

**THE PORT AUTHORITY OF
NY & NJ**

**PROCUREMENT DEPARTMENT
ONE MADISON AVENUE, 7TH FL.
NEW YORK, NY 10010**

**REQUEST FOR PROPOSALS
FOR PREQUALIFICATION**

**TITLE: MULTI-FACILITY MAINTENANCE DREDGING AND DREDGED
MATERIAL PROCESSING AND TRANSPORTATION**

NUMBER: 18834

**SUBMIT PROPOSALS BEFORE THE DUE DATE AND TIME TO THE ABOVE
ADDRESS**

DUE DATE: AUGUST 28, 2009

***CONTACT PERSON: Phyllis Esnes
PHONE # : 212-435-3975***

REQUEST FOR PROPOSALS

TITLE: MULTI-FACILITY MAINTENANCE DREDGING AND DREDGED MATERIAL PROCESSING AND TRANSPORTATION - PROPOSALS FOR PRE-QUALIFICATION

NUMBER:

I. INFORMATION FOR PROPOSERS

A. General Information: The Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey ("Port Authority" or "the Authority") is a corporate and public entity created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States. The Port Authority is a financially self-supporting public agency that receives no tax revenues from any state or local jurisdiction and has no power to tax. It relies almost entirely on revenues generated by facility users, tolls, fees, and rents. The Port Authority, together with its wholly-owned subsidiaries, provides the region with integrated transportation and trade services and operates facilities in connection therewith, including, but not limited to, three major regional airports, interstate traffic through four bridges and two tunnels, a bus terminal, a bus station, the Port Authority Trans-Hudson (PATH) rapid rail transit system, the Hoboken-lower Manhattan ferry service, and certain New York-New Jersey port facilities and the World Trade Center Site and Transportation Hub.

B. Purpose of this RFP

The Port Authority is seeking proposals from firms interested in participating in a Call-In Program for dredging at Port Newark, Elizabeth-Port Authority Marine Terminal, Port Jersey Marine Terminal, Brooklyn Port Authority Marine Terminal, Red Hook Marine Terminal and Howland Hook Marine Terminal, processing the dredged material and transporting the processed materials to disposal sites to be designated by the Port Authority within the Port District (roughly speaking, an area within a twenty five mile radius of the Statue of Liberty).

Work Orders will be issued only to firms that have been selected pursuant to this RFP to be placed on a call-in list that will be valid for the years 2010 through 2016. The Port Authority reserves the right to supplement the call-in list on a biennial basis when such action will best serve the public interest.

Selection of a firm to receive a specific Work Order will be based on competitive bidding in which all firms on the applicable list will be asked to participate or on rotational methods or such other methods as are appropriate for a given project in the sole discretion of the Port Authority.

C. Nature of the Work

1. It is anticipated but not guaranteed that work required by the Work Orders will include, but may not necessarily be limited to, the following:
 - Maintenance dredging and deepening of the berthing areas at the Authority's New York and New Jersey marine terminals.
 - Dewatering of dredged material.
 - Processing of dredged material at a waterfront site located in the Port District in accordance with the applicable State regulatory permit requirements. Attached for information and reference are New Jersey Department of Environmental Protection (NJDEP) and the New York State Department of Environmental Conservation (NYSDEC) permits for a dredging contract that is currently being performed.
 - Removal, separation and disposal of trash and debris encountered during dredging operations.
 - Transportation and delivery of processed dredged material by barge or truck to a waterfront site located in the Port District for offloading at a specific permitted and operational upland site to be designated by the Authority. Operation of the designated upland site will be the responsibility of others.
 - Transportation and placement of unprocessed dredged material at the Newark Bay Confined Disposal Facility (NBCDF) as directed by the Authority.
 - Transportation and placement of ocean suitable dredged material at the Historic Area Remediation Site (HARS).
 - Mobilization of labor and equipment to perform dredging activities at production rates to be stipulated in the Work Orders. Proposers should indicate the range (minimum and maximum) of daily dredging and processing production rates which they will be able to attain in the likely event that the Authority designated upland placement site(s) will be capable to accept and place processed dredged material on a twenty-four-hour seven-day basis.
 - Perform hydrographic surveys before and after dredging.
 - Coordination with shipping and tenant operations.
2. The Authority estimates that the work required by each of the individual Work Orders will be in the following cost ranges:
 1. Range A = \$1- \$5 million.
 2. Range B = Over \$5 million

3. Proposers should indicate in their proposals the cost ranges in which they are capable of performing. Separate call-in lists will be established for each of the above cost ranges.
4. Historically the Authority has dredged between 80,000 and 100,000 cubic yards of material annually from its port facilities. It is anticipated but not guaranteed that this trend will continue in the future.
5. Prior to the bid or issuance of individual Work Orders, a contractor may be required to submit additional information to demonstrate its ability to perform the work. The Authority reserves the right at any time to modify, waive, or vary the terms and conditions of this Request for Proposals ("RFP").
6. Contractors may be required to furnish a Performance and Payment Bond for a Work Order in a penal sum that will be identified in the Work Order.
7. Placement on a call-in list does not preclude the Chief Engineer from subsequently concluding, based upon analysis of additional information which may come to his attention or upon further analysis of the information submitted pursuant hereto, that the contractor is not qualified for inclusion thereon.
8. It is presently anticipated that Work Orders will include a provision that the contractor shall use and document every good faith effort to meet the stated goals for firms owned and controlled by minorities and firms owned and controlled by women and certified by the Authority as Minority Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) all as will be further set forth in the Work Orders.
9. All contractors will be subject to identity checks and background screening of staff, as per Port Authority requirements.
10. In the event that a contractor's performance on any Port Authority or PATH contract is rated less than satisfactory, the Chief Engineer, in his sole discretion, may remove the contractor from one or more of the call-in lists on which it has been placed as a result of this RFP.
11. A contractor on a call-in list will be required to respond to a Work Order bid invitation even if it chooses not to submit a bid. In the event the contractor does not submit a bid, it must instead submit a "courtesy letter" setting forth its reasons for failure to respond. In the event the contractor fails to submit a "courtesy letter," the Chief Engineer may, in his sole discretion, remove the contractor from any call-in list on which it has been placed as a result of this RFP until the contractor satisfactorily explains the reasons for its failure to respond to the bid invitation. The Chief Engineer

may, in his sole discretion, permanently remove from any call-in list resulting from this RFP any contractor that declines to bid on two contracts.

D. Deadline for Receipt of Proposals

The due date specified on the cover page is the Proposal Due Date. Proposals are due no later than 4:00 P.M., Eastern Daylight Savings Time on the Proposal Due Date.

The Port Authority assumes no responsibility for delays caused by any delivery service.

E. Submission of Proposals

- A. Proposers shall submit, no later than 4:00 pm on August 28, 2009, eight (8) copies of the required qualification information to:

**The Port Authority of New York and New Jersey
Procurement Department, Manager CCSD
Attn: Prequalification Administrator
One Madison Avenue, 7th Floor
New York, NY 10010**

- B. In order to expedite the evaluation of the qualification information furnished, Proposers must complete and submit the attached Contractor's Qualification Statement and related attachments. Responses which fail to adhere to this stipulation may be excluded from consideration.
- C. Company brochures alone shall not be submitted for the purpose of demonstrating experience and technical expertise. Submittals must be tailored to the specific requirements of this RFP.

F. Communications Regarding this RFP

All communications concerning this RFP should be directed to the Contact person listed on the cover page. All questions regarding this RFP should be submitted in writing to the Contact person at the address or facsimile number listed on the cover page no later than 3:00 p.m. Eastern Daylight Savings Time on August 21, 2009.

The Contact person is authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Contact person nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.

G. Union Jurisdiction

Proposers are advised to ascertain whether any union now represented or not represented at the facilities will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the Section of this RFP entitled "Harmony" included in the "Form of Contract" hereunder.

H. City Payroll Tax

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

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

These taxes, if applicable, are the sole responsibility of the Contractor. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Sales or Compensating Use Taxes", in the "Standard Contract Terms and Conditions" included herein, does not apply to these taxes.

I. Additional Proposer Information

Prospective Proposers are advised that additional vendor information, including, but not limited to forms, documents and other information, including M/WBE Participation Plan Submission Forms and protest procedures, may be found on the Port Authority website at: http://www.panynj.gov/DoingBusinessWith/contractors/html/other_info.html

II. REQUIREMENTS AND INFORMATION TO BE SUBMITTED

Proposers shall indicate which contract size range(s), as described in the section, above, entitled "Nature of the Work" they wish to perform by marking the appropriate box on Schedule A below.

A. The Proposer must demonstrate the following to the satisfaction of the Chief Engineer of the Authority:

1. a) Proposers for the Range A (\$1 - \$5 million) call-in list must have satisfactorily completed as a prime or general contractor a minimum of two (2) maintenance dredging and dredged material processing contracts of type and complexity comparable to the work described in the section entitled "Nature of the Work", above. Each such contract shall have been within the cost range of \$1 - \$5 million. The work must have been performed in full compliance with state regulatory requirements, have met all contract requirements and have been completed skillfully in a satisfactory manner and on time.

b) Proposers for the Range B (over \$5 million) call-in list i) must have satisfactorily completed as a prime or general contractor a minimum of two (2) maintenance dredging and dredged material processing contracts of type and complexity comparable to the work described in the section entitled "Nature of the Work", above. Each such contract shall have been over \$5 million in cost. The work must have been performed in full compliance with state regulatory requirements, met all contract requirements and have been completed skillfully in a satisfactory manner and on time.

Proposers shall provide a brief description of each such contract, including construction cost, dredging and dredged material processing production rates, unique features, compliance with schedules and the name and telephone number of the owner's representative familiar with the work.

2. The Proposer's Project Manager and Superintendent must each have a minimum of ten (10) years experience on contracts comparable in size, type and complexity to those contemplated by this RFP, and the Proposer's Superintendent must be experienced with maintenance dredging and dredged material processing performed in accordance with NJDEP and NYSDEC regulatory requirements.

If the Proposer, or any participant in a joint venture, cannot demonstrate all of the above-mentioned qualifications, then the Proposer, or such joint venture participant, shall submit any information requested by the Chief Engineer, to demonstrate to the satisfaction of the Chief Engineer that the Proposer, or such joint venture participant, has the capability to complete the work of the Contract.

3. The Proposer must be able to obtain a Performance and Payment Bond for Work Orders in the dollar range of the call-in list on which it seeks to be included from a surety company whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts.

- B. The Proposer must submit the information requested on the attached Contractor's Qualification Statement including schedules A, B, C and D.
- C. The Proposer should become familiar with maintenance dredging requirements as per the attached Specification No. 02482 – DREDGING - BARGE OVERFLOW PERMITTED and Specification No. 02483 – DREDGING – NO BARGE OVERFLOW PERMITTED and shall submit a narrative in attached Schedule D, describing how the Proposer would meet the maintenance dredging and dredged material processing requirements in accordance with NJDEP and NYSDEC regulatory permits (attached).
- D. The Proposer shall submit a narrative in the attached Schedule E describing any special or unique characteristics, qualifications or experience that would attest to its ability to perform the services described in "Nature of the Work", above, to the extent not elsewhere set forth in the Proposer's submission.

III. NOTIFICATION

Notification as to whether a Proposer has been placed on either or both call-in lists will be made only by a notice in writing, signed by the Chief Engineer or his designated representative on behalf of the Authority, and mailed or delivered to the office designated by the Proposer in its response to this RFP.

FINANCIAL INFORMATION

The Proposer will be required to demonstrate that it is financially capable of performing Work Orders in the dollar range for which it seeks to be listed. The determination of the Proposer's financial qualifications and ability to perform such Work Orders will be in the sole discretion of the Port Authority. The Proposer shall submit, with its proposal, the following:

- A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent year or the Proposer's most recent fiscal year.
- (2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five 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.

- B. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal has been submitted, containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.
- C. The name and address of the Proposer's banking institution, chief banking representative handling the Proposer's account, the Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

All proposals will be reviewed by the Port Authority to determine if they adhere to the format required in this RFP, if they contain all required submissions and if the Proposer has the experience, skill and financial ability to perform the work that is anticipated.

PROPOSAL SUBMISSION REQUIREMENTS

In order to expedite the evaluation of proposals, the Proposer's response to this RFP shall follow the format and order of items, using the same paragraph identifiers, as set forth below.

A. Letter of Transmittal

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, or a joint venture. In all cases, information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

- (1) Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;

- (2) Name(s), title(s) and telephone number(s) of the individual(s) who are authorized to negotiate and execute the Contract;
- (3) Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;
- (4) If a corporation: (a) a statement of the names and residences of its officers, and (b) a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the Proposals;

If a partnership: a statement of the names and residences of its principal officers, indicating which are general and which are special partners;

If an individual: a statement of residence;

If a joint venture: information on each of the parties consistent with the information requested above; if the Contract is awarded to a common law joint venture (a partnership of business entities) each member will be jointly and severally liable under the Contract.

B. Agreement on Terms of Discussion

The Proposer shall submit a copy of the "Agreement on Terms of Discussion," signed by an authorized representative of the Proposer. The Agreement format is included as Attachment A and shall be submitted by the Proposer without any alterations or deviations. Any Proposer who fails to sign the Port Authority's "Agreement on Terms of Discussion" will not have its proposal reviewed. If the Proposer is a joint venture, an authorized representative of each party must sign the Agreement.

C. Certifications With Respect to the Contractor's Integrity Provisions

The Proposer, by signing the Letter of Transmittal, makes the certifications set forth in the section entitled "Contractor's Integrity Provisions" attached hereto. If the Proposer cannot make any such certifications, it shall enclose an explanation of that inability.

D. Acknowledgment of Addenda

If any Addenda are sent as part of this RFP, the Proposer shall complete, sign and include with its Proposal the addenda form(s). In the event any

Proposer fails to conform to these instructions, its proposal will nevertheless be construed as though the Addenda had been acknowledged.

E. Acceptance of Form of Contract

The Port Authority has attached to this RFP as Attachment B, a Form of Contract. The Proposer is expected to agree with provisions of this Form of Contract. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

CONDITIONS FOR THE SUBMISSION OF A PROPOSAL

In addition to all other requirements of this RFP, the Proposer agrees to the following conditions for the submission of its proposal.

Changes to this RFP

At any time, in its sole discretion, the Port Authority may by written addenda, modify, correct, amend, cancel and/or reissue this RFP. If an addendum is issued prior to the date proposals are due, it will be provided to all parties to whom RFP's were mailed. If an addendum is issued after proposals have been received, the addendum will be provided only to those whose proposals remain under consideration at such time.

Proposal Preparation Costs

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its proposal, or in any other aspect of the Proposer's pre-contract activity. No Proposer is entitled to any compensation except under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

Disclosure of Proposal Contents / Use of Ideas and Materials

Proposal information is not generally considered confidential or proprietary. All information contained in the proposal is subject to the "Agreement on Terms of Discussion" attached hereto as Attachment A.

Ownership of Submitted Materials

All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of a Proposal shall not affect this right.

Subcontractors

Prior to using any subcontractors to perform the work contained in a Work Order, the contractor must identify the subcontractor(s) and the nature of the work the subcontractor(s) will perform. The approval of the Chief Engineer or his designee will be required before any such subcontractor(s) may be utilized.

Conflict of Interest

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

Authorized Signature

Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its proposal and this RFP.

References

The Port Authority may consult any reference familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of a proposal shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

Rights of the Port Authority

- (1) The Port Authority reserves all its rights at law and equity with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change or modify this RFP, to reject any and all proposals, to waive defects or irregularities in proposals received, to seek clarification of proposals, to request additional information and to request any or all Proposers to make a presentation.. The Port Authority may, but shall not be obliged to, consider incomplete proposals or to request or accept additional material or information. The holding of any discussions with any Proposer shall not constitute or be deemed a decision to place the Proposer on a call-in list..
- (2) No Proposer shall have any rights against the Port Authority arising from the contents of this RFP, the receipt of proposals, or the

incorporation in or rejection of information contained in any proposal or in any other document. The Port Authority makes no representations, warranties, or guarantees that the information contained herein, or in any addenda hereto, is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of the contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its Commissioners, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer required by this RFP or any subsequent Work Order and the Proposer agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.

- (3) At any time and from time to time after the opening of the proposals, the Port Authority may give oral or written notice to one or more Proposers to furnish additional information relating to its proposal and/or qualifications to perform the services contained in this RFP, or to meet with designated representatives of the Port Authority. The giving of such notice shall not be construed as an acceptance of a proposal. Information shall be submitted within three (3) calendar days after the Port Authority's request unless a shorter or longer time is specified therein.

No Personal Liability

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally with any liability by a Proposer or another or held liable to a Proposer or another under any term or provision of this RFP or any statements made herein or because of the submission or attempted submission of a proposal or other response hereto or otherwise.

Range "B" – over \$5,000,000

Indicate the type of work generally performed with your own work force.

