

June 19, 2017

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL, LLC ON AN “AS-NEEDED” BASIS DURING 2018 THROUGH 2020 (RFP# 49556)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to provide expert professional accounting services for New York New Jersey Rail, LLC (“NYNJ”) on an “as-needed” basis from the date of execution of an agreement (“Agreement”) for the performance of such services through 2020. NYNJ reserves the right, exercisable at its sole discretion, to extend the Agreement for up to two (2) additional one (1)-year terms through 2021 and 2022, respectively.

New York New Jersey Rail, LLC (“NYNJ”) is a limited liability company established under the laws of the State of New York. In 2008, the Authority purchased all of the membership interests in NYNJ, making it a wholly owned subsidiary of the Authority. NYNJ is a short-line freight railroad. As its full-time employees are engaged in railroad operations, it requires the assistance of an outside entity to provide expert railroad accounting support services.

For information about NYNJ’s facilities and operations see Attachment A-1, included herewith and made a part hereof.

The Agreement to be entered into by the Consultant will be between NYNJ and said Consultant in the form of the Authority’s Standard Agreement included herewith. The scope of the tasks to be performed by the Consultant are set forth in Attachment A to the Agreement included herewith. You should carefully review this Agreement as it is the form of agreement that NYNJ intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

**I. PROPOSER REQUIREMENTS:**

The Authority will consider only those firms who are able to demonstrate compliance with the following minimum qualifications requirements:

- A. At least three (3) years of continuous experience immediately prior to the date of the submission of its Proposal as a provider to transportation companies of expert professional accounting services, similar to those outlined in (Attachment A); and
- B. That it does not control, is not controlled by, and is not under common control with, any entity that owns or operates a rail freight carrier of any kind including, without limitation, a common carrier, private rail carrier, short line, terminal railroad or any other form of rail freight carrier.

Satisfaction of the foregoing requirements is a prerequisite for consideration but does not assure that the Proposer will be selected for performance of the subject services.

## **II. PROPOSAL FORMAT REQUIREMENTS:**

To respond to this Request for Proposals (RFP), the Proposer shall submit a concise Proposal in response to the following basic criteria:

- A. To be acceptable, this Proposal shall be no more than **30** single sided pages or 15 double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Letters F, G, and H in Section III, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number 49556** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section 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, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian. You are requested to submit one (1) reproducible original and seven (7) compact disc copies of your Proposal for review. USB Flash drives will not be accepted. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the CD(s).

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

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles 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 below 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 compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure

to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.

- E. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on July 11, 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. 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 a 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:

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

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

2. 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. Complete a copy of Attachment C (Company Profile)

- D. Demonstrate your compliance with the qualification requirements listed in Section I: Proposer Requirements, above.

E. Staff Qualifications and Experience

List the names and titles and provide resumes of personnel (including subconsultants, if any) who will be assigned to perform the required services.

1. If proposing the use of subconsultant(s), provide their Port Authority Minority/Women Business Enterprise (M/WBE) status.
2. Attach a detailed resume for each individual that includes educational background, chronological history of employment and any relevant licenses and/or certifications.

The resumes shall clearly identify the years of experience in the field related to the tasks for which the individual will be responsible.

3. Identify the role(s) and responsibilities of each individual proposed as they relate to the performance of the assignments/projects included in your response to Section F (Firm Qualifications and Experience).

4. Staffing and Cost Analysis

Provide a staffing and cost analysis for the performance of each task listed in Attachment A. The staffing analysis shall identify the names, titles, actual hourly pay rates, and billing rates of specific staff to be assigned to the performance of each task, and the total hours of work per person/per task, including out-of-pocket expenses, if any. The contemplated Attachment A services shall generally be performed at Consultant's office(s). Please note that out-of-pocket expenses shall not include daily commutation or housing costs or any relocation costs that may be incurred by your staff in the performance of services under this Agreement.

F. Firm Qualifications and Experience

Provide your firm's (including subconsultants') qualifications and experience, which includes projects similar in size and scope to that contemplated in Attachment A.

1. Identify your firm's size, capabilities and specific relevant experience in the performance of services similar to those contemplated in Attachment A.
2. In a table prepared by you, list any assignments performed within the last three (3) years where your firm provided (or is currently providing) similar advisory and management support services as a provider to transportation companies. Include the dates the services were provided, the nature of the services performed, a contact name, title, company, address, phone number, fax and email address for verification of said services.

