersed along the AirTrain right-of-way and at stations.
  - f. Provide dimensional requirements for the physical interfaces between the guideway and the stations.

- g. Prepare an Infrastructure Design Criteria Report to document all applicable criteria. The Report shall also identify criteria and/or assumptions that have been made, consider short-term and long-term development of the Airport, and assess the phasing in/out of the new/existing system. Submit to the Authority for review. Incorporate Authority comments, if any, and resubmit as Final.

## TASK L: AIRTRAIN SYSTEM PERFORMANCE AND OPERATION REQUIREMENTS

### Finalize Performance and Operation Requirements:

Define AirTrain performance and operational requirements that take into account ridership and identify headway for at least three (3) demand levels years (2025, 2035, 2050). In order to properly set station dwell limits and gauge station occupancies, ridership shall be analyzed in time increments not to exceed the anticipated system headway. The ridership analysis shall cover the entire 24-hour average day of the peak month in order to set the system-operating schedule properly. Complete the following tasks and incorporate into final report on performance and operational requirements to be reviewed by the Authority:

1. Prepare an analysis that will involve updating the initial ridership estimates based on airline operational data and updated forecasts of aviation demand, MTA activity forecasts, and price elasticity. Provide recommendation for future fare increase. The new analysis shall incorporate any changes in the ridership demand based on airline activity data and planning assumptions made by the Authority's Aviation Department.
2. Determine passenger capacity, train length, and the number of trains required to meet peak demand. Identify peak loads along with future peak loads, depending on airline movements.
3. Prepare an analysis of passenger circulation distances and times, taking into consideration horizontal and vertical movements as well as available system service levels. Assess if existing and planned vertical circulation are adequate to handle peak demands.
4. Prepare a passenger circulation and queuing analysis based on final estimates of ridership and concept configuration of the AirTrain.
5. Prepare an emergency evacuation analysis, which shall analyze the conceptual AirTrain platform population, and establish emergency egress requirements.
6. Perform a failure management analysis to identify how service will be maintained under various failure scenarios. Determine the optimum location for crossovers between guideways and guideway locations to store a ready train. This analysis shall include an evaluation of the cost of failure management facilities and systems.
7. Prepare an analysis of maintenance requirements and track access plan, which should determine suitable off-peak and shutdown periods for maintenance and capital asset replacement activities.
8. Summarize all work in a Concept of Operations Report and update Performance Requirements developed under Task F as needed.
9. Future ridership forecast shall be based on the Authority airport-wide aviation forecast (unconstrained) with Design Day Flight Schedules (DDFS) in five- (5-) year intervals up

to year 2050. A constrained forecast and associated DDFS will also be made available to the Consultant when finalized.

10. Conduct an AirTrain ridership study that takes into account airport-wide aviation forecast and price elasticity of demand, and propose recommendations for future fares increase for at least three (3) demand levels years (2025, 2035, 2050).
10. Review, organize and utilize the available forecast data to create necessary hourly peak, daily peak or other specific time demand information for variety of analyses. Supplemental or updating of forecast may be needed.
11. Propulsion Power System Requirements: Identify and define the range of power requirements for the AirTrain Propulsion Power System, including the identification of the source of electrical power at JFK. Coordinate this study with existing source of electrical service at JFK. The proposed Propulsion Power System design shall be coordinated to identify the need to modify electrical service to JFK. Complete the following tasks and incorporate results into a Propulsion Power System Report:
  - a. Prepare a preliminary, order-of-magnitude power load estimate of the energy consumption that will be provided for the AirTrain. Use this initial estimate to compare with the currently projected power capacity that will be available to supply power to the AirTrain to determine if additional power capacity will be required. The analysis shall be based on the planned operating characteristics defined in the Concept of Operations Report and the AirTrain Performance Requirements. The analysis shall consider propulsion power, station electrical loads, and guideway heating. The estimate shall include a projected annualized consumption value and a peak operational load. The estimate shall also estimate demand required at each terminal and the power allocation to each terminal on this basis.
  - b. Identify possible locations for power distribution substations. It may be necessary to identify a range of potential solutions resulting in several different locations. The location of these substations shall be a function of the system power demand.
  - c. Prepare a Propulsion Power System Report that shall include a narrative and define the limits available for a power propulsion system. The Propulsion Power System Report shall also include conceptual level drawings depicting proposed improvements to be constructed by Consolidated Edison (Con Ed) to provide an adequate supply of electrical power to meet AirTrain operational requirements. Submit to the Authority for review. Incorporate Authority comments, if any, and resubmit as Final.