B. Relevant Experience and Past Performance:

- On **Schedule A**, attached, list contracts completed by your firm, which document **your firm's meeting of the requirements indicated in the section entitled "Requirements and Information to be Submitted", above.** If a joint venture, list each joint venture partner's projects separately. Indicate if the contract was performed by your firm's own forces or by a sub-contractor.
- On **Schedule B**, attached, list the name and qualifications of the individual who will function as the **Project Manger** as well as those of any other **key supervisory personnel** to be assigned to the Contract along with the anticipated function and relevant experience of each person.
- On **Schedule C**, attached, list current projects currently under construction (**work on hand**) by your firm. If joint venture, list each joint venture's partner's projects separately.
- On **Schedule D**, attached, include a narrative demonstrating how maintenance dredging and dredged material processing can be met as required by Specification No. 02482 – DREDGING - BARGE OVERFLOW PERMITTED and Specification No. 02483 – DREDGING – NO BARGE OVERFLOW PERMITTED Specification No. 02561 in accordance with regulatory requirements stipulated in the NJDEP and NYSDEC permits.
- On **Schedule E**, attached, include a narrative describing any special or unique characteristics, qualifications or experience that would attest to your ability to perform the services described in "Nature of the Work", above, to the extent not elsewhere set forth in your firm's submission.

Does your firm have the required certification(s) and/or license(s) required under paragraph II.A, if required?

- Yes No Not Applicable

➤ If No, indicate how you plan on meeting this requirement:

➤ Submit documentation of required certification(s) and/or license(s)

Has your firm ever failed to complete any construction contract awarded it?

- Yes No

If yes, describe the circumstances on a separate piece of paper.

In the last five years, has your firm ever failed to substantially complete a contract in a timely manner?

- Yes No

If yes, describe the circumstances on a separate piece of paper.

Identify prior contracts that contained stated goals for M/WBE participation and how such goals were met or exceeded:

| Contract | Stated Goals | Actual % Obtained | Comments |
|----------|--------------|-------------------|----------|
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Financial Information:

Can your Firm provide a Performance And Payment Bond for the full amount required?

Yes No

Indicate approximate total bonding capacity: _____

Indicate name of your proposed surety company and name, address and phone number of agent:

➤ Name: _____

➤ Address: _____

➤ Telephone No. _____

Submit letter from your surety documenting your ability to submit the required Bond.

D. Certification

I hereby certify that the information submitted herewith, including attachments is true to the best of my knowledge and belief.

(Type or print business name of Firm)

By: _____
(Signature of officer of Firm)

(Type or print name of officer of Firm)

(Type or print title of officer of Firm)

(Type or print date)

SCHEDULE A

CONTRACTS COMPLETED

FIRM:

| Project Name, Location and Description | Owner * | Design Engineer * | Date Completed | Contract Price ** | Percent of Work Performed By Own Forces |
|---|----------------|--------------------------|-----------------------|--------------------------|--|
| | | | | | |
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Range A = \$1- \$5 million.

Range B = over \$5 million

Notes: *** Include Name, Address and Phone No. of Reference Contact**

****Indicate amount of Firm's contract and if work was done as a prime or general contractor**

**SCHEDULE C
WORK ON HAND / BIDS SUBMITTED**

FIRM: _____

WORK ON HAND:

| Project Name, Location and Description | Owner * | Design Engineer * | Contract Price ** | Scheduled Completion Date |
|--|---------|-------------------|-------------------|---------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

BIDS SUBMITTED:

| Project Name, Location and Description | Owner * | Design Engineer * | Bid Price ** | Low Bidder (Yes or No) | Anticipated Award Date/ Contract Duration |
|--|---------|-------------------|--------------|------------------------|--|
| | | | | | |
| | | | | | |
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| | | | | | |

Notes: * Include Name, Address and Phone No. of Reference Contact

**Indicate amount of Firm's contract and if work was done as a prime or general contractor

SCHEDULE D

NARRATIVE DEMONSTRATION HOW MAINTENACE DREDGING AND DREDGED MATERIAL PROCESSING CRITERIA CAN BE MET IN ACCORDANCE WITH NJDEP AND NYSDEC REGULATORY PERMITS

FIRM: _____

SCHEDULE E

NARRATIVE DESCRIBING ANY SPECIAL OR UNIQUE CHARACTERISTICS, QUALIFICATIONS OR EXPERIENCE THAT WOULD ATTEST TO ITS ABILITY TO PERFORM THE SERVICES DESCRIBED IN "NATURE OF THE WORK", ABOVE, TO THE EXTENT NOT ELSEWHERE SET FORTH IN THE PROPOSER'S SUBMISSION

ATTACHMENT A

AGREEMENT ON TERMS OF DISCUSSION

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

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Authority's Freedom of Information Resolution adopted by its Board of Commissioners on November 20, 2008 which may be found on the Authority website at http://www.panynj.gov/AboutthePortAuthority/ContactInformation/foi_policy.html, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

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DO NOT RETYPE.**

INTEGRITY CERTIFICATIONS

1. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder and each parent and/or affiliate of the bidder has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) 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; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to immediately notify the Authority in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Authority may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of Authority". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the bidder.

As used in this clause, the following terms shall mean:

Affiliate - An entity in which the parent of the bidder owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the bidder also owns more than fifty percent of the voting stock.

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

Employer Identification Number - The tax identification number assigned to firms by the Federal government for tax purposes.

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 bidder by whatever titles known.

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

Space Sharing - Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.

Staff Sharing - Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the bidder and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the bidder or if such services are provided on an alternating or interchangeable basis between the bidder and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial, and driving.

Equipment Sharing - Equipment shall be considered to be shared whenever the bidder shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following two circumstances: when, although the equipment is owned by another business or not-for-profit organization, the bidder has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the bidder owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the bidder has relinquished all right to the use of such leased equipment.

2. **NON-COLLUSIVE BIDDING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid 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 bidder or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the bidder prior to the official opening of such bid to any other bidder or to any competitor; (c) no attempt has been made and none will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") 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 and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Bidders"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the bidder for the purpose of securing business, has been employed or retained by the bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each parent, affiliate, director and officer of the bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the bidder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing

certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the bidder may be able to make the foregoing certification at the time the bid is submitted, the bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the bidder has falsely certified as to any material item in the foregoing certification 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 certification required to be disclosed, the Authority may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids on Authority contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of the Authority".

In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the bidder.

FORM OF CONTRACT

CHAPTER I

GENERAL PROVISIONS

16. DEFINITIONS

To avoid undue repetition, the following terms whenever they occur in this Form of Contract or any of the other papers forming a part of the Contract shall be construed as follows:

"Contract" shall mean, in addition to this Form of Contract, the Information for Bidders, the Request for Proposals, the Proposal, the Authority's acceptance, the letter of award and all documents listed therein if the Contract is negotiated, the Specifications and the Contract Drawings (including written addenda issued over the name of the Chief Engineer), all of which are made part hereof as though herein set forth in full. The Contract as so defined shall constitute the complete and exclusive statement of the terms of the agreement between the parties and the Contract may not be explained or supplemented by course of dealing, usage of trade or course of performance.

The term "days" or "calendar days" in reference to a period of time shall mean consecutive calendar days, Saturdays, Sundays and holidays, included.

The term "construction site" or words of similar import shall mean (to be determined).

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for or incidental to maintenance dredging and deepening as well as processing and transporting of dredged material at (to be determined); and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

"Work required by the Contract Drawings and Specifications in their present form" or words of similar import shall include all Work required by the Specifications in their present form (whether or not shown upon the Contract Drawings), all Work shown upon the Contract Drawings in their present form (whether or not mentioned in the Specifications), and all Work involved in or incidental to the accomplishment of the results intended by the Specifications and Contract Drawings in their present form (whether or not mentioned therein or shown thereon)."

"Equipment" and "plant" shall include construction equipment and plant rented as agent for the Authority.

"Schedule of Unit Prices" or words of similar import shall mean the Schedule of Unit Prices contained in the clause hereof entitled "Unit Prices".

"Classified Work" shall mean the items of Work set forth in the Schedule of Unit Prices and shall include any Work hereafter required which is of the same general character as that set forth in any of said items. In determining what is of the same general character, there shall be taken into consideration the provisions for measurement for payment appearing in said clause entitled "Unit Prices", which provisions shall form a part of the items in said Schedules of Unit Prices.

"Extra Work" shall mean Work required by the Chief Engineer, Deputy Director of Construction or Engineer of Construction pursuant to the clause hereof entitled "Extra Work Orders", other than Classified Work, which is in addition to that required by the Contract Drawings and Specifications in their present form.

"Estimated Total Contract Price" shall mean the result obtained by applying the unit prices quoted in the Schedule of Unit Prices to the estimated quantities therein and totaling the results, whether or not such results are correctly shown in the Contractor's Proposal.

"Contract Drawings" shall mean the Contract Drawings designated in the clause of the Specifications entitled "Contract Drawings" and, except as used in the phrase "Contract Drawings in their present form", shall include any future alterations and revisions of said drawings.

"Shop Drawings" shall mean all drawings, diagrams, illustrations, schedules, including supporting data, which are specifically prepared for this Contract and submitted by the Contractor pursuant to the requirements of the Specifications or the Engineer to illustrate some portion of the Work. The terms "shop drawings", "placing drawings" and "working drawings" are used interchangeably in this Contract.

"Catalog Cuts" shall mean all standard drawings, diagrams, illustrations, brochures, schedules, performance charts and instructions submitted by the Contractor pursuant to the requirements of the Specifications or the Engineer to illustrate some portion of the Work.

"Director of Procurement" shall mean the Director of Procurement of the Authority for the time being, or her successor in duties, acting either personally or through her duly authorized representatives acting within the scope of the particular authority vested in them.

"Chief Engineer" shall mean the Chief Engineer of the Authority for the time being, or his successor in duties, acting personally.

"Engineer" shall mean the Chief Engineer, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them.

"Deputy Director of Construction" shall mean the Deputy Director of Construction of the Authority for the time being, or his successor in duties, acting personally.

"Engineer of Construction" shall mean the designated Engineer of Construction for the facility at which the Work is being performed or his successor in duties, acting personally.

"Inspector" shall mean any representative of the Engineer designated by him as Inspector and acting within the scope of the particular authority vested in him.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Authority to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Authority after the completion of the Work (whether or not they are yet delivered or installed), even though they are subsequently to be removed by others. The terms, "permanent installation", "permanent structure", "permanent materials", and words of similar import shall have the same meaning as the term "permanent construction".

"Subcontractor" shall mean anyone who performs Work (other than or in addition to the furnishing of materials, plant or equipment) at or about the construction site, directly or indirectly for or in behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services or who performs Work which consists only of the operation of construction equipment of which he is the lessor.

"Materialman" shall mean anyone who furnishes materials, plant or equipment to the Contractor or any subcontractor for use at or about the construction site in the performance of Work.

"Materialman" or "subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent or the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor himself.

"Workingman" or "workman" shall mean any employee of the Contractor or of a subcontractor who performs personal labor or personal services at the construction site.

"Notice" shall mean a written notice.

Whenever they refer to the Work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of similar import shall mean directed, required permitted, ordered, designated or prescribed by the Engineer; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Engineer; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Engineer.

Whenever "including", "such as" or words of similar import are used, the specific things thereafter enumerated shall not limit the generality of the things preceding such words.

17. GENERAL AGREEMENT

The Contractor agrees to perform maintenance dredging and disposal of dredged material in accordance with Work Orders issued by the Engineer at various berths and piers at the New Jersey Marine terminals of Port Newark and Elizabeth-Port Authority Marine Terminal and to furnish all structures, equipment, plant, labor, materials and other facilities and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the Contract Drawings and Specifications and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract.

The Authority agrees to pay to the Contractor and the Contractor agrees to accept from The Authority, in full consideration for the performance by the Contractor of his duties and obligations under this Contract and the whole thereof, a compensation determined from the Work performed upon the basis of the items of Work, units of measurement and prices specified in the clause hereof entitled "Unit Prices" and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

This Contract is one entire contract for the accomplishment of the results and the doing of the things above specified and is not separable. Similarly, the Contractor's compensation is one entire compensation which, although computed upon the basis of the actual quantities of Classified Work performed and the unit prices quoted by the Contractor in the Schedule of Unit Prices, is not earned solely by the doing of the acts from which such compensation is determined.

The enumeration in this Form of Contract and in the Specifications of particular things to be furnished or done at the Contractor's expense, or without cost or expense to the Authority, or without additional compensation to the Contractor shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done; but the Contractor shall perform all Work as required without other compensation than that specifically provided, whatsoever changes may be made in the Contract Drawings and Specifications, whatsoever Work may be required in addition to that required by the Contract Drawings and Specifications in their present form, and whatsoever obstacles or unforeseen conditions may arise or be encountered.

18. NOT USED

19. AUTHORITY ACCESS TO RECORDS

The Authority shall have access during normal business hours to all records and documents of the Contractor relating to any amounts for which the Contractor has been compensated, or claims he should be compensated, by the Authority by payment determined on any basis other than by payment of a lump sum or unit price amount agreed upon in writing by the Contractor and the Authority; provided, however, such access shall extend to certified payroll records as described in the clause of the Form of Contract entitled "Prevailing Rate of Wage" regardless of the method by which the Contractor is compensated under this Contract. The Contractor shall obtain for the Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three years after Final Payment to the Contractor; provided, however, that if within the aforesaid three year period the Authority has notified the Contractor in writing of a pending claim by the Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of his subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of 6 years from the date of Final Payment with respect to the records and documents involved.

No provision in this Contract giving the Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Authority would have in the absence of such provision.

20. NOT USED

21. EXEMPTION FROM NEW JERSEY STATE SALES TAXES

The attention of the Contractor is directed to the following provision of the New Jersey State Sales and Use Tax Act:

Receipts from sales made to contractors or repairmen of materials, supplies or services for exclusive use in erecting structures or building on, or otherwise improving, altering or repairing real property of:

(a) organizations described in subsections (a) and (b) of section 9 of the "Sales and Use Tax Act," P.L. 1966, c.30 (C. 54:32B-9);

*** are exempt from the tax imposed under the "Sales and Use Tax Act," provided any person seeking to qualify for the exemption shall do so pursuant to such rules and regulations and upon forms as shall be prescribed by the director. N.J.S.A. 54:32B-8:22.

The Authority is an exempt organization of the type described in subsection (a) of section 9 of the act.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New Jersey State sales and use taxes on such materials, supplies and services.¹⁹

¹⁹ Note regarding equipment rentals: The attention of the Contractor is directed to the fact that the New Jersey State Sales Tax Bureau has ruled that the "rental of equipment is taxable whether or not the job is performed for an exempt organization." Therefore in the case of equipment rentals, if any, the Contractor should include in his prices an amount for taxes thereon.

If (i) any claim is made against the Contractor by the State of New Jersey for such sales or compensating use taxes, or (ii) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialman or subcontractor by the State of New Jersey for such sales or compensating use taxes, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

- A. the Contractor, or the Contractor and any such subcontractor, as the case may be, have complied with such rules and regulations as may have been promulgated relating to the claiming of the exemption from such taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith; and
- B. the Authority is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Authority may choose and to settle or satisfy said claim, and such attorney as the Authority may designate is authorized to act for the purpose of contesting, settling and satisfying said claim; and
- C. the Contractor, or the Contractor and any such subcontractor, as the case may be, give immediate notice to the Authority of any such claim, cooperate with the Authority and its designated attorney in contesting said claim and furnish promptly to the Authority and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six years after the date of Final Payment or longer if such a claim is pending or threatened at the end of such six years.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

22. PERFORMANCE AND PAYMENT BOND

If the Authority shall in its sole discretion so elect at the time of Contract award, the Contractor shall furnish a bond for the faithful performance of all obligations imposed upon him by the Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of the Contract. Such bond shall be in the form bound herewith entitled, "Performance and Payment Bond", shall be in a penal sum equal to the Estimated Total Contract Price and such bond shall be signed by one or more sureties²⁰ satisfactory to the Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of this Form of Contract as though herein set forth in full.

At any time after the opening of Proposals, the Authority may give notice to one or more bidders to advise the Authority as to the names of their proposed sureties. Within forty-eight hours thereafter each bidder so notified shall so advise the Authority. The giving of such notice to a bidder shall not be construed as an acceptance of his Proposal, and omission to give such notice shall not be construed as an election by the Authority not to require a bond.

²⁰

Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the construction site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

If the Authority elects to require the Contractor to furnish a bond, he shall deliver such bond to the Authority within seven days after receipt by him of the acceptance of his Proposal, and the sureties thereon shall be as proposed by him, provided, that if the Authority has theretofore given notice to him that his proposed sureties or any of them are not satisfactory, the bond shall be executed by other sureties satisfactory to the Authority.

The Authority shall give notice to the Contractor within ten (10) days after receipt of the Performance and Payment Bond as to whether or not such bond is satisfactory.