G. Technical Approach

Provide a detailed description of the proposed technical approach to be taken for the performance of the required services for each task in Attachment A and a schedule for completion of said tasks. Factors addressed in your technical approach shall include, but should not be limited to, your proposed methodology and strategy for performing the services described in Attachment A, as well as any specific software or other technology you may employ in the performance of these services.

H. Management Approach

Describe in detail your management approach to performance of the subject services which shall include, but should not be limited to:

1. An organization chart for this project that identifies the relationship between the Project Manager, Principals, and other key individuals. Include their firm(s), office address, function, task responsibility, and overall reporting relationships.

Also, submit a profile of each person identified in the organization chart that describes how his or her experience and technical capabilities will assist in the successful performance of the contemplated services.

2. Approach to keeping the Authority and NYNJR informed of issues and progress during performance of the contemplated services.
  3. Approach to quality control/quality assurance of the services to be performed, including (without limitation) internal controls such as second person review/approval of invoices or bills for payment, dual signatures for certain checks, and approval procedures to be employed in communicating with NYNJR staff.
- I. Your attention is directed to Paragraph 20 of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBE) goals for participation in this program. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Consultant shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, 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 in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority 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 the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it 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 represents 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 will 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 subcontracts 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 or commissions customarily allowed for similar services. The costs of 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.

J. Provide a complete list of your firm's affiliates.

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

Proposers are advised that, while not currently anticipated, nothing herein shall preclude the Authority from determining at a subsequent point in time during 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 30 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 Port Authority, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

- L. The selected Consultant(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this standard agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority's standard agreement.

#### **IV. FINANCIAL INFORMATION:**

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

- A. Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the Proposer's three (3) most recent fiscal years.
- B. Where the certified financial statements in A above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.
- C. Where the statements submitted pursuant to A and B above do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.
- D. Banking, tax, and credit information, including:
  - 1. Name and address of the Proposer's banking institution;
  - 2. Chief banking representative handling the Proposer's account;
  - 3. Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes);
  - 4. Proposer's Dun and Bradstreet number, if any;
  - 5. Name of any credit service to which the Proposer furnished information; and,
  - 6. Number, if any, assigned by such service to the Proposer's account.



## **V. SELECTION PROCESS:**

The qualifications based selection shall take into consideration the following technical criteria, and subsequently cost, as appropriate. After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing technical criteria, to perform the required services.

- A. qualifications and experience of the staff proposed to perform services hereunder;
- B. qualifications and experience of the firm, including the quality of similar services provided to others including the demonstrated ability to complete the services in accordance with the project schedule;
- C. technical approach to the performance of the contemplated services; and
- D. management approach to 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.

## **VI. ORAL PRESENTATIONS**

After review of all Proposals, 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. Presentations will be limited to 30 minutes, and should include material contained in your Proposal. The presentation will be followed by question and answer session that will last approximately 30 minutes. Proposer's staff making the presentation shall be led by the proposed Project Manager who may be supported by no more than three (3) other senior staff members proposed to work on this program. Notification of presentation scheduling will be made by email. Please provide the name, telephone number, 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.

## **VII. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

It is Authority policy that its consultants, contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State's requirements that certain consultants, contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New

Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State's Department of the Treasury.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s) who shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Courtney R. Eddington, Solicitation Manager, at [ceddington@panynj.gov](mailto:ceddington@panynj.gov). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP 49556" in the subject line. The Authority must receive all questions no later than 4:00 P.M.EST, seven (7) working days before the RFP due date. Neither Ms. Eddington, 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. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

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

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

The Authority reserves the 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 yours,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

## ATTACHMENT A

### PERFORMANCE OF EXPERT PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL, LLC ON AN “AS-NEEDED” BASIS DURING 2018 THROUGH 2020

#### **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>.

New York New Jersey Rail, LLC (“NYNJ”) is a limited liability company established under the laws of the State of New York. In 2008, the Authority purchased all of the membership interests in NYNJ, making it a wholly owned subsidiary of the Authority. NYNJ is a short-line freight railroad. As its full-time employees are engaged in railroad operations, it requires the assistance of an outside entity to provide expert railroad accounting support services.

For information about NYNJ’s facilities and operations see Attachment A-1, included herewith and made a part hereof.