#### TASK M: AIRTRAIN CONCEPTUAL PLANNING AND SYSTEM TECHNICAL AND SPECIFICATIONS

1. Prepare conceptual plans for AirTrain facilities. In completion of the Conceptual plans for the Guideway, Station, Traction Power substations, Rail yard and Maintenance Facility, include:
  - a. Performance Design Criteria. Include the required performance specifications for all necessary building systems.
  - b. Design drawings to the preliminary Conceptual plans
  - c. Preliminary Design calculations

- d. Construction cost estimates and construction schedules
- e. System Technical and Performance Specifications.

#### **TASK N. COST ESTIMATING AND SCHEDULE DEVELOPMENT**

1. Develop preliminary capital cost and operations/maintenance cost estimates for the AirTrain. The cost estimates shall include a breakdown of all costs that will be part of the AirTrain procurement, including but not limited to the provision(s) of all system elements and necessary infrastructure, including stations and maintenance control facility. Costs shall be based on historical costs for similar/comparable people mover system applications and adjusted to account for local conditions and market conditions.
2. Develop a detailed implementation schedule for the AirTrain, including a phased transition from the existing AirTrain system and the decommissioning or integration of the old system. The implementation schedule shall include all aspects of the Program, including design, manufacturing, construction commissioning and operational readiness of the system and infrastructure components.

#### **TASK O. IMPROVEMENT STRATEGY**

1. Submit to the Authority an assessment of the various procurement options available to finalize design, construct, operate and maintain the Program.
2. Draft a report documenting the various methods and options available along with the pros and cons, short- and long-term costs of each, along with recommendations for implementing the Program. Address the major tasks to be completed, the parties responsible for completing them, and a timetable for completion. Submit the report to the Authority for review and comments. Incorporate Authority comments and issue report at final.

#### **TASK P. ENVIRONMENTAL PLANNING AND PERMITTING SERVICES**

1. Identify, manage and track necessary Environmental permitting required for the Program through quantitative evaluation of landside, aeronautical, environmental, and economic data to ensure compliance with applicable regulatory requirements.
2. Provide an overall environmental permitting strategy.
3. Develop draft Environmental Assessment Documentation as required for the Program depending on the Capacity Enhancement option pursued.
4. Provide management, tracking and assessment of Authority sustainability guidelines.
5. Manage and track adherence to Leadership in Energy & Environmental Design (LEED) requirements for Program and individual projects to ensure LEED credits are obtained for the Program.

### **IV. DOCUMENTATION AND DELIVERABLES**

The Consultant shall provide documentation and deliverables of work produced in both soft and hard copies. Submit soft copies in native files for Word, Excel, AutoCAD, Revit, Primavera P6, as appropriate. Number and format of hard copies are to be determined at the completion of tasks, but more than twenty (20) copies of any deliverable will not be required.

## **V. AUTHORITY DOCUMENTATION SOFTWARE REQUIREMENTS**

Documents shall be developed consistent with Authority electronic strategy and shall utilize approved hardware and software. The systems presently accepted are:

- A. Microsoft Excel 2007: budgeting, cost monitoring, tables and charts
- B. Microsoft Word 2007; word processing
- C. Microsoft Power Point; graphics and presentations
- D. Microsoft Project 2007; design schedules
- E. Authority Engineering Architectural Design Division CAD Standards, January 2010

## **VI. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY**

The Authority will make available for the Consultant's information certain documents specified below. The documents specified below were not prepared for the purpose of providing information for the Consultant upon the present work but they were prepared for other purposes, and do not form a part of this Agreement. The Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn. They are made available to the Consultant merely for the purpose of providing information in the possession of the Authority, irrespective of whether such information may be accurate, complete or pertinent, or of any value to the Consultant.