In the event of a default by the Contractor in his obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Proposal, such default shall entitle the Authority in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Proposal, without any liability on the part of the Authority. Inasmuch as the damages to the Authority resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory bond will include items whose accurate amount will be difficult or impossible to compute, such damages shall be liquidated in the sum of the following amounts:

- A. The excess, if any, of the Estimated Total Contract Price in the Proposal finally accepted over that in the Proposal of the Contractor; and
- B. The expense to reprocur the Contract, if any; and
- C. The sum of \$3,000 for each day after the receipt by the Contractor of the acceptance of his Proposal that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

If the Contractor furnishes a bond in accordance with the requirements of the Authority under this numbered clause, the Authority shall reimburse the Contractor for the net amount actually paid by him to the surety or sureties as the premium on such bond. The Contractor shall deliver to the Engineer receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Engineer, the Authority shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Authority shall be or become dissatisfied with any surety or sureties then upon any bond furnished in accordance with the requirements of the Authority, or if for any other reason such bond shall cease to be adequate security to the Authority, the Contractor shall, within five days after notice from the Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Authority to constitute adequate security.

CHAPTER II

PRICES AND PAYMENTS

23. UNIT PRICES

The following Schedule of Unit Prices does not constitute an outline of the Work required by the Contract Drawings and Specifications in their present form but is merely a list of the items of Classified Work to be used in computing the Contractor's compensation. It contains all such items. The compensation computed there from is full compensation for all Work whatsoever required by the Contract Drawings and Specifications in their present form.

In the case of each item of Classified Work, the Work performed will be measured and the Contractor's compensation will be computed as hereinafter provided in this numbered clause. In case of discrepancy between the prices quoted in writing and those quoted in figures, the writing shall control.

The Estimated Total Contract Price is solely for the purpose of fixing the amount of security to be maintained by the Contractor for the faithful performance of the Work. Prior to the signature of the Contract by the parties, it was for the purpose of facilitating the comparison of Proposals and of computing damages in the event of a default by the successful bidder in the agreement created by the acceptance of his Proposal. The estimated quantities are given solely as a basis for the computation of the Estimated Total Contract Price. The Authority makes no representation as to what the actual quantities will be and shall not be held responsible even though the estimated quantities are not even approximately correct. Insofar as the Contractor's compensation is based upon Classified Work, it will be computed from the actual quantities of Work performed, whether greater or less than the estimated quantities.

| SCHEDULE OF UNIT PRICES | | | | |
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The following provisions are applicable to the Schedule of Unit Prices. The quantity for payment described in the following provisions shall be the quantity of Classified Work furnished, installed, performed and/or placed in accordance with the Specifications, as shown on the Contract Drawings and where ordered by the Engineer.

No quantity of work will be included under more than one item of Classified Work.

24. COMPENSATION FOR EXTRA WORK

The Chief Engineer shall have authority to agree in writing with the Contractor on behalf of the Authority upon lump sum or other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this numbered clause.

If such agreement on compensation is not made, and Extra Work be performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

- 1.) For Extra Work consisting of refuse container services, an amount equal to the actual net cost in money of the labor and materials required for the provision of such services, plus seven per cent (7%) of such net cost.
- 2.) For Extra Work consisting of performance of construction work at the construction site, an amount determined as follows:
 - a. In the case of Extra Work performed by the Contractor personally, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus twenty per cent (20%) of such net cost, plus such rental for equipment (other than small tools) required for such Extra Work as the Engineer deems reasonable.
 - b. In the case of Extra Work performed by a subcontractor, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus twenty per cent (20%) of such net cost plus such rental for equipment (other than small tools) required for such Extra Work as the Engineer deems reasonable, plus seven per cent (7%) of the sum of the foregoing cost, percentage of cost, and rental.

As used in this numbered clause (and in this clause only):

"Refuse Container Services" means the delivery, removal and emptying of refuse containers as required during the performance of Extra Work subject to approval by the Engineer.

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by the Contractor or by the subcontractors, subject to the Engineer's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees; however, all wages actually paid that are in excess of the prevailing wages in the performance of Extra Work shall be subject, on each occasion, to the initial and continuing approval of the Engineer in advance of the performance of such Extra Work; plus a proper proportion of (a) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (b) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

"Work day" in reference to an item of equipment means a day other than a Saturday, Sunday or legal holiday except that if the particular item of equipment is actually utilized at the construction site by the Contractor or subcontractors under this or any other Contract with the Authority on a Saturday, Sunday or legal holiday said day shall be deemed a work day.

The rental for equipment, whether owned by the Contractor or subcontractors or rented from others and notwithstanding the actual price of any rental or actual costs associated with such equipment, shall be computed by the Engineer on the basis of the following:

A. Hourly rental for those items of equipment listed in the "Rental Rate Blue Book" (published by Machinery Information Division, K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95131-2398), (hereinafter called "the Blue Book") shall be 100% of the applicable rates as listed in said book, reduced to an hourly basis (see formula below) except that such applicable rates shall be reduced by 50% for all hours of rental payable hereunder in excess of 8 hours each day. The edition of this publication to be used shall be the one in effect on the date of the actual rental of the equipment. The "Estimated Operating Cost per Hour" as set forth for such item of equipment in the Blue Book shall be added to the hourly rental for each hour that such equipment is actually engaged in performing Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra Work (i.e. standby rental time). None of the provisions of the Blue Book shall be deemed referred to or included in this Contract except as specifically set forth in this Section.

B. If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, the Engineer shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as he finds appropriate.

In the event the Contractor is directed by the Engineer to immediately perform Extra Work within 24 hours of the direction to proceed, the Engineer shall determine the reasonable rate of rental and/all hourly operating cost of the items of equipment necessary to perform such Extra Work by such means as he finds appropriate. However, if the equipment is owned by the Contractor or owned by a subsidiary of the Contractor, the Blue Book rates will apply as set forth in this clause.

When utilizing the rental rates appearing in the Blue Book, the Engineer shall determine the applicable rate and the hourly rental determined therefrom by applying the following criteria:

The rate to be applied for an item of equipment used on a particular Extra Work order shall be the monthly rates from the foregoing publication.

The pro rata portion which one hour bears to the applicable rate shall be determined in accordance with the following formula:

| | |
|--------------------------------------|--|
| Hourly rate based on monthly rental. | 1/176 of monthly rental from Blue Book |
|--------------------------------------|--|

The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.

If the Engineer should determine that the nature or size of the equipment used by the Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Engineer to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by the Contractor but will be based on the smallest or least elaborate equipment determined by the Engineer to have been suitable for the performance of the Extra Work.

In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the taxes on the rental actually paid by the Contractor or subcontractor and the reasonable cost of transporting such equipment to and from the construction site, including applicable tolls, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours.

In computing the Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to the Contractor of any type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to the Contractor and small tools.

Whenever any Extra Work is performed (whether by the Contractor directly or through a subcontractor), the Contractor shall, at the end of each day, submit to the Engineer (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, listing the actual hours of operation for each piece of equipment, together with the rental claimed therefor. Such memoranda and time slips are for the purpose of enabling the Engineer to determine the amounts to be paid by the Authority under this numbered clause; and accordingly, they shall constitute a condition precedent to such payment and the failure of the Contractor or his subcontractors to furnish them with respect to any Work shall constitute a conclusive and binding determination on his part that such Work is not Extra Work and shall constitute a waiver by the Contractor of claims for payment for such Work. The Contractor's compensation for Extra Work shall be subject to audit review by the Authority. The Engineer will notify the Contractor that an audit review will be conducted no later than 90 days from the date of such notification. The Engineer will also provide the Contractor with an estimated duration of the audit. During the audit review, the Contractor shall provide records to substantiate the memorandum and time slips submitted to the Engineer. Failure to provide such Contractor or subcontractor records may result in a reduction or total denial of material, equipment and labor costs for Extra Work. Upon completion of the audit review, the Contractor will be provided with the audit findings of the Authority. If the Contractor disagrees in whole or in part with the audit findings, the Contractor shall notify the Authority of such disagreement in writing within 30 days of receipt of said audit findings or the Authority will deem the audit findings to be final and acceptable to the Contractor. In the event that the Chief Engineer and the Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this clause, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

25. COMPENSATION FOR PREMIUM TIME

Where the Engineer directs that the Contractor perform Work at times other than those elsewhere specified in the Contract, and the Contractor directly or through a subcontractor is obligated by the provisions of its applicable collective bargaining agreement to pay premium time rates for such Work then, the Contractor shall be compensated for the cost differential between regular time rates and premium time rates at an amount equal to the total of the following:

- A. For premium time rates paid by the Contractor to its own forces, an amount equal to the premium time portion of the salaries and wages which the employer is required to pay and actually pays to its employees pursuant to the terms of its applicable collective bargaining agreement for the overtime period or periods described above, plus a proper proportion, if any, computed upon the basis of premium time salaries and wages of (1) taxes actually paid by the employer pursuant to law, (2) vacation allowances, other fringe benefits and union dues and assessments which the employer actually pays pursuant to contractual obligations, and (3) increased premiums paid by the Contractor personally, specifically allocable to the insurance required by this Contract, plus five per cent (5%) of such premium portion.

- B. For premium time rates paid by a subcontractor, an amount equal to the premium time portion of the salaries and wages which the employer is required to pay and actually pays to its employees pursuant to the terms of its applicable collective bargaining agreement for the overtime period or periods described above, plus a proper proportion, if any, computed upon the basis of premium time salaries and wages of (1) taxes actually paid by the employer pursuant to law, (2) vacation allowances, other fringe benefits and union dues and assessments which the employer actually pays pursuant to contractual obligations, and (3) increased premiums paid by a subcontractor, specifically allocable to the insurance required by this Contract, plus five per cent (5%) of such premium portion, plus two per cent (2%) of the foregoing cost.

All additions to the Contractor's compensation provided for in this clause require the prior written approval of the Engineer and are conditioned on the Contractor's payment of such amounts to his subcontractor to the extent verifiable by the Authority.

The additions to the Contractor's compensation provided in this clause shall not apply where the Engineer directs the Contractor to perform work at times other than those specified elsewhere in the Contract and also determines that such work is required to mitigate previous delays in the Contractor's performance of Work.

26. COMPENSATION FOR EMERGENCY DELAYS

If the Contractor is specifically directed by the Engineer to suspend his operations as stipulated in the Specifications entitled "Conditions and Precautions" or if the Contractor is specifically directed not to start his operations at a time when operations are permitted to start as stipulated in such Section, and if solely because of such suspension or direction not to start any of the Contractor's or subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle at the construction site, during the hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Engineer which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages, and in addition thereto such rental as the Engineer deems reasonable for such equipment during the period or periods of such idleness. The rental for idle equipment shall be computed by the Engineer in accordance with the provisions of the clause of the Form of Contract entitled "Idle Salaried Men and Equipment".

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, he shall give prompt written notice to the Engineer stating the reasons why he believes such payments should be made and shall moreover, furnish to the Engineer at the end of each day, a memorandum showing the name, payroll title, salary rate and employer of each of the workingmen, and description, owner and claimed rental rate for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Engineer to verify the Contractor's claim at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on his part that he is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being conditions precedent to payment under this numbered clause.

27. MONTHLY ADVANCES

On or about the first day of each month, the Engineer shall (upon receipt from the Contractor of such information as he may require, including a certification in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that he has paid and caused his subcontractors to pay at least the prevailing rate of wage and supplements required by such clause) estimate and certify to the Authority the approximate amount of Work performed and compensation earned by the Contractor up to that time showing separately:

- A. The approximate amount of Classified Work performed by the Contractor up to that time and a sum determined from such Work in accordance with the units of measurement and unit prices specified in the Schedule of Unit Prices.
- B. The increases, if any, in the Contractor's compensation for which provision is specifically made elsewhere in this Contract.

As an aid to the Contractor and to facilitate his performance, the Authority shall, within fifteen days after the receipt of each such monthly certificate, advance to the Contractor by check the sums so certified, minus, however, either ten per cent (10%) of the sum certified pursuant to subparagraph A of this numbered clause or five percent (5%) of the Estimated Total Contract Price, whichever is less, and minus all prior advances and payments to the Contractor or for his account and minus payments by the Authority to lessors of construction equipment.

Within seven days of receipt of any sum attributable to Work performed by a subcontractor or materialman or within such later period as is provided in the subcontract or purchase agreement, the Contractor shall advance to the subcontractor or materialman said sum, less such amount, if any, as the Contractor is authorized to retain under the subcontract or purchase agreement.

Notwithstanding the above, the Authority shall have the right, at its sole discretion, to directly pay the subcontractors and material suppliers who perform Work for or furnish materials to the Contractor in connection with the Work of this Contract.

Prior to certifying any amount for payment hereunder, the Engineer may require that the Contractor submit a certification accurately and fully setting forth the total amount due and payable to each subcontractor and supplier for Work performed or materials provided by such subcontractor or supplier in connection with the Work of this Contract. Any payment made by the Authority to a subcontractor or supplier pursuant to the provisions of this numbered clause shall be made in reliance upon such certification and all such payments shall be considered as advances to the Contractor of the compensation payable hereunder. No such payment shall relieve the Contractor of any of its obligations hereunder.

Furthermore, within fifteen (15) days of the Authority's award of the Contract, the Contractor shall submit to the Engineer a listing of all subcontract and material supply agreements entered into by the Contractor for the performance of Work required by this Contract. Such listing shall include the names and addresses of each such subcontractor and supplier and the amounts payable under each such agreement. As and when any modifications are made to such agreements or any additional subcontracts or supply agreements are entered into, the Contractor shall inform the Engineer of such and shall indicate the amounts payable thereunder.

Nothing contained herein shall be deemed to create any additional rights in such subcontractors or suppliers or to alter the rights of the Authority as such are set forth in the clause hereof entitled "Withholding of Payments".

28. RELEASE OF MONIES PREVIOUSLY WITHHELD FROM MONTHLY ADVANCES UPON RENDITION OF A CERTIFICATE OF SUBSTANTIAL COMPLETION

After the rendition of the Certificate of Substantial Completion and with the approval of the Engineer, an amount up to 80% of the total amount of monies withheld from the Contractor's monthly advances in accordance with the preceding clause may be released to the Contractor. If, in the Engineer's judgment, no monies, or less than 80% of the total amount of monies withheld should be released it will be based on, but not limited to, the estimated value of the remaining Work, unresolved claims by subcontractors, the estimate of possible audit adjustments and an assessment of the risks to the Authority in making such a release of monies. This clause does not create a right to such a release of monies or to any specific percentage release, all of which shall remain purely the discretionary decision of the Engineer.

Prior to the release of any amount withheld from the Contractor's monthly advances by the Authority, the Contractor shall submit to the Engineer a certification of all unresolved requests for additional compensation including all items in dispute and potential claims which the Contractor had actual knowledge of or by reasonable inspection and inquiry should have known of, to the date of the certification. Any such items not made known to the Authority by inclusion in the certification of additional compensation requests submitted by the Contractor will be deemed to have been released by the Contractor. Notwithstanding the above provisions, before making any release of monies the Engineer may require the Contractor to submit further information for the Engineer's review and analysis, and shall require the Contractor to execute a separate written release of claims as described above in a form acceptable to the Authority.

Nothing contained herein shall be deemed to alter or diminish the rights of the Authority as such are set forth in the clauses hereof entitled "Withholding of Payments", "Final Payment", "Monthly Advances" or under any other clause of this Contract relating to compensation to the Contractor, any release of monies hereunder being purely at the discretion of the Engineer.

29. FINAL PAYMENT

After the rendition of the Certificate of Final Completion and upon receipt from the Contractor of such information as may be required, the Engineer shall certify in writing to the Authority and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Authority in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that he has paid and caused his subcontractors to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Authority a detailed sworn statement of all claims, just and unjust, of subcontractors, materialmen and other third persons then outstanding and which he has reason to believe may thereafter be made on account of the Work.

Within thirty days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required), the Authority shall pay to the Contractor by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Contract called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of Final Payment shall be and shall operate as a release to the Authority of all claims and of all liability to the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of the Authority and others relating to or arising out of the Contract, including claims arising out of breach of contract and claims based on claims of third persons, excepting only his claims for reimbursement for certain sales taxes as hereinbefore provided. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations in connection with this Contract or the Performance and Payment Bond.

The Contractor's agreement as provided in the immediately preceding paragraph above shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph above shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority or the Engineer. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment. In any case in which interest is allowable on the amount of the Final Payment, such interest shall be at the rate of 6% per annum for the period, if any, in which such interest is due.

30. WITHHOLDING OF PAYMENTS

If (1) the Contractor fails to perform any of his obligations under this Contract or any other agreement between the Authority and the Contractor (including his obligation to the Authority to pay any claim lawfully made against him by any materialman, subcontractor or workman or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor is made against the Authority or (3) any subcontractor under this Contract or any other agreement between the Authority and the Contractor fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third person which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor or if in the opinion of the Chief Engineer any of the aforesaid contingencies is likely to arise, then the Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Chief Engineer may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Chief Engineer may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Authority shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons.

Until actual payment to the Contractor, his right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Authority under this numbered clause.

In the event that wages and/or supplements have been paid in an amount less than as required by this Contract, the Authority shall also have the right to withhold from the Contractor out of any payment, final or otherwise, on this, or any other open contract that the Contractor has with the Authority, so much as may be necessary to pay to laborers, mechanics, architects, draftsmen, engineers and technical workers, and others employed on the Work, the difference between the sums such persons should have received as wages and/or supplements and the amounts they actually received, and to pay such sums over to such persons. All such payments shall be deemed to be payments for the Contractor's account. In addition, the Contractor shall be required to pay to the Authority an amount equal to the Authority's cost of any investigation conducted by or on behalf of the Authority, that discovers a failure to pay wages and/or supplements as required by this Contract by the Contractor or its subcontractors, the cost of such investigation to be determined by the Chief Engineer personally. If the Contractor fails or refuses to pay for the cost of any such investigation after demand by the Authority, the Authority may deduct from any amount payable to the Contractor by the Authority, under the Contract or under any other open contract between the Contractor and the Authority, an amount equal to the cost of such investigation.