#### **II. SCOPE OF WORK**

The Consultant shall provide services in accordance with accepted professional practices and the highest standards appropriate within the time allotted, in good faith, and in a manner reasonably calculated to be in the best interests of NYNJ. The Consultant will devote such time as is reasonably necessary to perform the services and endeavor to accomplish the objectives and tasks set forth herein at such times as are deemed necessary by NYNJ.

The services of the Consultant, including the physical storage of financial records, shall be performed at Consultant’s office(s), unless directed otherwise by NYNJ.

As noted in Attachment A-1, NYNJ’s business is expected to grow substantially over the next 10 years. If timely provision of such services requires additional staffing, the Consultant shall engage additional staff, as necessary, to provide services as required.

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

##### **TASK A. ACCOUNTING STRUCTURE REVIEW AND RATIONALIZATION**

At the start of the contract and if needed concurrent with Task C below, the Consultant will perform a review of all income, expense, balance sheets, and related accounting systems. From this review and in close consultation with NYNJ and Authority staff, the Consultant will draft a report of recommended revisions and improvements to the present accounting structure and include an implementation plan and schedule that takes into considerations backwards compatibility, current capacity, and anticipated future growth. The report shall also include, but should not be limited to, the following:

1. Structure for booking income and expenses to NYNJ’s two divisions:
  - a. Marine Division (“MRD”)
  - b. Port Jersey Rail Division (“PJR”)

2. Comprehensive schema, developed by the Consultant, for booking line item costs to specific facilities, divisions, states or assets.

#### TASK B: IMPLEMENTATION OF RECOMMENDED IMPROVEMENTS

At the sole direction of NYNJR and the Authority, and if needed concurrently with Task C, the Consultant shall implement the recommendations provided in the report produced in Task A.

#### TASK C: DAILY MANAGEMENT SUPPORT

Specific tasks to be performed may include but shall not be limited to:

##### 1. Railroad Accounting Management

- a. Set up and maintain books and accounts for NYNJR, including accounts payable and accounts receivable.
- b. Make appropriate entries and revisions to such books and accounts to reflect revenues earned and expenses paid.
- c. Cash management, including monthly cash advance requests made to the Authority.
- d. Bill and collect fees and charges due to NYNJR for the transportation and handling of freight.
- e. Under the direction of the Managing Director of NYNJR, and where required with their prior approval, pay the following costs and expenses of NYNJR operations:
  - 1) wages and fringe benefits for NYNJR personnel;
  - 2) the cost of goods and services procured for NYNJR;
  - 3) costs of railroad maintenance and inspections, such as track work and locomotive maintenance; and,
  - 4) all other bona fide business expenses incurred by NYNJR, as and when such costs are incurred.

##### 2. Financial Reporting

- a. Prepare monthly and annual financial reports for NYNJR and the Authority according to standard railroad practices and as directed by NYNJR.
- b. Itemize revenues received and expenditures made, including preparation of electronic documentation of all invoices paid and checks that paid them.
- c. Prepare an annual budget, including forecasting revenue and projecting expenses.
- d. Provide a monthly variance report detailing actual revenues and expenses versus budgeted, if any, and the reason(s) therefore.
- e. Prepare and file financial reports with the Surface Transportation Board (“STB”), the tax authorities of the States of New York and New Jersey, New York City Economic Development Corporation (“NYCEDC”) and other governmental agencies as necessary.

- f. Prepare and file reports on the receipt and disposition of rail cars with the STB, other governmental agencies, railroad associations, and connecting railroads as necessary.
  - g. Prepare ad hoc reports and analyses as requested by either NYNJR or the Authority.
3. Business Operations Management Support
- a. Work with the Managing Director and operating staff to ensure good relations with NYCEDC, connecting railroad carriers and customers.
  - b. Respond to NYCEDC, railroad and customer inquiries.
  - c. Maintain records of all rail cars received into NYNJR custody and their disposition.
  - d. Assist the Managing Director and staff in determining the need for goods and services.
  - e. Support the Managing Director and staff in procuring such goods and services.
  - f. Provide Managing Director business document review space during oversight visits.
4. Document Management
- a. Store and maintain, for the duration of the Agreement, all books, records, accounts, reports, and other financial documents generated pursuant to this Agreement on their premises.

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

The successful Consultant will be provided with the historical accounting and financial records of NYNJR.