All documents, as well as Authority standards, and Authority specifications will be made available to the Consultant by the Authority.

Said documents are as follows:

- A. JFK AirTrain Study July 2008
- B. A 21st Century for the State of New York: Recommendations for a new John F. Kennedy International Airport (Known as "*Vision Plan*"), available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/JFKVisionPlan.pdf>
- C. Current Airport Layout Plan (ALP)
- D. The Port Authority Approved Capital Plan: <http://corpinfo.panynj.gov/pages/capital-plan/>
- E. Sustainability and Resilience Assessments, Plans, and Design Guidelines
- F. Unconstrained and Constrained Passenger Forecast (including fleet mix and any applicable DDFS)
- G. JFK AirTrain Ridership Study 2017

## **VII. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

A. Commercial Liability Insurance:

1. The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor' coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. If vehicles are to be used to carry out the performance of this Agreement,

then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is unescorted in the performance of any field services airside, or if so directed by the Authority, the Commercial General Liability Insurance and Automobile Liability Insurance must contain limits of not less than \$25,000,000 combined single limit per occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey and its related entities" as additional 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 cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Consultant's insurance shall be primary insurance as respects to the above additional insureds, its representatives, officials, and employees. Any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

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

2. Additional Coverages: The Consultant shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
  - a. If the services of the Consultant, as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
  - b. Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
  - c. Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
  - d. Coverage for work within fifty (50) feet of railroad.

B. Workers' Compensation Insurance:

1. The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.
2. Additional Coverages: The Consultant shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
  - a. United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b. Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c. Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

C. Professional Liability Insurance:

The Consultant shall take out and maintain Professional Liability Insurance in limits of not less than \$5,000,000 each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

D. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number, compliance with notice of cancellation provisions, and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager and Exigis email: ([certificates-portauthority@riskworks.com](mailto:certificates-portauthority@riskworks.com))..

1. Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
2. Renewal certificates of insurance or policies shall be delivered via e-mail to the Authority's Project Manager at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.
3. If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the General Manager shall so direct, the Consultant shall suspend performance of the Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on

account thereof. If the Agreement is not suspended (whether or not because of omission of the General Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.

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

## **VIII. CONDITIONS AND PRECAUTIONS**

The Consultant shall comply with the following conditions and precautions in the performance of such services hereunder, except as otherwise directed by the Director.

### **A. General**

1. Immediately inform the Authority of any unsafe condition discovered at any time during the course of this work.
2. All vehicular, including aeronautical and/or pedestrian traffic shall have priority over any and all Consultant operations.

### **B. Work Areas**

1. Limit work to the areas necessary for the performance of such work and do not interfere with the operation of the facility without first obtaining the specific approval from the Authority's Project Manager.
2. Do 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.

\*\*\*

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

DATE

FIRM NAME  
ADDRESS  
CITY, STATE ZIP

Attention: CONTACT NAME, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL RAIL  
PLANNING/EXPANSION SERVICES FOR JOHN F. KENNEDY  
INTERNATIONAL AIRPORT AIRTRAIN CAPACITY ENHANCEMENTS  
PROGRAM ON AN "AS-NEEDED" BASIS DURING 2017-2018**

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 the subject services on an "as-needed" basis during 2017-2018, as more fully set forth in Attachment A (and the attachments thereto), which is attached hereto and made a part hereof.

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, Aviation Department 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](mailto:****@panynj.gov).