If, however, the payment of any amount due to the Contractor shall be improperly delayed by the fault of the Authority, the Authority shall pay the Contractor interest thereon at the rate of six percent (6%) per annum for the period of delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

CHAPTER III

PROVISIONS RELATING TO TIME

31. TIME FOR COMPLETION AND DAMAGES FOR DELAY

The Contractor shall complete the performance of each Work Order issued under this Contract within the time required by that Work Order.

The Contractor shall not commence the performance of the first Work Order until the later of the following dates:

- A. If a Performance and Payment Bond is required, the date of receipt by him of notice from the Authority that the Performance and Payment Bond furnished by him is satisfactory;
- A. If Chapter V of the "Form of Contract" contains a clause entitled "Insurance Procured by Contractor", the date of receipt by him of notice from the Authority that the insurance procured by him pursuant to said clause is satisfactory, as evidenced by the certificate to be furnished in accordance with said clause.

The time for completion shall not be extended on account of the time required to furnish the documents referred to in subparagraphs A and B above, but the Authority shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that he can and will complete the performance of the Work within the time hereinbefore stipulated or within the time as extended in accordance with the clause hereof entitled "Extensions of Time". Inasmuch as the damage and loss to the Authority which will result from delay in completing the performance of the Work within the time herein stipulated will include items of loss whose amount will be incapable or very difficult of accurate estimation, the damages to the Authority for each calendar day by which the Contractor does not complete performance of the Work within the time or times above stipulated or within such time or times as extended in accordance with the clause hereof entitled "Extensions of Time", shall be liquidated in the sum of Three Thousand Dollars (\$3,000) per calendar day.

32. TERM OF CONTRACT

(To Be Determined)

This Contract may be terminated by the Authority at any time during the term of this Contract. The Authority shall have the right to terminate this Contract or any part thereof, without cause, at any time, upon 30 days written notice to the Contractor. The right of termination described above shall be in addition to any rights and remedies that the Authority would have at law or in equity resulting from the Contractor's breach of this Contract.

33. EXTENSIONS OF TIME

The time above provided for completion of any part of the Contract shall be extended (subject, however, to the provisions of this numbered clause) only if in the opinion of the Engineer the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets all the following conditions:

- A. Such cause is beyond the Contractor's control and arises without his fault;
- B. Such cause comes into existence after the opening of Proposals on this Contract and neither was nor could have been anticipated by investigation before such opening.

Variations in temperature and precipitation shall be conclusively deemed to have been anticipated before opening of such Proposals on this Contract except to the extent that the actual monthly average temperature varies from a temperature which is 10 per cent (10%) above or below the monthly normal temperature and except to the extent that the actual number of days of precipitation (of 0.1 inch or more) per month exceeds a number equal to two plus the normal number of days of precipitation per month.

In any case, the variations in temperature and precipitation described in the immediately preceding sentence will be cause for an extension of time only if occurring between the actual time of commencement of the Work at the construction site and the time for completion stipulated in the clause hereof entitled "Time for Completion and Damages for Delay" (or such time as extended as provided for herein). In the case of portions of months the number of days will be pro-rated by the Engineer. Temperature and precipitation shall be as recorded by the U. S. Weather Bureau in its publications, including that entitled "Local Climatological Data with Comparative Data", which is applicable to the area in which the Work is to be performed, and in the case of precipitation, the normal number of days of precipitation (of 0.1 inch or more) per month as abstracted from the aforementioned publications are as follows:

| Month | Normal number of days per month on which precipitation exceeds 0.1 inch |
|--------------|--|
| January | 7 |
| February | 7 |
| March | 8 |
| April | 7 |
| May | 6 |
| June | 6 |
| July | 5 |
| August | 7 |
| September | 6 |
| October | 6 |
| November | 7 |
| December | 7 |

In any event, even though a cause of delay meets all the above conditions, an extension shall be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of time.

Any reference herein to the Contractor shall be deemed to include subcontractors and materialmen, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for the portion of the Contract actually delayed. The Engineer may defer all or part of his decision on an extension and any extension may be rescinded or shortened if it subsequently is found that the delays can be overcome or reduced by the exercise of reasonable precautions, efforts and measures.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Engineer within 48 hours after the time when he knows or should know of any cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes which the Authority is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of the Authority, and since, with sufficient opportunity, the Authority might if it so elects attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the Contractor's obligations and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Engineer that it is. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive.

34. IDLE SALARIED MEN AND EQUIPMENT

If any salaried men or equipment of the Contractor or any sub-contractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on each of two or more full days on which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of the Authority or the Engineer occurring after the opening of Proposals on this Contract, and if such idleness is not due to any cause within the control of the Contractor or of any of his subcontractors or materialmen or his or their employees, then the Authority shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of the Authority or the Engineer) an amount equal to that which the employer actually pays such salaried employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations on the basis of such salaries, and a proper proportion of the taxes actually paid by the employer pursuant to law upon the basis of such salaries and plus such rental for such idle equipment as the Engineer deems reasonable. The rental for idle equipment shall be computed by the Engineer in accordance with the provisions of the clause of the Form of Contract entitled "Compensation for Extra Work"; provided, however, that the seven per cent (7%) of the rental to be paid in accordance with said clause in the case of equipment utilized by subcontractors shall not be payable in connection with such idle equipment; and provided further that the provisions of subparagraph C of said clause shall not be applicable to such idle equipment.

The Contractor shall give written notice to the Engineer before the end of the second of the above mentioned 2 or more full days (whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that salaried men or equipment have been kept idle under circumstances which might result in payment under this numbered clause; and he shall furnish with such notice, for all the days that have occurred, and shall in addition furnish at the end of each additional day of the above mentioned 2 or more full days, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried men claimed to have been kept idle at the construction site, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations based on their salaries, and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefor. Said notice and memoranda are for the purpose of enabling the Engineer to verify the Contractor's claim at the time, and of enabling him to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under this numbered clause, so that the day on which notice is given shall be counted as not later than the second of the above mentioned 2 or more full days and no subsequent day shall be counted for which the above memoranda are not furnished at the end of such day.

35. DELAYS TO CONTRACTOR

As between the Contractor and the Authority, the Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of the Authority, its officers, agents, employees and contractors, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and except to the extent, if any, that compensation may be agreed to by the Chief Engineer in writing pursuant to the clause hereof entitled "Compensation for Extra Work" for impact costs incurred by the Contractor in connection with the performance of Extra Work. Subject only to such exceptions, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, the Authority makes no representation or guaranty as to when the construction site or any part thereof will be available for the performance of the Contract or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that the Authority shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by the Authority as to the time of such performance and the delay of the Authority in fulfilling such requirement shall not result in liability of any kind on the part of the Authority except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.

36. CANCELLATION FOR DELAY

If the performance of the Contract or any portion of it shall, in the opinion of the Chief Engineer, be materially delayed, whether or not through the fault of the Contractor, by any cause which affects the Contractor's ability to perform the Contract without affecting to the same degree the Authority's own ability to perform it, either directly or through others, the Authority shall have the right at any time during the existence of such delay to cancel this Contract as to any portion not yet performed, without prejudice to the rights, liabilities and obligations of the parties under this Contract arising out of portions already performed, provided, however, that such right of cancellation shall not exist if the delay be due to any wrongful act or omission of the Authority. In the event of such cancellation, no allowance shall be made for anticipated profits.

CHAPTER IV

CONDUCT OF CONTRACT

37. AUTHORITY OF CHIEF ENGINEER

Inasmuch as the public interest requires that the project to which this Contract relates shall be performed in the manner which the Authority, acting through the Chief Engineer, deems best, the Chief Engineer shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in the clause hereof entitled "General Agreement" and the Contract Drawings and Specifications shall be deemed merely his present determination on this point. In the exercise of this authority, he shall have power to alter the Contract Drawings and Specifications; to require the performance of Work not required by them in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

If at any time it shall be, from the viewpoint of the Authority, impracticable or undesirable in the judgment of the Chief Engineer to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Authority, he shall have authority to suspend performance of any part or all of the Contract until such time as he may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of the Authority impracticable or undesirable in the judgment of the Chief Engineer to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of the Authority, he shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) and his decision shall be conclusive, final and binding on the parties. His decision may be based on such assistance as he may find desirable. The effect of his decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract provided, however, that notwithstanding the decision reached by the Chief Engineer in a review of determinations by the Assistant Chief Engineer for Construction or Engineer of Construction that a particular item of Work is not Extra Work the Contractor shall be compensated therefor as provided in written orders of the Assistant Chief Engineer for Construction or Engineer of Construction expressly and unmistakably indicating his intention to treat Work described therein as Extra Work issued in accordance with the provisions of the clause hereof entitled "Extra Work Orders" for amounts not in excess of \$25,000 and subject to the aggregate limit specified in said clause.

All such questions shall be submitted in writing by the Contractor to the Chief Engineer for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Authority relating to any such question the Contractor must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer.

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

38. AUTHORITY AND DUTIES OF ENGINEER

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Engineer and shall perform the Contract to the satisfaction of the Engineer at such times and places, by such methods and in such manner and sequence as he may require, and the Contract shall at all stages be subject to his inspection. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Drawings, Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or men to which the Engineer objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Engineer shall confirm in writing any oral order, direction, requirements or determination.

The Contractor is requested to orally advise the Engineer of questions as they arise. Although such advice will not substitute for the written notice and information for which requirements are set forth elsewhere herein, it is anticipated that it will facilitate prompt decisions on the part of the Engineer and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Engineer shall control or in which the Contract shall be performed to his satisfaction or subject to his inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and so performed.

39. NOTICE REQUIREMENTS

No claim against the Authority shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice of the information with respect to such claim as provided in this numbered clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) for damages, payment or compensation of any nature or for extension of any time for performance of any part of this Contract.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

- A. In the case of any claims for Extra Work, extension of time for completion, idle salaried men and equipment, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.
- B. In the case of all other types of claim, notice shall have been given to the Engineer, personally, as soon as practicable, and in any case, within 48 hours, after occurrence of the act, omission, or other circumstance upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made, which records shall be submitted to the Engineer, personally.

The above requirements for notices and information are for the purpose of enabling the Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the requirements herein for such notice and information are essential to this Contract and are in addition to any notice required by statute with respect to suits against the Authority.

The above referred to notices and information are required whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Authority has indicated it will consider a claim.

No act, omission, or statement of any kind shall be regarded as a waiver of any of the provisions of this numbered clause or may be relied upon as such waiver except only either a written statement signed by the Executive Director of the Authority or a resolution of the Commissioners of the Authority expressly stating that a waiver is intended as to any particular provision of this numbered clause, and more particularly no discussion, negotiations, consideration, correspondence, or requests for information with respect to a claim by any Commissioner, officer, employee or agent of the Authority shall be construed as a waiver of any provision of this numbered clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Authority representative above designated to receive it may not be sufficient to come to the attention of the representative of the Authority with the knowledge and responsibility of dealing with the situation only notice and information complying with the express provisions of this numbered clause shall be deemed to fulfill the Contractor's obligation under this Contract.

40. EQUAL EMPLOYMENT OPPORTUNITY

In order to conform with the policy of the Authority the Contractor agrees that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the Rules and Regulations promulgated pursuant thereto, are hereby made a part of this Contract and are binding upon him and that it shall not be a defense to the Contractor in any action arising directly or indirectly out of such legislation and Rules and Regulations that the Authority may not be subject thereto.

The provisions of this numbered clause are for the benefit of the Attorney General of the State of New Jersey, Division on Civil Rights in the Department of Law and Public Safety of the State of New Jersey, and the Director thereof, as well as for the benefit of the Authority, and said Division and Director shall have a right of action against the Contractor to effectuate the intent of this clause.

41. NO DISCRIMINATION IN EMPLOYMENT

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training,
- B. The Contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the Contract to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the Contractor's obligations hereunder,
- C. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of the Contract with the Port Authority, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status,
- D. The Contractor will include the provisions of subparagraphs A through C of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the Contract with the Port Authority,
- E. The Contractor will submit to the Authority every two weeks a report indicating the number of workers employed at the construction site as of the 1st and 15th days of each month and the projected number of workers to be so employed during the following month. This report shall also indicate the trade in which such workers are employed and, with respect to current employment (but not projected employment), shall indicate the number of such workers who are members of the following groups:
 - 1.) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
 - 2.) Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

- 3.) 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;
 - 4.) 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.
- F. The Contractor agrees that he will fully cooperate with the offices of the Attorney General of the State of New Jersey and the Attorney General of the State of New York (either or both being referred to hereinafter as "the Attorney General") and with the Authority in any inquiry which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and said Contractor will comply promptly with all requests and directions from the Attorney General and the Authority in this connection, both before and during construction.
- G. Full cooperation as expressed in clause F foregoing shall include, but not be limited to, being a witness or complainant in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by the Attorney General, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by the Attorney General, signing any and all documents involved in any proceeding involving questions of unlawful or invidious discrimination, the execution of which are deemed necessary by the Attorney General, participating in meetings, submitting periodic reports on the racial aspects of present and future employment, assisting in inspection at the construction site, and promptly complying with all State directives deemed essential by the Attorney General to insure compliance with all Federal and State laws, regulations and policies against racial or other unlawful or invidious discrimination.
- H. Upon the basis of a finding by the Attorney General that the Contractor has not complied with these nondiscrimination clauses and that by reason thereof there has been a material breach of this contract, the Executive Director of the Authority shall have the sole discretion and power to declare this contract null and void upon 10 days' notice to the Contractor. In such event the Contractor shall become liable for any and all damages which shall accrue to the Authority including, but not limited to, the difference between the total cost of completion and the contract price under this agreement.
- I. The provisions of this numbered clause which refer to the Attorney General are inserted in this contract for the benefit of the Attorney General as well as for the benefit of the Authority, and said Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

42. AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY

The Contractor shall comply with the provisions set forth hereinafter. These provisions are modeled on the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance in 1978.

Each bidder, contractor or subcontractor (hereinafter called the Contractor) must fully comply with the clause entitled 'Equal Employment Opportunity' and these bid conditions. The Contractor commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of these bid conditions by submitting a properly signed bid.

The Contractor shall appoint a company executive to assume the responsibility for the implementation of the requirements, terms and conditions of these bid conditions.

- A. The goals for minority and female participation, expressed in percentage terms, for the Contractor's workforce at the construction site under this Contract are as follows:

| | |
|---------------------------|------|
| Minority, except laborers | 30% |
| Minority, laborers | 40% |
| Female, except laborers | 6.9% |
| Female, laborers | 6.9% |

These goals are applicable to all construction Work performed at the construction site under the Contract.

The Contractor's compliance with this Section shall be based on its implementation of the clause entitled 'Equal Employment Opportunity', and specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the Contract and in each trade. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract. Compliance with the goals will be measured against the total work hours performed.

B.

- 1.) The Contractor shall provide written notification to the General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2.) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty days after acceptance of the proposal, for the approval of the Engineer. The Contractor shall maintain and periodically update it at intervals as required by the Engineer. The Workforce Projection Schedule shall include the time period in which each trade shall be utilized, the average number of workers required per trade on a weekly basis, the peak period for each trade, and the number of workers required per trade for the peak period on a weekly basis.

C.

- 1.) As used in these specifications:
 - a. Omitted
 - b. "Manager" means General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2.) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.
- 3.) Omitted.
- 4.) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in the total workforce at the construction site under the Contract including employees of the Contractor and the subcontractors. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified. These goals may be achieved through utilization of journeyworkers and apprentices. In the event they are not achieved through the utilization of journeyworkers, the maximum number of apprentices provided for in the applicable collective bargaining agreement may be utilized to achieve said goals.
- 5.) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

- 6.) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7.) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these provisions shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - b. Develop maximum job opportunities for apprentices appropriate to the conditions of the Work and subject to the applicable collective bargaining agreement, in conjunction with training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7a above.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Manager when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company

newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth.
- k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p hereof provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
 - 9.) Goals for minorities and for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).
 - 10.) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - 11.) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
 - 12.) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the clause entitled "Equal Employment Opportunity", including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Authority. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
 - 13.) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Authority shall proceed accordingly.
 - 14.) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports, including the Monthly Employment Utilization Report, relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or

laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

- 15.) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

43. PREVAILING RATE OF WAGE

The Contractor shall pay or provide (and shall cause all subcontractors to pay or provide) to his or their workmen, laborers and mechanics (who are employed by him or them to work on an hourly or daily basis at any trade or occupation at or about the construction site) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Work is being performed as determined by the Engineer.

For purposes of this Contract, the Engineer has determined that the prevailing rates of wage and supplements are those established by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (40 U.S.C.A. 276a) for the locality in which the Work is to be performed. The schedule of wages and supplemental benefits which are currently in effect is attached hereto. However, the applicable rates shall be those which are in effect on the date of opening of Proposals.