The Authority will make available all necessary materials and documents including, but not limited to, the historical accounting and financial records of NYNJR, for the Consultant's information. These documents were not prepared for the purpose of providing information for the Consultant under 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; they are presented merely for the purpose of providing the Consultant with such information as is in the possession of the Authority whether or not such information may be accurate, complete, or pertinent, or of any value to the Consultant.

The Consultant will also be provided with the Authority's records retention policy.

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

##### **A. Commercial Liability Insurance:**

The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor coverages in limits of not less than \$1,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this Agreement, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. In addition, the liability policies (other than

Professional Liability) shall include the Authority and its wholly owned entities as additional insureds and shall be specifically endorsed with a provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Consultant's insurance shall be primary with respect to the above additional insureds. Any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

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

**B. Workers' Compensation Insurance:**

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

**C. Fidelity Coverage:**

The Consultant shall take out, maintain and pay the premiums on a Comprehensive Dishonesty, Disappearance and Destruction Policy including but not limited to employee dishonesty coverage, loss inside the premises coverage, loss outside the premises coverage, accounts receivable and depositors forgery coverage in limits of not less than \$1,000,000. per occurrence. New York New Jersey Rail LLC shall be named as a loss payee.

**D. Compliance:**

Prior to commencement of work, the Consultant shall deliver a certificate from its insurer referencing the title of the Agreement and the Port Authority contract number assigned to the Agreement (if applicable), (x) evidencing maintenance of the above required policies of insurance, and compliance with the notice of cancellation provisions, and (y) containing a separate express statement of compliance with each of the requirements above set forth to the Project Manager.

1) Upon request of the Port Authority 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 Authority's General Manager, Risk Management must approve the

renewal certificate(s) of insurance before work can resume. 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 Authority's General Manager shall so direct, the Consultant shall suspend performance of the Agreement. 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.

\* \* \*

## **ATTACHMENT A-1**

### **PERFORMANCE OF EXPERT PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL, LLC ON AN “AS-NEEDED” BASIS DURING 2018 THROUGH 2020**

#### **NEW YORK NEW JERSEY RAIL, LLC FACILITIES AND OPERATIONS**

New York New Jersey Rail, LLC (“NYNJR”), a limited liability company established under the laws of the State of New York is soliciting proposals from qualified firms to provide certain railroad accounting support services in support of its rail operations.

NYNJR is a wholly-owned subsidiary of The Port Authority of New York and New Jersey (the “Authority”). The Authority purchased all of the membership interests in NYNJR in 2008.

NYNJR consists of two separate rail divisions, the Marine Division and the Port Jersey Rail Division (“PJRD”). The Marine Division provides a “carfloat” service across New York Harbor. NYNJR moves freight cars (both loaded and empty) via rail carfloat, from its western terminal in Greenville Yard, Jersey City, New Jersey, to its eastern terminal at the 65<sup>th</sup> Street Yard, Brooklyn, New York, and vice versa. NYNJR delivers freight both to on-line customers along a rail network in South Brooklyn, New York, and to connecting railroads in both New Jersey and New York. The PJRD serves warehouses adjacent to the Port Jersey facilities and Greenville Yard.

In New Jersey, NYNJR connects with Conrail Shared Assets (“Conrail”), and via Conrail with two Class I railroads: CSX Transportation (“CSX”) and the Norfolk Southern Corporation (“NS”).

In New York, NYNJR connects with the New York & Atlantic Railway (“NYA”), which serves customers in Brooklyn, Queens and Long Island. NYA also interchanges freight cars with CSX and Canadian Pacific Railway in Queens, New York.

In 2016, NYNJR moved more than 3,400 revenue freight cars over its float system, carrying commodities such as lumber, edible oils, rice, scrap metal, beer, and recycled glass. PJRD moved more than 6,200 revenue cars in 2016. The capital improvements to the railroad that are currently underway as described below will allow for the Marine Division to move up to 24,000 revenue cars annually.

#### **NYNJR Workforce**

NYNJR has a total staff of 13 employees. With the exception of four management staff, all of NYNJR’s personnel are unionized, being represented by the Seafarers International Union (“SIU”).



## **Revitalization of NYNJR Facilities**

NYNJR is in the midst of a major campaign to revitalize and restore its facilities, which were originally constructed by the Pennsylvania Railroad in the early part of the 20<sup>th</sup> Century. As the fortunes of private railroads declined in the Northeast, these facilities suffered from neglect and deferred maintenance. As such, they are in dire need of repair, stabilization and (ultimately) replacement with more modern equipment and facilities.