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

4. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services 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. 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. The Consultant shall be compensated at an amount equal to **\*.\*** times the actual salaries paid by you to professional and technical personnel (but not partners or principals) for time actually spent by them in the performance of services hereunder, plus an amount equal to the number of hours actually spent by partners and principals in the performance of services hereunder times the billing rate (no multiplier applied) described below but in each case excluding premium payments for overtime work or night work or for performing hazardous duty. Attached hereto is a schedule of actual salaries and titles of architects, engineers, technical staff, or other permanent professional and technical personnel employed by you, as well as rates customarily billed for partners and principals on projects such as this. Said staffing analysis shall clearly indicate any of your employees, proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, or subconsultants, working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide 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 multiplier set forth in the first line 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 (15<sup>th</sup>) day of each month, you shall render a bill for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the 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 or electronic funds 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. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees or subconsultants, 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 Aviation Department 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.

17. 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.

18. 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.

19. 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.

20. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned 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.

For this Agreement, the Director has set a targeted goal of thirty percent (30%) combined participation by qualified and certified MBEs and WBEs on technical service projects.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights or by Empire State Development Corporation's Division of Minority and Women-Owned Businesses (DMWBE).

In order to facilitate the meeting of this goal, the Consultants shall use every good-faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible. Any awardee entering into a contract with the Port Authority will be expected to acknowledge that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth in the contract, such finding will constitute a breach of contract, and Port Authority may withhold payment from the contractor as liquidated damages. Such liquidated damages may be calculated as an amount equaling the difference between: (1) all sums identified for payment to MBE/WBEs had the contractor achieved the contractual MBE/WBE goals; and (2) all sums actually paid to MBE/WBEs for work performed or materials supplied under the contract.

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>. A directory of MBE/WBEs certified by the DMWBE may be viewed at: <https://ny.newnycontracts.com>.

## 21. 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.”

## 22. NOTIFICATION OF SECURITY REQUIREMENTS

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

- Consultant/Subconsultant identity checks and background screening

The Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files and access identification, to include some form of biometric security methodology, such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant’s staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities and such as the Transportation Worker Identification Credential (TWIC) for personnel performing in secure areas at maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original unlaminated social security card for identity and SSN verification. Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

- 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 site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained consultant security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's 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 sites or facilities (including any rental spaces), 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>.

- (1) require that the Consultant and subconsultants, when appropriate, sign Non-Disclosure and Confidentiality Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Protected Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

- (3) require Consultants and commercial enterprises to attend training to ensure security awareness regarding Authority information;
  - (4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;
  - (5) restrictions on the transfer, shipping, and mailing of PI;
  - (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;
  - (7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
  - (8) require the Consultant to mandate that each of its subconsultants maintain the same levels of security required of the Consultant under any Authority-awarded Agreement.
  - (9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Consultants and subconsultants, on a need to know basis, without prior approval of the Authority;
  - (10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.
- Audits for Compliance with Security Requirements

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

## 23. CONFIDENTIAL INFORMATION/NON-PUBLICATION

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on

behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

D. The Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority. Such approval may be withheld if for any reason the Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

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 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. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent 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 Authority.

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

FIRM NAME

- PAGE 22 -

DATE

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

ACCEPTED:

FIRM NAME

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

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 PERFORMANCE OF EXPERT PROFESSIONAL  
RAIL PLANNING/EXPANSION SERVICES FOR JOHN F. KENNEDY  
INTERNATIONAL AIRPORT AIRTRAIN CAPACITY ENHANCEMENTS PROGRAM  
ON AN “AS-NEEDED” BASIS DURING 2017-2018 (RFP #49247)**

**AGREEMENT ON TERMS OF DISCUSSION**

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

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

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

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

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

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

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

**ATTACHMENT C**  
**COMPANY PROFILE**

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL  
RAIL PLANNING/ EXPANSION SERVICES FOR JOHN F. KENNEDY  
INTERNATIONAL AIRPORT AIRTRAIN CAPACITY ENHANCEMENTS PROGRAM  
ON AN “AS-NEEDED” BASIS DURING 2017-2018 (RFP #49247)**

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 (MBE/WBE/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 MBE/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.