The provisions of this numbered clause are inserted in this Contract for the benefit of such workmen, laborers and mechanics as well as for the benefit of the Authority; and if the Contractor or any subcontractor shall pay or provide any such workman, laborer or mechanic less than the rates of wages and supplements above described, such workman, laborer or mechanic shall have a direct right of action against the Contractor or such subcontractor for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this clause. If such workman, laborer or mechanic is employed by any subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the subcontractor's failure to pay or provide such wages and supplements) such workman, laborer or mechanic shall have a direct right of action against the Contractor. The Authority shall not be a necessary party to any action brought by any workman, laborer or mechanic to obtain a money judgment against the Contractor or any subcontractor pursuant to this numbered clause.

Nothing herein contained shall be construed to prevent the Contractor or any subcontractor from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that the Contractor or any subcontractor can obtain workmen, laborers and mechanics for the minimum herein before prescribed. All wages actually paid that are in excess of the prevailing wages in the performance of Extra Work and Net Cost Work, if applicable, shall be subject, on each occasion, to the initial and continuing approval of the Engineer in advance of the performance of such Extra Work and Net Cost Work, if applicable.

The Contractor shall post at the Work site, in a place that is prominent, accessible and visible to all employees of the Contractor and its subcontractors during the daily time period that the Contractor and/or subcontractor performs Work at the site, the appropriate prevailing wage and supplement schedules. The

Contractor must inform all employees, including those of its subcontractors, that they may obtain a copy of the prevailing wage and supplement schedule from the Contractor.

The Contractor and every subcontractor shall make and maintain weekly payroll records during the course of the Work and for the period set forth in the clause hereof entitled "Authority Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, the employee's correct payroll classification, rate of pay and supplements, daily and weekly number of hours worked, deductions made and actual wages and supplements paid. The Contractor shall submit these weekly payroll records to the Authority (on forms furnished by the Authority) of all his payroll records and those of each of his subcontractors as the Authority may require with the Contractor's monthly Payment Application, together with an affidavit by the Contractor and by each subcontractor to the effect that such payroll records are correct and complete, the wage and supplement rates contained therein are not less than those required by the provisions of this Contract, and the classifications set forth for each employee conform with the work performed. Such copies and summaries and the original payroll records shall be available for inspection by the Authority (including its Inspector General), and the Contractor and its subcontractors shall permit such representatives to interview employees during working hours on the job site.

The Engineer may at any time request the Contractor to prepare a daily report on the Authority form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Engineer. The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 1.) At the beginning of each workday the Contractor shall:
 - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/subcontractor name and contract number;
 - b. ensure that each employee, including those of subcontractors, has printed and signed his or her name and indicated his or her work classifications, the last four digits of his or her social security number, and his or her starting time;
- 2.) At the end of each workday, the Contractor shall:
 - a. ensure that each employee, including those of subcontractors, has signed out and indicated his or her ending time;
 - b. sign the Certification Statement at the bottom of the form to indicate that the information contained in the *Contractor Daily Sign-In Sheet* is true and accurate; and
 - c. submit the original completed form to the Engineer's representative.

In an area of his office at the Site of the Work which is accessible to his employees, the Contractor shall display such printed material as may be provided by the Engineer setting forth information for the employees of the Contractor and his subcontractors concerning the wage and supplemental benefit requirements set forth in this numbered clause. The Contractor shall also cause each of his subcontractors to display such material in a similarly accessible place in any office which the subcontractor maintains at the Site of the Work.

The Contractor's failure to comply with any provision of this numbered clause shall be deemed a substantial breach of this Contract.

44. EXTRA WORK ORDERS

No Extra Work of a cost in excess of \$25,000 shall be performed except pursuant to written orders of the Chief Engineer expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work; and, no Extra Work of a cost of \$25,000 or less shall be performed except pursuant to written orders of the Chief Engineer, Deputy Director of Construction or the Engineer of Construction expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work; and, exclusive of Extra Work expressly authorized by or pursuant to a resolution of the Commissioners of the Authority or its Committee on Construction, the Chief Engineer and, subject to the foregoing limitation, the Deputy Director of Construction and the Engineer of Construction, shall have authority to order any item of Extra Work, if the cost thereof to the Authority together with the cost of all other Extra Work previously ordered and not expressly authorized as aforesaid will not in the aggregate be in excess of the sum specified in the letter of acceptance of the Contractor's Proposal as the limit on such authority to order Extra Work; provided, however, that Extra Work in excess of such aggregate amount may be ordered as above provided to the extent expressly authorized in a writing signed by the Executive Director of the Authority delegating authority vested in him pursuant to the By-Laws or a resolution of the Commissioners of the Authority or its Committee on Construction and in the case of Extra Work ordered by the Deputy Director of Construction or Engineer of Construction to the extent expressly authorized in a writing signed by the Chief Engineer delegating authority vested in the Executive Director as aforesaid, which in turn was vested in him by the Executive Director.

In the absence of such an order signed by the Chief Engineer in the case of Extra Work of a cost in excess of \$25,000 and by the Chief Engineer or Deputy Director of Construction or Engineer of Construction in the case of Extra Work of a cost of \$25,000 or less, if the Engineer shall direct, order or require any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twenty-four hours give written notice thereof to the Chief Engineer and the Engineer, stating why he deems it to be Extra Work, and shall moreover furnish to the Engineer time slips and memoranda as required by the clause hereof entitled "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of affording to the Chief Engineer an opportunity to verify the Contractor's claim at the time and (if he desires so to do) to cancel promptly such order, direction or requirement of the Engineer, of affording to the Engineer an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to the Authority an opportunity to take such action as it may deem desirable in light of the Contractor's claims. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on his part that the direction, order or requirement of the Engineer does not involve the performance of Extra Work, and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims.

45. PERFORMANCE OF EXTRA WORK

The provisions of this Form of Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

46. TITLE TO MATERIALS

All materials to become part of the permanent construction shall be and become the property of the Authority upon delivery at the construction site or upon being especially adapted for use in or as a part of the permanent construction, whichever may first occur, subject however to the Contractor's assumption of risk under the clause hereof entitled "Risks Assumed by the Contractor", subparagraph A.

The Contractor shall promptly furnish to the Authority such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of the Authority.

47. ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any monies due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Engineer may, from time to time, expressly approve in writing. For each individual, partnership or corporation proposed by the Contractor as a subcontractor, the Contractor shall submit to the Authority a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the RFP for Prequalification entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee". All further subcontracting by any subcontractor shall also be subject to such approval of the Engineer. Approval of a subcontractor may be conditioned on (among other things) the furnishing, without expense to the Authority, of a surety bond guaranteeing payment by the subcontractor of claims of materialmen, subcontractors, workmen and other third persons arising out of the subcontractor's performance of any part of the Work.

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve the Contractor of any of his obligations; no subcontract, no approval of any subcontractor and no act or omission of the Authority or the Engineer shall create any rights in favor of such subcontractor and against the Authority; and as between the Authority and the Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontracts and all approvals of subcontractors shall be and, regardless of their form, shall be deemed to be conditioned upon performance by the subcontractor in accordance with this Contract; and if any subcontractor shall fail to perform the Contract to the satisfaction of the Engineer, the Engineer shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved subcontractors.

48. CLAIMS OF THIRD PERSONS

The Contractor undertakes to pay all claims lawfully made against him by subcontractors, materialmen and workmen, and all claims lawfully made against him by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

49. CERTIFICATES OF PARTIAL COMPLETION

If at any time prior to the rendition of the Certificate of Final Completion, any portion of the permanent construction has been satisfactorily completed, and if in the judgment of the Engineer such portion of the permanent construction is not necessary for the operations of the Contractor but will be immediately useful to and is needed by the Authority for other purposes, the Engineer may render to the Authority and to the Contractor a certificate in writing to that effect (herein called a Certificate of Partial Completion), and thereupon or at any time thereafter the Authority may take over and use the portion of the permanent construction described in such Certificate and exclude the Contractor therefrom.

The rendition of a Certificate of Partial Completion shall not be construed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates in the event that he has failed to complete the same in accordance with the terms of this Contract. Moreover, the acceptance of a Certificate of Partial Completion by the Authority shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

50. CERTIFICATE OF SUBSTANTIAL COMPLETION

Prior to the rendition of the Certificate of Final Completion, the Engineer may deem the entire Work to be substantially completed when, in the judgment of the Engineer, the permanent construction has been satisfactorily completed to the point where the Work is fit for its intended purpose and use. The Engineer may, if such a determination of substantial completion is made and at such time, render to the Authority and to the Contractor a certificate in writing to that effect (herein called the Certificate of Substantial Completion), and thereupon or at any time thereafter the Authority may take over and use the permanent construction described in such Certificate and exclude the Contractor therefrom. Whether to make a determination of a substantial completion as to any portion of the Work, and whether to render such a Certificate, shall be the discretionary determination of the Engineer based upon an examination and appraisal of the completed Work, and no right to such a determination or certification is established in the Contractor by this provision.

The rendition of such Certificate of Substantial Completion shall not relieve the Contractor of his obligation hereunder to complete the Work of this Contract nor shall it be construed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates in the event that he has failed to complete the same in accordance with the terms of this Contract. Moreover, the acceptance of a Certificate of Substantial Completion by the Authority shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

When the Contractor is of the opinion that the Work is substantially complete as described above, the Contractor may submit to the Engineer a written request that the Engineer inspect the Work so as to determine, in the Engineer's sole opinion, whether substantial completion has been achieved. The Contractor's written request shall list the specific items of Work that are incomplete. Upon such a request, the Engineer will respond within 30 days with a Certificate of Substantial Completion or provide a written explanation of the reasons why the Work is not substantially complete including a list of open items necessary to achieve substantial completion. Nothing contained herein shall be deemed to preclude the Engineer from making a determination of substantial completion in the absence of a request therefor by the Contractor.

51. CERTIFICATE OF FINAL COMPLETION

After the satisfactory completion of all Work whatsoever required and the making of such tests and inspections as may be necessary or desirable, the Engineer shall render to the Authority and to the Contractor a certificate in writing (herein called the Certificate of Final Completion) certifying that in his opinion all Work under this Contract, including Extra Work, has been completed in accordance with the Contract Drawings and Specifications and the requirements of the Engineer, and certifying the date as of which it was so completed.

The rendition of the Certificate of Final Completion shall not be construed to constitute an extension of the Contractor's time for performance in the event that he has failed to complete the Work in accordance with the terms of this Contract. Moreover, the acceptance of the Certificate of Final Completion by the Authority shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

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

During the term of this Contract, the Contractor 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 Contractor on behalf of the Authority, whether or not such duties are related to this Contract or any other Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

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 Contract or any other Authority contract), etc., which might tend to obligate the Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Authority contract.

Where used in this clause, the term "Authority" shall be deemed to include all subsidiaries of the Authority. Currently, those subsidiaries are the Port Authority Trans-Hudson Corporation (PATH), the Newark Legal and Communications Center and the New York and New Jersey Railroad Corporation.

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

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

CHAPTER V

WARRANTIES MADE AND LIABILITY

ASSUMED BY THE CONTRACTOR

53. CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. That he is financially solvent, that he is experienced in and competent to perform the type of services contemplated by this Contract, that the facts stated or shown in any papers submitted or referred to in connection with his Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. That he has carefully examined and analyzed the provisions and requirements of this Contract and inspected the construction site, that from his own investigations he has satisfied himself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to him for such examination, analysis, inspection and investigations was adequate;
- C. That the Contract is feasible of performance in accordance with all its provisions and requirements and that he can and will perform it in strict accordance with such provisions and requirements;
- D. That no Commissioner, officer, agent or employee of the Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and
- E. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, existence or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at the construction site; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the construction site as they may eventually be found to exist and warrants and represents that he can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at his own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Contract Drawings or Specifications or any other part of the Contract is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Contract or any part thereof. Moreover, the Authority does not warrant or represent either by issuance of the Contract Drawings and Specifications or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that he was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Contract prior to opening of Proposals on this Contract in order that he might request inclusion in this Contract of any statement, representation, promise or provision which he desired or on which he wished to place reliance; that he did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that he expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

54. RISKS ASSUMED BY THE CONTRACTOR

The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions (whether negligent or not) of the Contractor, of the Authority, or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks which arise solely from affirmative acts done by the Authority subsequent to the opening of Proposals on this Contract with actual and wilful intent to cause the loss, damage and injuries described in subparagraphs A through C below:

- A. The risk of loss or damage to the permanent construction prior to the rendition of the Certificate of Final Completion (other than loss or damage to the portions of the permanent construction with respect to which Certificates of Partial Completion have been issued), and the Contractor shall forthwith repair, replace and make good any such loss or damage to the permanent construction without cost to the Authority;
- B. The risk of claims, fines or penalties, just or unjust, made by third persons or assessed by courts or governmental agencies or entities against the Contractor or the Authority on account of injuries (including wrongful death), loss, damage or liability of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work (whether or not actually caused by or resulting from the performance of the Work) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site or Authority premises, including claims against the Contractor or the Authority for the payment of workers' compensation, whether such claims, fines or penalties are made or assessed and whether such injuries, damage, loss and liability are sustained at any time both before and after the rendition of the Certificate of Final Completion;

- C. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Authority for loss or damage to any property of subcontractors, materialmen, workmen and others performing the Work, occurring at any time prior to completion of removal of such property from the construction site or Authority premises or the vicinity thereof.

The Contractor shall indemnify the Authority against all claims described in subparagraphs B and C above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys, except where indemnity would be precluded by New York State General Obligations Law, Section 5-322.1 or by other applicable law. If so directed, the Contractor shall defend against any claim described in subparagraphs B and C above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority. Unless a claim is one which the Contractor is not required to indemnify the Authority against as described in the first sentence of this paragraph, such defense shall be at the Contractor's cost.

The provisions of this numbered 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 numbered clause if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity, except, however, that the Authority by action of its Board of Commissioners may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this numbered clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the issuance of a Certificate of Completion nor the making of Final Payment shall release the Contractor from his obligations under this numbered clause. Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this numbered clause or of any other clause of this Contract relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this Contract, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

The provisions of this numbered clause shall not be impaired by any rights the Contractor might otherwise have to limitation or apportionment of damages under the law of admiralty or to limitation of liability under 33 U.S.C.A. Chapter 9 (Protection of Navigable Waters and of Harbor and River Improvements), 46 U.S.C.A. Chapter 8 (Limitation of Vessel Owner's Liability), and any other similar statutes, and as between the Contractor and the Authority, the Contractor hereby waives any such rights. Moreover, the Contractor also waives any rights to limitation of liability under such law or statutes in connection with damage which may occur to property of the Authority arising out of or in connection with performance of the Contract whether the right to recover for such damage arises under this Contract or otherwise.

55. NO THIRD PARTY RIGHTS

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action".

56. INSURANCE PROCURED BY CONTRACTOR

- A. The Contractor shall take out and maintain at its own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations, Independent Contractor coverages, including contractual liability coverage (including coverage on or within 50 ft. of railroad property, if applicable) covering the obligations assumed under this Contract; and, in addition, Commercial Automobile Liability Insurance covering owned, non-owned and hired autos, both insurances in limits of not less than \$5,000,000 per occurrence/accident for Bodily Injury Liability and Property Damage Liability. Moreover, the General Commercial Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or excursions from liability forming part of the standard, basic unamended and underscored Commercial Liability Policy.
- B. The Contractor shall take out and maintain at its own expense Maritime Protection Indemnity Insurance (that will "pay on behalf of" basis), and Charter Legal Liability, where applicable, relating to the operation, maintenance, or use of any vessel (whether self-propelled or being towed) in connection with work to be performed in this Contract, in a limit of liability of not less than \$5,000,000 for any one occurrence, including Masters and members of crews of vessels.
- C. The Liability Policies in clauses A & B above shall include the Port Authority, The State of New Jersey, The State of New York, The City of New York, The New Jersey Department of Environmental Protection, The New York State Department of Environmental Conservation, the Members of the New Jersey Tidelands Resource Council, the New Jersey Fund for the Support of Free Public Schools, and the cities of Bayonne, Newark and Elizabeth as additional insureds.
- D. The liability policies in clauses A & B above shall be specifically endorsed that, The insurer shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

The certificate (s) of insurance shall contain this language.

- E. The Contractor shall take out and maintain Workers Compensation Insurance and Employers Liability Insurance (including other states coverage) in accordance with the requirements of law. The policy shall include the United States Longshore and Harbor Workers Compensation Act Endorsement. If the Contractor's Work is on or within 50 ft. of railroad property, the Contractor shall have the Workers' Compensation policy endorsed to include amendments to coverage B-Federal Employers' Liability Act in limits of not less than \$1,000,000.
- F. If the Contractor requires one or more Subcontractors in this contract to procure the required insurance under this section called (Insurance Procured by Contractor), that Subcontractor must provide evidence for the same insurance as required in clauses A through E above. The liability policies of the Subcontractor must include the Port Authority, The State of New Jersey, The State of New York, The City of New York, The New Jersey Department of

Environmental Protection, The New York State Department of Environmental Conservation, the Members of the New Jersey Tidelands Resource Council, the New Jersey Fund for the Support of Free Public Schools, and the cities of Bayonne, Newark and Elizabeth as additional insureds.