As noted above, NYNJR's western terminal is Greenville Yard in Jersey City, New Jersey. Conrail currently leases 27 acres (approx.) to NYNJR which includes yard tracks, switches, an office trailer for use by NYNJR personnel, and one pontoon transfer bridge.

In Brooklyn, NYNJR operates out of the 65<sup>th</sup> Street Rail Yard. This approximately 33-acre yard includes nine classification tracks leading to two float bridges, four transloading tracks, and an office trailer for use by NYNJR personnel.

The Port Authority is currently in the midst of investing approximately \$133 million into NYNJR's facilities with the assistance of a \$92 million federal earmark secured by Congressman Jerrold Nadler (D-NY) and administered by the Federal Highway Administration ("FHWA"). These major state-of-good-repair effort includes:

- Construction of a new hydraulic transfer bridge at Greenville Yard
- Construction of new support tracks at Greenville Yard
- Construction of two new 18-car capacity carfloats (current carfloat can move 14 65-foot railcars)

The Authority has been awarded a number of other grants to improve the railroad's other facilities. The following grant-funded projects are currently in the planning phase:

- 2nd Lead Track for the Port Jersey Rail Division
- 2nd Lead Track for the 65th Street Rail Yard
- Transload Improvements for the 65th Street Rail Yard

## **NYNJR Offices**

NYNJR's principal operating office is at 26 Colony Road, Jersey City, New Jersey, 07305, in Greenville Yard. NYNJR also maintains an office trailer at the 65<sup>th</sup> Street Rail Yard in Brooklyn, New York, which houses Brooklyn-based personnel. The Managing Director and General Manager-Marine Rail Division visit this office when required.

**P.A. Agreement #\*\*\*-17-\*\*\***

DATE

FIRM NAME

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL, LLC ON AN AS-NEEDED BASIS DURING 2018 THROUGH 2020**

Dear CONTACT:

1. The Port Authority of New York and New Jersey ("Authority") for and on behalf of New York New Jersey Rail, LLC ("NYNJ") hereby offers to retain FIRM NAME ("the Consultant" or "you") to provide expert professional accounting services for NYNJ, as more fully set forth in Attachment A, which is attached hereto and made a part hereof, on an as-needed basis during 2018 through 2020. References herein to the Authority shall also mean NYNJ. The Authority and NYNJ reserve the right to assign this Agreement to the Authority or to any subsidiary or related entity of the Authority.

The Authority reserves the right to extend this Agreement for up to two (2) additional one (1) year terms from the expiration of the original term of this Agreement. The exercise of said extensions shall be in writing by the Director to the addressee noted above (or addressees as otherwise requested in writing by the Consultant to the Director (as defined in Section 2 below)). A letter extending the Agreement term shall be sent to the Consultant at least 30 days prior to the end of the term.

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

2. This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein, "Director" shall mean the Authority's Director, Port Commerce, acting either personally or his/her duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

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

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

4. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit, in writing, to the Director for approval, an estimated cost and staffing analysis of such services. You shall begin performing services under this Agreement upon your receipt of the Director's written (1) approval of such cost and (2) direction to proceed. At the point at which your expenditures for such services reach such approved estimated cost, you shall not continue to render any such services. Preparation of cost estimates and staffing analysis mentioned in this paragraph and in paragraph 8 shall not be a compensable service hereunder.

5. 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.

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

7. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the combined total amount of \$\*\*\*,\*\*\* 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.

8. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, C and D below, subject to the limits on compensation and the provisions set forth in Paragraphs 4 and 7 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, B, and C hereunder.

A. The Consultant will be compensated at an amount equal to \*.\* times the actual salaries paid by you to professional and technical personnel (but not partners or principals) for time actually spent by them in the performance of services hereunder, plus an amount equal to the number of hours actually spent by partners and principals in the performance of services hereunder times the billing rate (no multiplier applied) described below but in each case excluding premium payments for overtime work or night work or for performing hazardous duty. Attached hereto is a schedule

of actual salaries and titles of architects, engineers, technical staff, or other permanent professional and technical personnel employed by you, as well as the rates customarily billed for partners and principals on projects such as this. Said staffing schedule shall clearly indicate any of your employees, proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

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

The Authority reserves the right of approval of all personnel, amounts, billing rates and salaries of said personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the services under this Agreement that has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, it is the intention of the Authority to grant an increase 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) warranted by increased costs of providing services under this Agreement, c) based upon increases in salaries and billing rates that are generally applicable to all of Consultant's clients, and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to the Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall in all cases be finally determined by the Director or his designee, in their sole and absolute discretion.