- G. Each of the liability policies carried by the Contractor and Subcontractors shall provide coverage for cross-liability/severability of interests.
- H. Each of the policies above shall contain a provision that the policies may not be canceled, terminated, or modified without sixty (60) days written notice to the General Manager, Risk Management, (Dredging Program) Port Authority of New York and New Jersey, 225 Park Avenue South, 12th Floor, New York, NY 10003.
- I. Within five (5) days after acceptance of its Proposal, the Contractor shall deliver to the General Manager, Risk Management, at the above address, a certificate (in duplicate) evidencing the policies above, and stating the Contract number. Upon request of the General Manager, Risk Management, the Contractor shall furnish the Port Authority with a certified copy of each policy, including provisions establishing the premiums. The certificate(s) of insurance shall also state the same language in clauses C, D, G and H. Where applicable, the Subcontractors must comply with this clause I.
- J. The requirements of these insurance clauses are for the greater assurance of the Port Authority that the Contractor will be financially able to discharge its obligations under the clause hereof entitled "Risks Assumed by the Contractor" and shall not in any way be construed as a limitation of the nature of extent of its obligations.
- K. If at any time the above liability insurance should be canceled, terminated or modified so that insurance is not in effect as above required, then, if the General Manager shall so direct, the Contractor shall suspend performance of the Contract at the premises. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended (whether or not because of omission of the General Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required cost of such insurance which costs the Contractor shall pay to the Authority.
- L. At any time during this Contract, at the Port Authority expense, the Port Authority may require the Contractor to change or modify the limits and coverages for the requirements stated in this Contract.

57. ENVIRONMENTAL INSURANCE PROCURED BY THE PORT AUTHORITY

The Authority will procure and maintain in force an Owner Controlled Environmental Insurance Policy covering the Contractor's pollution legal liability and professional liability, including cleanup, with a limit of \$20,000,000 each claim and in the aggregate and a deductible of \$100,000 as it relates to the Work of this Contract for dredging and disposal of dredged material. The policy will be in effect commencing on the date that the Port Authority awards this Contract and will include the Contractor and approved subcontractors as named insureds for such period that is appropriate for the methods used by the Contractor and subcontractors for dredging and disposal of dredged material.

Such policy shall (i) be expressly endorsed for dredging locations to be dredged under this Contract, transportation routes, and material disposition site(s), (ii) contain provisions for claims disputes and coverage to be litigated in courts only in the states of New York and New Jersey, USA, having jurisdiction, and not be limited to arbitration, and (iii) provide for coverage that the material may be considered a hazardous substance/waste under applicable law including, but not limited to, Resource Conservation and Recovery Act (RCRA) and/or Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and/or the Toxic Substance Control Act (TSCA). It should be noted that the substance might be considered "hazardous" under CERCLA, but not necessarily "hazardous" under RCRA and that such materials if RCRA "hazardous" would require a manifest and disposal under RCRA at a Subtitle C hazardous waste disposal facility.

The Contractor and the subcontractors must refer to the policy form to determine all coverages included and excluded and to determine their rights and responsibilities as insureds under the policy form. A copy of the policy may be examined during normal business hours by the Contractor or, at the Contractor's request, by any of the subcontractors performing Work for the Contractor under this Contract, at the office of the General Manager, Risk Management/Treasury, The Port Authority of NY and NJ, 225 Park Avenue South, 12th Floor, New York, NY 10003. The Contractor and the subcontractors are responsible for payment for all losses within the deductible and losses not covered by the Owner Controlled Environmental Insurance Policy.

The Contractor and subcontractors shall comply with all obligations as insureds under or in connection with the above policy.

CHAPTER VI

RIGHTS AND REMEDIES

58. RIGHTS AND REMEDIES OF AUTHORITY

The Authority shall have the following rights in the event the Chief Engineer shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

- A. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through other contractors.
- B. The right to cancel this Contract as to any or all of the Work yet to be performed.
- C. The right to specific performance, an injunction or any other appropriate equitable remedy.
- D. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the Contractor's failure to procure insurance satisfactory to the Authority within the time limit specified in the Clause hereof entitled "Insurance Procured By The Contractor" and the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Authority indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses of the Information For Bidders entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee", , any false certification at any time by the Contractor or a subcontractor pursuant to the clause "Prevailing Rate of Wage Certification" set forth in the Information for Bidders, or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor's incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

59. RIGHTS AND REMEDIES OF CONTRACTOR

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Engineer shall so direct) to suspend or abandon performance.

60. PERFORMANCE OF WORK AS AGENT FOR CONTRACTOR

In the exercise of its right to take over and complete Work as agent for the Contractor, for which provision is made in the clause hereof entitled "Rights and Remedies of Authority", the Authority shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and other facilities provided by the Contractor for the purpose of the Work and the Contractor shall not remove any of the same from the site of the Work without express permission. Unless expressly directed to discontinue the performance of all Work, the Contractor shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by the Authority.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Engineer will separately state the amount of Work performed by the Authority as agent for the Contractor, credit to the Authority the cost thereof, and credit to the Contractor the compensation earned thereby; and the difference between them shall be payable by the Contractor to the Authority, or vice versa as the case may be. If such difference is in its favor, the Authority may deduct it from any moneys due the Contractor, and if such moneys be insufficient, the balance thereof shall be payable to it on demand; if in the Contractor's favor, it shall constitute part of the Final Payment.

The exercise by the Authority of its right to take over the Work shall not release the Contractor or his sureties from any of his or their obligations or liabilities under this Contract or the Performance and Payment Bond.

61. NO ESTOPPEL OR WAIVER

The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Engineer, or any officer, agent or employee of the Authority, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and the Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any moneys which may be paid to him or for his account in excess of those to which he is lawfully entitled.

Neither the acceptance of the Work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Contract or otherwise issued by the Authority, the Engineer, or any officer, agent or employee of the Authority, nor any permission or direction to continue with the performance of Work, nor any performance by the Authority of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Authority in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Authority, its Commissioners, officers, agents or employees shall be deemed to be a waiver of any provision of this Contract or of any rights or remedies to which the Authority may be entitled because of any breach thereof, excepting only a resolution of its Commissioners, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

CHAPTER VII
MISCELLANEOUS

62. SUBMISSION TO JURISDICTION

The Contractor hereby irrevocably submits himself to the jurisdiction of the Courts of the State of New York and to the jurisdiction of the Courts of the State of New Jersey in regard to any controversy arising out of, connected with, or in any way concerning the Proposal or this Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Authority, either by registered or certified mail addressed to the applicable office as provided for in the clause hereof entitled "Service of Notices on the Contractor", by registered or certified mail addressed to any office actually maintained by the Contractor or by actual personal delivery to the Contractor if the Contractor be an individual, to any partner if the Contractor be a partnership or to an officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

63. PROVISIONS OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

64. INVALID CLAUSES

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

65. NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES

Neither the Commissioners of the Authority nor any officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable to him under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

66. SERVICE OF NOTICES ON THE CONTRACTOR

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office or post office box, enclosed in a postpaid wrapper addressed to the Contractor at his office, or its delivery to his office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Authority the Contractor's office will be that stated in his Proposal. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director, or managing or general agent; or if a partnership upon any partner.

67. MODIFICATION OF CONTRACT

No change in or modification, termination or discharge of this Contract, 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 any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

The authority of any person to order Extra Work or to alter the Contract Drawings and Specifications does not include the power to cancel, modify or waive any provision of the Form of Contract, and no officer or other representative of the Authority shall have the power so to do unless and until hereafter so authorized by or pursuant to a resolution of the Commissioners of the Authority or by or pursuant to a resolution of their appropriate Committee.

68. PUBLIC RELEASE OF INFORMATION

The Contractor and all his subcontractors shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable. This provision shall survive termination or expiration of this Contract.

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned²¹ Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

Contractor

Surety

²¹ Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of _____".

If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of _____".

If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of _____".

are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") in the penal sum of _____ Dollars and _____ Cents (\$ _____), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this _____ day of _____ 2008

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract (to be determined) and

WHEREAS, the Authority has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit the Authority and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as the Authority itself) shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the Authority.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

The sureties shall give the General Counsel of the Authority the following notices:

- A. Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;
- B. Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt by said General Counsel of notice under either subparagraph A or B above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

By²²

Principal

Surety

By²³

APPROVED AS TO ACCEPTABILITY OF SURETIES:

Credit Manager

_____ 2008

²² If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

²³ Add signatures of additional sureties, if any.

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____

SS:

County of _____

On this _____ day of _____, 2008, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____, that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Notary Seal)

(Notary Signature)

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____

SS:

County of _____

On this _____ day of _____, 20____, before me personally came and appeared _____, to me known, and known to me to be one of the members of the firm of _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

(Notary Signature)

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____

SS:

County of _____

On this _____ day of _____, 20____, before me personally came and appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

(Notary Signature)

AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY

SPECIFICATIONS

DIVISION 1

GENERAL PROVISIONS

69. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS

These Specifications relate generally to performing dredging, processing and transportation of dredged material at (location(s) to be determined). These Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph, as shown on the Contract Drawings in their present form. In addition, all things shown on the Contract Drawings even though not expressly mentioned in these Specifications, all things mentioned in these Specifications even though not shown on the Contract Drawings, and all things not specified either on the Contract Drawings, or in the Specifications but are involved in carrying out their intent and in the complete and proper execution of the matter referred to in the immediately preceding paragraph are required by these Specifications; and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the requirement of the Contract Drawings shall control.

Some Sections of the Specifications make cross references to construction specified in other Sections of the Specifications, including cross references intended to avoid duplication by the bidders in quoting prices and to point out some of the necessity for coordination. Such cross references are not intended to be complete or all inclusive, and the Contractor shall ascertain for himself both the nature and the extent of all construction which may be related to that under each Section of the Specifications whether or not expressly referred to.

Some Sections of the Specifications contain a general description of the construction under such Sections. Such description is merely a very general one and is not intended to outline the construction required by the Specifications and Contract Drawings. Accordingly, such description shall be construed as in aid of and supplemental to, but in no case limiting, impairing or decreasing, the requirements elsewhere set forth with respect to the construction to be performed.

The Contractor's compensation for all construction whatsoever referred to in the Specifications and Contract Drawings in their present form, even though the need for certain items of such construction may be contingent upon future occurrences or determinations or upon other circumstances, shall be deemed to be included in the price(s) quoted by the Contractor in the Form of Contract unless the Specifications or Contract Drawings expressly state that compensation in addition to such price shall be payable for such items of construction. The express statement in some cases to the effect that certain construction shall be without additional cost to the Authority shall not impair the application of this paragraph in other cases.

The distribution of various parts of the construction among the Divisions and Sections of the Specifications or among the Contract Drawings is not intended as a representation of the most effective or logical method of organizing, scheduling, or subcontracting the construction, and the Contractor shall ascertain for himself how to do so unless otherwise expressly prescribed in this Contract.

In all cases the provisions of the second paragraph of this numbered Section shall control.

70. AVAILABLE PROPERTY

Subject to the conditions elsewhere stated herein, those areas to be occupied by the permanent construction will be made available to the Contractor upon the commencement of his first operations at the construction site.

Any additional property which the Contractor desires for his operations shall be obtained by him at his own expense.

The Contractor will be permitted to use only so much of the aforesaid areas as is necessary for the performance of the Contract, and he must at all times so conduct his operations as not to encroach upon or block the portions used by others. The Engineer may at any time make joint or exclusive assignments of particular portions thereof, either to the Contractor or to others, and may take over and use for other purposes any portions which, in the opinion of Engineer, are not required for the performance of the Contract.

The Contractor shall daily clean up the areas made available to him so that they are free at all times of refuse, rubbish, scrap material or debris.

71. OPERATIONS OF OTHERS

During the time that the Contractor is performing the Contract, other persons will be engaged in other operations on or about the construction site including facility operations and maintenance and tenant shipping terminal operations all of which shall remain uninterrupted.

The Contractor shall so plan and conduct his operations as to work in harmony with others engaged at the construction site and not to delay, endanger or interfere with the operations of others (whether or not specifically mentioned above), all to the best interests of the Authority and the public and as may be directed by the Engineer.

72. LABOR ACTIONS

Whenever any labor strike, slowdown, work stoppage, picketing or other labor action which might interfere with the performance of the Contract, or of other Authority or PATH contracts or the operation of any Authority or PATH facility occurs at the construction site or at any other Authority or PATH facility as a result of the Contractor's (or its subcontractor's) utilization of particular means, methods or manpower to perform the Work required by the Contract, the Contractor shall pursue all remedies which are appropriate and available to him to avoid such interference.

73. CONTRACTOR'S MEETINGS

The Contractor shall conduct job progress and coordination meetings with subcontractors in his field office every two weeks, or as frequently as job conditions require or the Engineer may request. The Engineer shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Engineer and the subcontractors within forty-eight (48) hours of the day following the meetings.

The Contractor shall attend separate job progress and coordination meetings with the Engineer every two weeks, or at times otherwise requested by the Engineer.

74. CONTRACT DRAWINGS

The Contract Drawings which accompany and form a part of these Specifications bear the general title (to be determined) and are separately numbered and entitled as follows:

The Contract Drawings do not show all of the details of the Work and are intended only to illustrate the character and extent of the Work to be performed. Accordingly, they may be supplemented during the performance of the Work by the Engineer or by the Contractor subject to the approval of the Engineer, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does not constitute a representation as to the conclusions to be drawn therefrom nor a representation that no others exist in addition to those shown, even in the same location; nor does the absence of any indication on said drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials constitute a representation that none exist.

After the Contract has been executed, the Contractor will be furnished six (6) copies of the Specifications and Contract Drawings without charge.

75. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES

The Contractor shall specifically prepare for this Contract all Shop Drawings which may be required in addition to the Contract Drawings or in addition to any other drawings which the Engineer may issue in supplementing the Contract Drawings.

The specific requirements elsewhere set forth in the Specifications for furnishing Shop Drawings, Catalog Cuts and samples for any particular portion of the Contract shall not limit the obligation of the Contractor to furnish Shop Drawings, Catalog Cuts and samples for any other portion when so required by the Engineer.

The Contractor shall submit a general "Submittal Schedule" for the Engineer's review and approval listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within 30 days after receipt by the Contractor of the acceptance of the Proposal. A more detailed schedule shall be submitted no less than 30 calendar days prior to the actual date of any submittal.

After checking and verifying all field measurements and after complying with applicable procedures specified hereunder, the Contractor shall submit to the Engineer for review and approval, in accordance with the approved schedule of Shop Drawing submissions, or for other action if so indicated by the Engineer, four copies and two reproduces, unless otherwise requested, of all Shop Drawings which will bear a specific written indication that the Contractor has reviewed the submission for conformance to the requirements of the Contract Drawings and Specifications.

The Port Authority uses Primavera Expedition software to track the status of Submittals provided by the Contractor. In order to facilitate this electronic tracking, the Contractor shall use the transmittal form that is provided at the pre-construction meeting, and shall forward it to the Engineer via a MAPI compliant e-mail system (e.g. Microsoft Outlook, CC mail, Lotus notes, etc.).

The Contractor's transmittals of Submittal data shall fully comply with the numbering and naming conventions and other procedures that will be provided by the Engineer to the Contractor at the pre-construction meeting.

All submissions shall be identified as the Engineer may require. In general, submissions shall specifically reference Contract Drawing numbers or Specification section numbers for which the item pertains. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, conformance to the specified performance and design criteria, materials, test results and similar information to enable the Engineer to review the submittal as required.

The Contractor shall also submit nine copies to the Engineer for review and approval pursuant to the approved submittal schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings and Specifications. All Catalog Cuts and samples shall have been reviewed by the Contractor and shall be accompanied by a specific written indication that the Contractor has reviewed the submittal for conformance with the Contract Drawings and Specifications and shall be identified clearly as to material, supplier, manufacturer's procedures and pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing, Catalog Cut and sample, the Contractor shall have determined and verified all quantities, dimensions, conformance to the specified performance and design criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed and coordinated each Shop Drawing or Catalog Cut with other Shop Drawings and Catalog Cuts and with other requirements of the Work.

At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation in any Shop Drawing, Catalog Cut and sample from the requirements of the Contract Drawings or Specifications and, in addition, shall cause a specific notation of each such variation to be made on each submittal to the Engineer, for review and approval of each such variation.

The Engineer's review and approval of Shop Drawings, Catalog Cuts or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Drawings or Specifications unless the Contractor has in writing called the Engineer's attention to each such variation at the time of submission as required hereunder and the Chief Engineer has given written approval of each by an express specific written notation thereof incorporated in or accompanying the Shop Drawing, Catalog Cut or sample approval. Approval of Shop Drawings, Catalog Cuts and samples which are inconsistent with the requirements of the Contract Drawings and Specifications shall not be deemed to waive or change such requirements or to relieve the Contractor of his obligations to perform such requirements unless the Chief Engineer shall expressly and specifically state that he is waiving or changing such requirements, as stated above.