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 project/program management or other 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 \$1,000 per occasion. Payments above said total amount shall be subject to the prior written authorization of the Director. Such premium payments to supervisory employees, who do not receive such payments in the Consultant's normal business practice shall not be given under this Agreement.

C. Amounts actually paid to subconsultants hereunder who have been retained after 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 expense(s), approved in advance by the Director, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

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

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

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

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

When the Consultant uses his personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the 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 shall be reimbursable hereunder when approved in advance in writing by the Director. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration (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 an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to 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 rates referred to in subparagraph A above.

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

The Authority 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.

10. 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 fifteen days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

11. 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.

12. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Director.

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

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

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

16. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority will have, without cost

or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority but such license shall not be otherwise transferable.

17. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees, or sub-consultants which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority shall have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Port Commerce Department without express written authorization of the Director. The Authority will have the exclusive right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to ensure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

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

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 or to impose any obligation on the Authority to such subconsultant or 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 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 (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;

B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

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

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

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

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

## 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 that 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, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only 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 the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the 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 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 work, the Consultant shall request a description from the Project Manager of the Secure Areas, which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its 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 the 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

The 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. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request 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 of loss or damage to any property of the Consultant or its subconsultants arising out of or in connection with the performance of services hereunder;

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

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder including claims against the Consultant or its subconsultants or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage 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 \$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. the Consultant has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to the Consultant 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 foregoing 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 “27G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority will take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified

as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultant is also advised that the inability to make such certification will not in and of itself disqualify the Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances the Consultant may be required as a condition of award of this Agreement to enter into a Monitoring Agreement under which the Consultant will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might, under this clause, make it unable to make the foregoing certifications, or might require disclosure.

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

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

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

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

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

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

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. The Authority may exercise this right to suspend the Consultant by giving the Consultant written notice outlining the particulars of such suspension. Upon receipt of such notice, the Consultant shall comply with the notice’s terms. Agreement activity may resume at such time as the Authority issues another written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant’s expense when the Consultant is determined by the Authority not to be responsible (non-responsible). In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and may pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

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

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

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

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

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, it shall report such occurrence to the Authority’s Office of Inspector General within three (3) business days of

obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about reporting information to the Office of Inspector General). Failing to report such conduct shall constitute grounds for a finding that the Consultant is non-responsible.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your subconsultants and your subconsultant's employees to keep confidential, a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, nor shall the Consultant participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in any other consultant or potential consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said other consultant or potential consultant; nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in any other consultant or potential consultant of the Authority, and if the Consultant's participation in the preparation, negotiation or award of any agreement with such other consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Authority in writing of such situation, giving the full details thereof. Unless the Consultant receives the specific written approval of the Authority, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Authority may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, and such mitigation plan shall be subject to the approval of the Authority and shall become a requirement imposed on the Consultant, as though fully set forth in this Agreement. In the event the Director shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or 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 Director shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others; and any lump sum compensation payable

hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements 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 a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

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

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

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

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

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 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) and NYNJR.

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, left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

ACCEPTED:

FIRM NAME

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

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

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

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

**INSTRUCTIONS**

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "36" to "37" and insert a new Paragraph "36" as follows:

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

**ATTACHMENT B**

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT  
PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL,  
LLC ON AN “AS-NEEDED” BASIS DURING 2018 THROUGH 2020  
(RFP# 49556)**

**AGREEMENT ON TERMS OF DISCUSSION**

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

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

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

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

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

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

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DO NOT RETYPE.



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

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT  
PROFESSIONAL ACCOUNTING SERVICES FOR NEW YORK NEW JERSEY RAIL,  
LLC ON AN “AS-NEEDED” BASIS DURING 2018 THROUGH 2020 (RFP #49556)**

1. Company Legal Name (print or type):

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

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

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

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

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

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

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

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9. Officer or Principal of Firm and Title:

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

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11. Is your firm certified by the Authority as a Minority-owned, Woman-owned or Small Business Enterprise (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.