Where a Shop Drawing, Catalog Cut or sample is required no related Work shall be performed prior to the Engineer's review and approval of the submission.

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits his needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches.

Upon receipt of the submittal, the Engineer will review the Shop Drawing, Catalog Cut or sample for conformance to the design information and materials shown on the Contract Drawings and contained in the Specifications. Approval by the Engineer shall not constitute a complete review or approval of the means, methods, techniques, sequences or procedures of construction, except where a specific means, method, technique, sequence or procedure of construction is specifically delineated in or required by the Contract Drawings or Specifications, and the approval shall not constitute a review and approval in regard to safety precautions or programs incident thereto. The review and approval of a separate item will not in itself indicate approval of the assembly in which the item functions. Any design shown on the Shop Drawings and prepared by the Contractor, his subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

Within the number of working days hereinafter specified after receipt of the Shop Drawing prints, the Engineer shall approve or not approve the same or require corrections or additions to be made thereon. When a shop drawing is not approved or if additions or corrections are required, the Engineer shall return within this period one of the four copies submitted and the Contractor shall make the revisions, corrections or additions shown thereon to be made. He shall resubmit four prints and one brownline (reproducible) showing the drawing corrected as required. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on the previous submittal. Each drawing shall be corrected as required until the approval of the Engineer is obtained. After each resubmission, the Engineer shall have the number of working days hereinafter specified in which to approve revisions or corrections.

The number of working days within which the Engineer shall advise the Contractor as to whether the Shop Drawings are approved, not approved, or require corrections or additions to be made thereto shall be as follows, except that 20 working days shall be required for the Engineer to review shop drawings submitted with design calculations.

| No. of Dwgs. Submitted Within 5 Consecutive Working Days for Each Discipline(*) | No. of Working Days for Engineer To Review Shop Drawings |
|---|--|
| Up to 50 | 10 |
| 51 to 75 | 15 |
| More than 75 | 20 |
| * Disciplines shall be defined as follows: Structural, Architectural, Civil, Geotechnical, Mechanical, Electrical, Traffic and Environmental. | |

Failure of the Contractor to provide 30 calendar days advance notice to the Engineer of any submittal shall result in a five (5) working day extension of the number of working days stated in the chart above. In no event shall an extension of the Engineer's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone dates.

As soon as approval has been given to any Shop Drawing or Catalog Cut, the Contractor shall within five days send to the Engineer six prints, except that when the Engineer specifically so directs, nine prints shall be sent. After approval thereof, no change will be permitted thereon unless approved in writing by the Engineer.

Before final payment for the Work is made, the Contractor shall furnish to the Engineer one set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be marked "RECORD DRAWING – NOT FOR REVIEW", dated and signed by the Contractor and be in the form of Mylar reproducibles, from which clear prints can be made. By signature, the Contractor is verifying that the drawing reflects the as-constructed condition.

All drawings, data, calculations and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared in connection with this Contract and submitted to the Authority shall become the property of the Authority. The Authority shall have the non-exclusive right to use or permit the use of all such drawings, data and other papers and any ideas or methods represented thereby for any purpose and at any time without additional compensation. No such papers shall be deemed to have been given in confidence. Any statement or legend to the contrary in connection with such drawings, data or other papers and in conflict with the provisions of this paragraph shall be void and of no effect.

76. SUBSTITUTION

Where a proprietary item or make is specified or mentioned herein or called for or mentioned on the Contract Drawings and the phrases "similar and equal to" or "approved equal" are used in connection therewith, the utilization of any other item or make will be deemed a substitution. Substitution for the proprietary item or make specifically named may be made only in accordance with the Section hereof entitled "Workmanship and Materials" and in accordance with the following.

Whenever materials or equipment are specified or described in the Contract Drawings or Specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of another supplier or manufacturer may be accepted by the Engineer if sufficient information and proof is submitted by the Contractor to permit the Engineer to determine that the material or equipment proposed is equivalent or equal to that named and the Engineer approves the substitution. The procedure for review by the Engineer will include the following. Requests for review of substitute items of material and equipment will not be accepted by the Engineer from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make a timely written application to the Engineer for approval thereof, certifying that the proposed substitution will perform at least the identical functions and achieve at least the identical results called for by the specified product and otherwise be equal to the specified product with regard to, but not limited to, durability, maintenance, strength, energy costs and record of proven performance. The application shall state that the evaluation and approval of the proposed substitution shall not delay the Contractor's completion of the Work as required by the Contract, whether or not approval of the substitution will require a change in the construction and, in no event will the Contractor be granted an extension of time for completion of any portion of the Work for reasons related directly or indirectly to the evaluation of the proposed substitution or to the proposed substitution itself. Any variations of the proposed substitution from that specified shall be identified in the application, and maintenance, repair and replacement services for the substitution shall be indicated. The Engineer may require the Contractor to furnish at the Contractor's expense additional laboratory test data concerning the proposed substitution.

Such submission to the Engineer shall be made only by including the requested substitution in the list of materials required to be submitted to the Engineer in accordance with the Section hereof entitled "Inspections and Rejections" within forty-five calendar days after the receipt of the acceptance of the Contractor's Proposal. After the approval of said list, no substitutions will be permitted, except that a brand or make named in the Specifications may be submitted for approval in lieu of a brand or make on said list. Any such submission shall not imply, or impose on the Engineer, any obligation whatsoever to discuss, disclose or justify the reasons for his opinion, approval, acceptance or rejection.

The Engineer shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Engineer's prior written approval. The Engineer may require Contractor to furnish at Contractor's expense a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor.

Notwithstanding such approval, however, the Contractor assumes the risk that such approved substitute item or make is not equal to that shown or specified and if at any time the substitution shall appear not to be so equal he shall replace the substitution with that originally shown on the Contract Drawings or called for in the Specifications at his own cost and reimburse the Authority for any loss occurring on account of the substitution failing to be equal, notwithstanding that it had been previously approved for use by the Engineer.

The construction called for by the Contract Drawings and Specifications may be adapted for a particular proprietary item or make of material or equipment. Therefore, if any construction not required by the Contract Drawings or Specifications in their present form is necessary or desirable because of the use of substitute item or make of material or equipment (even though such other item or make is approved by the Engineer), such construction shall be furnished or performed by the Contractor at his expense and subject to the approval of the Engineer.

77. WORKMANSHIP AND MATERIALS

Workmanship and materials shall in every respect be free from defects of any kind and shall be in accordance with the best modern practice and whenever the Contract Drawings, Specifications or directions of the Engineer admit of a doubt as to what is permissible or fail to note the quality of any construction the interpretation which calls for the best quality is to be followed. Workmanship shall conform to applicable Specifications, manufacturer's instructions and recommendations for installation of products for the applications shown on the Contract Drawings, all of which shall be subject to the provisions of the Section of Division 1 GENERAL PROVISIONS entitled "Inspections and Rejections".

All items provided in this contract that use dates in the recording, storing or processing of information shall use such dates correctly at all times including using such dates correctly in the recording, storing or processing of information after January 1, 2000 (Year 2000 Compliant).

Materials and Equipment incorporated into the Work shall be new except as may be otherwise herein specifically required, and shall comply with make, size, type and quality specified, or as specifically approved in writing by the Chief Engineer in accordance with the Section of Division 1 GENERAL PROVISIONS entitled "Substitution".

Reference to standards of any society, institution, association, or governmental authority in the Specifications or on the Contract Drawings, whether specific or by implication, shall mean for such standards which are part of the building code in effect for Work of this Contract the edition date published in such code; and such references which are not part of the building code, shall mean the latest edition date in effect at the time of opening of Proposals upon the present Contract unless specifically stated otherwise.

If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be employed by the Contractor in performing the Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the approved instructions of the applicable supplier except as otherwise provided in the Contract Drawings or Specifications.

In case of a discrepancy between a description or requirement in the Contract Drawings and Specifications for any material or equipment and a catalog number or other designation for the same material or equipment (even though stated to be acceptable), the description or requirements shall control.

In various paragraphs of these Specifications, references may be made to certain standard or tentative specifications or requirements of various organizations. Unless otherwise stated, these references are to be construed as referring to the specifications and requirements in effect on the date set for opening bids upon the present Contract.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which the Authority has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority. The Specifications and Contract Drawings contain confidential information which is disclosed only to enable this Contract to be performed. Said Specifications and Drawings must not be used for any purpose detrimental to the interest of the Authority and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of the Authority, provided, however, that the Contractor may, when the performance of the Contract so requires, furnish said information to others for the purpose of engaging or informing subcontractors and materialmen.

If, in accordance with this Contract, the Contractor furnishes research, development or consultative services in connection with the performance of the Contract and if in the course of such research, development or consultation patentable subject matter is produced by the Contractor, its officers, agents, employees, subcontractors or materialmen, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but as between the Contractor and the Authority 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 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.

The right to use all material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction required in connection with this Contract and to which a patent, copyright or other intellectual property right applies or may apply shall be obtained by the Contractor without separate or additional compensation whether the same is patented, copyrighted or otherwise protected as an intellectual property right before, during or after the performance of the Contract.

The Contractor shall indemnify the Authority against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright or other intellectual property right infringement arising out of or in connection with the Authority use, in accordance with the preceding two paragraphs of this numbered clause, of such subject matter or material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction to which a patent, copyright or other intellectual property right applies or may apply. If requested by the Authority and if notified promptly in writing of any such claim, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to the Authority. If the Authority be enjoined from using any of the facilities which form the subject matter of this Contract and as to which the Contractor is to indemnify the Authority against patent, copyright or other intellectual property right claims, the Authority may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, copyright or other intellectual property right or to remove all such facilities and refund the cost thereof to the Authority or to take such steps as may be necessary to ensure compliance by the Authority with such injunction, all to the satisfaction of the Authority and all without cost or expense to the Authority.

78. INSPECTIONS AND REJECTIONS

All Work and all construction, processes of manufacture and methods of construction involved in or related to the performance of the Work shall be at all times and places subject to the inspection of the Engineer, acting personally or through his Inspectors, and the enumeration in these Specifications of particular portions of such Work, construction, processes of manufacture or methods of construction which will or may be inspected by the Engineer or such Inspectors shall not be deemed to imply that only such Work, construction, processes of manufacture and methods of construction will or may be so inspected. The Engineer shall be the judge of the quality and suitability of the Work, construction, processes of manufacture and methods of construction for the purposes for which they are used or to be used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall be removed immediately from the site. The fact that the Inspectors have approved the materials and workmanship shall not relieve the Contractor from his obligation to supply other material and workmanship when so ordered by the Engineer.

The Contractor, at his own expense, shall furnish such facilities and give such assistance for inspection as the Engineer may direct. In the case of materials required by the Specifications to be inspected in the factory or plant, and in the case of any other items which the Engineer may designate, the Contractor shall secure for the Engineer and his Inspectors free access to all parts of such factories or plants and shall furnish to the Engineer three copies of purchase orders, two copies of mill shipping statements and four copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten days' notice to the Engineer of his intention to commence the manufacture or preparation of such materials.

Other than the materials and equipment specifically required to be inspected at the manufacturer's factory or plant, all materials will be inspected at the construction site and any portions thereof which are rejected by the Engineer shall be immediately removed from the construction site by the Contractor and shall be replaced with new materials by the Contractor at his own expense.

In the case of materials to be inspected at the construction site, the Contractor shall submit a list of all such materials in triplicate to the Engineer for his approval prior to ordering same. The list shall be submitted within forty-five calendar days after receipt of the notice of acceptance and shall contain the following information:

- A. Classification of submittal in accordance with the following:
- Class I - A submittal for record of an expressly specified item.
- Class II - A submittal of an item which conforms to an express generic specification or a submittal which is deemed by the Contractor to be identical to an expressly specified item.
- Class III - A submittal which is deemed by the Contractor to be functionally equivalent but not identical to a specified item.
- B. In the case of Class II and Class III, the Contractor shall supply adequate information to the Engineer to enable the Engineer to compare the specified item and the proposed substitution. Information shall include, but need not be limited to, technical specifications, Catalog Cuts, drawings, references to existing installations and test data, or any other data required by the Engineer.
- C. In the case of fabricated materials for which Shop Drawings are to be prepared, a brief description of the material and the statement "see Shop Drawings".
- D. In the case of materials or equipment listed in manufacturer's catalogs, the list shall contain the vendor's name, the manufacturer's name, brand name, style designation, catalog number and, where the Specifications require catalog cuts, the statement "see catalog cut".
- E. In the case of materials or equipment for which Shop Drawings are not to be prepared, and which are not listed in any catalog, the list shall contain a complete description of the material or equipment, which shall be in sufficient detail to describe completely the materials or equipment and quality therefor.

The Engineer shall advise the Contractor whether said list is approved or requires corrections or additions within the number of working days indicated in the chart below:

| Type of Submittal | No. of Working Days for Engineer to Approve/Disapprove Items |
|--|--|
| Class I Material submittals | 10 |
| Portland Cement mix designs that require confirmation of the 28-day properties | 35 |
| Changes in asphalt mix designs that need to be confirmed with a batch mix at the plant | 35 |
| Class II Material submittals | 20 |
| Class III Material submittals | 30 |

Failure of the Contractor to provide 30 calendar days advance notice to the Engineer of any submittal shall result in a five (5) working day extension of the number of days stated in the chart above. In no event shall an extension of the Engineer's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone dates.

Within ten working days after receipt of said list, the Engineer shall notify the Contractor of which items are approved and which disapproved. Within two working days thereafter, the Contractor shall resubmit a new list covering those items which were disapproved. After each such re-submission the Engineer shall have a similar period of ten days in which to approve or disapprove.

Should materials or equipment be delivered to the construction site without having been placed on the aforementioned list and approved, it shall be immediately removed from the construction site by the Contractor at his own expense.

79. MANUFACTURERS' CERTIFICATION

Where materials and equipment are required by these Specifications to conform to certain standard or tentative specifications or requirements of any organizations, including American Society for Testing and Materials, American National Standards Institute, Association Rules for Grading Lumber, Federal Specifications, National Electrical Manufacturers Association, American Association of State Highway and Transportation Officials, American Water Works Association and the International Municipal Signal Association, the Contractor shall furnish to the Engineer the manufacturer's written certification that each of the materials or equipment conforms to the foregoing standard or tentative specifications. The certification shall be delivered to the Engineer prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Authority and may be rejected at any time by the Engineer if incorrect, improper or otherwise unsatisfactory in his opinion.

80. NO RELEASE OF CONTRACTOR

Any provision of this Contract for testing, inspection or approval, and any actual testing, inspection or approval, of any materials, workmanship, plant, equipment, drawings, program, methods of procedure, or of any other thing done or furnished or proposed by the Contractor to be done or furnished in connection with the Contract is for the benefit of the Authority not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Engineer knows of no good reason for objecting thereto. No such provision for testing or inspection, no omission of testing or inspection, and no such approval shall release the Contractor from his full responsibility for the accurate and complete performance of the Contract in accordance with the Contract Drawings and Specifications or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

81. ERRORS AND DISCREPANCIES

If, in the performance of the Contract, the Contractor discovers any errors or omissions in the Contract Drawings or Specifications, or in the marks, lines and elevations furnished by the Authority in the construction undertaken and executed by him, he shall immediately notify the Engineer and the Engineer shall promptly verify the same.

If with the knowledge of such error or omission and prior to the correction thereof, the Contractor proceeds with any construction affected thereby, he shall do so at his own risk and the construction so done shall not be considered as construction done under and in performance of this Contract unless and until approved and accepted.

82. ACCIDENTS AND FIRST AID PROVISIONS

The Contractor shall promptly report in writing to the Engineer and to the Authority Manager, Claims Administration all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injuries or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damage is caused, the accident shall be reported immediately by telephone to both of the said representatives of the Authority.

The Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service, in case of accident, to any who may be injured in the progress of the Contract. He shall have standing arrangements for the removal and hospital treatment of any person who may be injured while engaged in the performance of the Contract.

If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the aforementioned representatives of the Authority, giving full details of the claim.

83. SAFETY PROVISIONS

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property.

He shall, at his own expense, provide temporary structures, place such watchmen, design and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precaution against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed.

The Contractor shall employ for Work of the Contract a competent person conforming to the requirements of the Code of Federal Regulations 29 CFR 1926.32(f) who shall be designated by the Contractor as authorized to perform the duties required by 29 CFR 1926 et seq. as applicable for Work of this Contract.

Obtain and submit to the Engineer one copy of material safety data sheet (MSDS) conforming to the requirements of 29 CFR 1910.1200(g) for each hazardous chemical utilized for permanent and consumable materials employed for Work of this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss, including but not limited to:

- A. All employees on the Work, the public, and other persons and entities who may be affected thereby;
- B. All the Work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Contractor has removed all workers, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

Until fire protection needs are supplied by permanent facilities under this Contract, install and maintain temporary fire protection facilities. Comply with requirements of National Fire Protection Association NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alteration and Demolition Operations".

The Contractor shall employ only such men as are physically fit and are free from contagious or communicable diseases.

He shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct his operations that annoyance to occupants of nearby property and the general public will be reduced to a minimum.

The bringing of intoxicating substances onto the construction site and the use or consumption of intoxicating substances at the construction site are prohibited. It shall be the responsibility of the Contractor to insure that all employees of the Contractor and of all subcontractors, materialmen and any other persons under contract to or under the control of the Contractor shall comply with the provisions of this paragraph.

The Contractor shall daily clean up all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the construction site shall present a neat, orderly and workmanlike appearance. Before the Certificate of Final Completion of Work will be issued, the Contractor shall remove all surplus materials, falsework, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and shall put the construction site in a neat, orderly condition.

In the event the Contractor encounters at the construction site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Engineer. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Engineer.

Within 15 days of the acceptance of his Proposal, the Contractor shall submit to the Engineer, for review, the Contractor's Site Safety Program, which shall be specific for the construction site and include a description of the work to be performed, a hazard assessment of the Work to be performed and the means by which such hazards shall be mitigated. The Contractor's Site Safety Program shall comply with all applicable federal, state, municipal and local and departmental laws and shall include, among other things, the designation by the Contractor of a qualified individual to administer such Site Safety Program.

Should any vessel, equipment, plant, material, object or debris of any kind used in connection with the Contract or located at or in transit to or from the construction site be sunk, lost, dumped or go adrift under any circumstances, whether or not in navigable water, which in the opinion of the Engineer may, at the time or potentially, be dangerous to or obstruct any navigation or interfere in any way with other work by or for the Authority or with the use of the Authority facilities, the Contractor shall recover and remove the same immediately. The Contractor shall give immediate notice with description and location of such items to the Engineer and when required shall mark or buoy such items until they are removed. The foregoing obligations under this numbered Section shall not be impaired by any right which the Contractor might otherwise have to abandon such vessel, equipment, plant, material, object or debris of any kind without further obligation on his part, and the Contractor waives any such right.

84. RECYCLING OF CONSTRUCTION DEBRIS MATERIAL

The Contractor shall remove from Authority property all construction debris, demolition debris and other debris material generated from the performance of the Work of this Contract. The Contractor shall transport to recycling facilities no less than 75% by weight of the following types of designated debris material, to the extent arising from the Work of this Contract:

- A. Asphalt Concrete
- B. Portland Cement Concrete
- C. Steel
- D. Excess Unrestricted Soil

During the process of removal of all such designated debris material from Authority property, the Contractor shall submit to the Engineer on a monthly basis a Designated Debris Material Assessment Summary indicating the actual types and quantities by weight of the designated debris material removed for this Contract up to that point in time. The Designated Debris Material Assessment Summary shall be accompanied by written verification from recycling and landfill destinations identifying the originating Work site, quantity of material delivered and type of debris material for all designated debris material removed from the Work site.

Within 15 days of the award of the Contract, the Contractor shall submit to the Engineer for review the Contractor's Designated Debris Material Assessment Plan indicating the anticipated types and anticipated quantities by weight and the intended destinations for all such designated debris material to be removed from the Work site.

All removals shall be completed promptly upon the completion of construction under this Contract.

85. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS

The Contractor shall furnish to the Engineer at the end of each day Work is performed at the construction site, a memorandum showing for that day (a) the construction performed, (b) the type of equipment used identifying each piece of equipment as owned by the Contractor or rented from others; (c) a statement of any unusual happening that occurred, and (d) the names and number of workers in each trade classification that were employed. Such memorandum shall not be deemed to be a substitute for the notices, time slips, memoranda or other data required under the clauses of the Form of Contract relating to compensation for Extra Work.

86. LAWS AND ORDINANCES

In order to effectuate the policy of the Authority, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect the Contract and the performance thereof and those engaged therein if said Contract were being performed for a private corporation, except where stricter requirements are contained in the Specifications or Contract Drawings, in which event the latter requirements shall apply. However, the Contractor shall not apply for any permits, licenses or variances in the name of or on behalf of the Authority, but shall do so in his own name where required by law, regulation or order or by the immediately preceding sentence. Nor shall the Contractor apply for any variance in his own name without first obtaining the approval of the Authority.

The Port Authority has applied for the following permit in connection with this Contract in its own name:

(To be determined)

The Contractor shall comply with all provisions of the said permit (s). Copies of the permits are attached hereto and made a part hereof as Appendix A.

87. U.S. COAST GUARD SECURITY REQUIREMENTS

The Contractor is advised that in conjunction with Port Security Provisions for the Port of New York and New Jersey a 25 yard security or exclusionary area has been established by the United States Coast Guard around all bridges, piers and other facilities on the waterfront in the Greater New York/New Jersey area. No person or vessel may enter these security areas without the approval of the Coast Guard Captain of the Port and Vessel Traffic Service Activities New York as well as the Commander, First Coast Guard District Bridge Branch.

All requests to enter into these security zones shall be made in writing to Captain of the Port of New York not less than 30 days prior to the intended date of entry into the zone. Requests must be submitted to the U.S. Coast Guard Waterways Oversight Branch at Commanding Officer, U.S. Coast Guard Activities New York (WOB), 212 Coast Guard Drive, Staten Island, NY 10305; (718) 354-4193 or 4355 and must contain a complete list of all personnel that will enter into the security zones, complete vessel information and, if appropriate, a copy of Coast Guard Bridge Branch construction approval.

The following information is required:

- A. Employee's name, social security number and date of birth.
- B. Contractor's supervisor name and telephone number.
- C. Name, type, size of barge/vessel/boat.
- D. Project start and end dates, working hours and days.

After background checks of all personnel have been completed, Coast Guard Captain of the Port will issue a letter specifying personnel and vessels authorized to enter the security zone.

After initial written approval for entry has been received, the Contractor shall notify the Coast Guard (Vessel Traffic Service 718-354-4088) daily prior to entering and upon securing for the day or leaving the site.

If additional, or changes in existing personnel, are required said information identified above shall be transmitted as above, as early as possible, but not less than 96 hours in advance of the expected change.

Failure to comply with the above Security Zone Requirements and Conditions is punishable under Federal Law by arrest, prosecution, and or civil penalties.

88. IDENTIFICATION

No person will be permitted on or about the construction site without a pass, permit or identification badge approved by the Engineer. The Contractor shall provide such passes, permits or identification badges for his employees, subcontractors and materialmen whenever necessary. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever they are working at the construction site.

89. SIGNS

No advertisement or sign, other than the name and address of the Contractor, will be permitted on any fences, temporary structures or elsewhere on the construction site and such advertisement will be permitted only upon the condition that it is first approved by the Engineer. In any event, the advertisement shall not exceed six feet by eight feet in overall dimensions.

90. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE

At a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone.

During the performance of any Work at the construction site, the Contractor shall have a representative thereat who shall be authorized by the Contractor to receive and put into effect promptly all orders, directions and instructions from the Engineer. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a set of the Contract Drawings.

Orders and directions may be given orally by the Engineer and shall be received and promptly obeyed by the Contractor or his representative or any superintendent, foreman or other employee of the Contractor who may have charge of the particular part of the Work in relation to which the orders or directions are given. A confirmation in writing of such orders or directions will be given by the Engineer when so requested by the Contractor.

91. SURVEYS

The Engineer will establish a bench mark and a base line at or adjacent to the location of the Contractor's operations. The Contractor shall perform all surveys which may be required for the performance of the Contract. He shall carefully preserve any base line and bench mark which may be established by the Engineer.

The Contractor shall, in addition, furnish to the Engineer, without additional compensation therefor, any or all information and data regarding points, lines, grades, elevations and other survey information established by the Contractor during the performance of the Contract.

Surveys and measurements of quantities for purposes of computing Contractor's compensation shall be made by the Contractor as directed by and in the presence of, or jointly with, the Engineer, at the Engineer's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Engineer.

92. TEMPORARY STRUCTURES

Unless otherwise provided in this Contract, the Contractor shall determine the need for and shall design, furnish and construct all barricades, fences, staging, falsework, formwork, shoring, scaffolding and other temporary structures required in the performance of the Contract, whether or not of the type enumerated in the Specifications or on the Contract Drawings, including those which would be required by law or regulation if this Contract were being performed for a private corporation. All such temporary structures shall be of adequate strength for the purposes for which they are constructed and shall be provided with graphics, warning signs and warning lights as required to inform personnel and the public of the hazards being protected against, and the Contractor shall maintain them in satisfactory condition. The design and drawings for such structures are to be prepared by the Contractor, and when requested by the Engineer they shall be submitted for his review before being used. Neither such approval, however, nor any requirements of the Engineer, the Specifications or the Contract Drawings shall relieve the Contractor of his responsibility for the design, construction and use of the temporary structures or from any obligations and risks imposed on him under this Contract, and any such approval or requirements shall be deemed merely to relate to minimum standards and not to indicate that the temporary structures are adequate or that they meet the Contractor's obligations under this Contract.

Temporary structures shall be painted with an approved dark color paint and shall be repainted whenever necessary during the period that the Contract is being performed. Upon completion of all Work under this Contract, the temporary structures shall be removed from the construction site.

93. PERMIT AND REQUIREMENTS FOR WELDING

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Engineer and obtain an Authority cutting and welding permit. The Authority will issue this permit without payment of a fee, and application forms may be obtained from any Resident Engineer of the Authority, at his office at the facility. Unless otherwise approved by the Engineer, all cutting and welding operations shall be performed in accordance with the conditions which form a part of said permit. The permit application must be filled out and submitted in duplicate to the Engineer at least forty-eight hours prior to commencing welding or cutting operations at the construction site.

94. FINAL INSPECTION

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Engineer in writing and the Engineer will give said construction (including any portions with respect to which Certificates of Partial Completion have been issued) a minute and thorough inspection. Before any Certificate of Final Completion will be issued, any defects or omissions noted on this inspection must be corrected by the Contractor.

95. WARRANTIES

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of the Authority and not as a substitute for rights which the Authority might otherwise have. Although such warranties shall be enforceable as provided, neither any requirement of this Contract with respect to warranties by the Contractor nor any guarantee or warranty given to the Contractor or the Authority by any manufacturer shall be deemed to be a limitation upon any rights which the Authority would have, either expressed or implied, in the absence of such guarantees or warranties.

96. TEMPORARY UTILITY SERVICES

Operate and maintain temporary services and facilities in a safe and efficient manner. Modify as required throughout progress of the Contract, and remove from Authority property when no longer required, or replaced by the use of completed permanent facilities as approved by the Engineer.

Make arrangements for securing, and pay all costs for heat, light, power, water, and other services which may be required for the performance of the Contract.

97. TEMPORARY SANITARY FACILITIES

Make arrangements for securing and pay all costs for temporary toilets, wash facilities and drinking water including toilet tissue, paper towels, paper cups and similar disposable materials for use by the Contractor, subcontractors, materialmen or other persons over whom the Contractor has control. Comply with regulations and health codes, which would be applicable if the Authority were a private corporation, for the type, number, location, operation and maintenance of fixtures and facilities. Install facilities where directed by the Engineer, and remove from Authority property when no longer required.

98. PROGRESS SCHEDULE

When requested by the Engineer, within seven calendar days after issuance of a Work Order the Contractor shall submit a progress schedule for the approval of the Engineer. The progress schedule shall show the dates for the commencement and completion of the different portions of the Work Order. After the approval of the schedule the Contractor shall maintain and periodically update it at intervals determined by the Engineer. No changes shall be made therein without the written approval of the Engineer. Approval of any progress schedule shall not limit, affect or impair the Contractor of his obligation to complete the Work Order by the time(s) required in the Work Order, even though the schedule approved may be inconsistent with such completion, and in accordance with all other provisions of the Contract, nor shall it constitute a representation by the Authority that the Contractor will be able to proceed or complete the Work in accordance with the schedule.

The Engineer shall have the right at any time when in his judgment the Work is not proceeding in accordance with the approved progress schedule, or at anytime it is likely that the Work may not be completed by the time(s) required in the Work Order, even though the Contractor is proceeding in accordance with the approved progress schedule, to order the Contractor to increase the number of men employed, to use additional plant or equipment, or to take such other steps as may be required to assure the completion of the various operations within the time(s) allotted therefore in the approved schedule or by the aforesaid completion times(s).

99. CONDITIONS AND PRECAUTIONS

A. Construction Site Conditions:

- 1.) Should the Contractor be specifically directed to suspend operations at a berth specified herein to be available for operations of the Contractor, or should such berth not be available by the times specified elsewhere in the Contract, and if solely because of such suspension of operations or late availability of pier or berth, the Contractor is necessarily kept idle at the construction site, the Contractor will be compensated as stipulated in the provisions of the Contract concerning compensation for emergency delays.
- 2.) No vehicles of the Contractor, employees of the Contractor, subcontractors, materialmen or others over whom the Contractor has control will be permitted to park in or on Authority property, except for construction vehicles which will be permitted to park at the area of Work during the times when the Work is being performed.

All vehicles, including construction vehicles and company vehicles will be required to pay the appropriate tolls for each passage or crossing of Authority facilities, or parking at Authority lots.
- 3.) Securely fasten material or construction which must be left in place between working periods in a manner approved by the Engineer so as not to be a hazard.
- 4.) Take all precautions necessary for protection of persons, traffic and property during dust or fragment generating operations, concrete mixing or placing, or other operations which may stain, soil or damage property or injure persons. Provide and erect waterproof, fire-resistant, UL labeled tarpaulins with flame-spread rating of 15 or less, or other protective enclosures as approved by the Engineer.
- 5.) Restrict smoking to areas designated by the Engineer for this purpose.
- 6.) Do not burn or bury debris of any type on Authority property, or wash waste materials down sewers or into waterways.
- 7.) Provide sound suppression devices on gasoline and diesel powered construction equipment and pneumatic tools as required to maintain noise exposures below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for Construction (OSHA). Maintain such sound suppression devices in proper operating condition throughout the time of their use, and adjust and repair as required to maintain noise within exposure levels stipulated in 29 CFR 1926.52, Table D-2.

- B. No requirement of or omission to require any precautions under this Contract shall be deemed to limit or impair any responsibility or obligation assumed by the Contractor under or in connection with this Contract and the Contractor shall at all times maintain adequate protection to safeguard the public and all persons engaged in the Work and shall take such precautions as will accomplish such end, without undue interference with the public or the operations of the Authority.

100. HOURS OF WORK

- 1.) Except as otherwise specified in the Contract, the Contractor shall perform the Work of this Contract without restrictions.
- 2.) Do not perform Work on a legal holiday of the state(s) in which Work is being performed.

DIVISION 2SECTION 02482DREDGING - BARGE OVERFLOW PERMITTEDPART 1 - GENERAL

1.01 SUMMARY

- A. This Section specifies requirements for dredging of all materials of whatever nature encountered within the areas shown on the Contract Drawings to be dredged where barge overflow of suspended materials is permitted.

1.02 QUALITY ASSURANCE

- A. Verify that the entity performing dredging has within the two (2) years preceding the date of submission of the Proposal for this Contract, been engaged in dredging within the navigable waters of the United States, as defined in 33 CFR 329.4, and within such time has successfully completed at least one dredging contract involving dredging of a quantity of material not less than that required or Work of this Contract. In addition, verify that such entity has successfully completed, at any time, at least one contract for dredging of a quantity of material within the navigable waters of the United States, as defined herein, using the dredging method selected by the Contractor for use under this Contract.
- B. Establish and maintain control of dredging and disposition operations to ensure that the following are in compliance with Contract requirements:
1. Perform dredging to the lines and grades shown on the Contract Drawings.
 2. Dispose of dredged materials as stipulated in Section 3.03 herein.

1.03 Not Used

1.04 SUBMITTALS

- A. Submit the following in accordance with the requirements of "Shop Drawings, Catalog Cuts, and Samples" of Division 1 - GENERAL PROVISIONS:
1. Original fathometer data on compact disks (CD's). Such CD's shall become the property of the Authority.
 2. Calculations of the volume of dredged material to be included in the volume for payment. Method of calculation shall be subject to approval by the Engineer.

3. Drawings showing the plan layout of the soundings taken before and after dredging and indicating the depths below mean low water. The drawings shall be to a scale of 1 inch equals 40 feet. Submit such drawings as follows.
 - a. Soundings for a pre-dredging survey, as required by 3.01B herein, with an estimate of the total volume of material to be removed, not more than thirty (30) calendar days prior to the commencement of dredging.
 - b. Soundings for a post-dredging survey(s), as required by 3.04 herein, with an exact calculation of volume of material actually removed, not more than fifteen (15) calendar days after completion of dredging.
 - c. Soundings for the post-dredging survey(s) showing only data points for recordings less than the Dredge Line depth in red and recordings deeper than the Dredge Line plus 2' Allowable Overdredge depth in green.

PART 2 - PRODUCTS

Not applicable.

PART 3 - EXECUTION

3.01 PREPARATION

- A. In the event floating fender bumpers (such as camels or deadmen) interfere with the operations of the work of this Contract, temporarily relocate them to an area approved by the Engineer and then resecure them in the original area when operations in that immediate area are complete, or when so directed by the Engineer.
- B. Fathometer Soundings
 1. Prior to commencement of dredging to be performed under this Section of Specifications, take continuous profile fathometer soundings in the presence of the Engineer at the spacing shown on the Contract Drawings throughout the areas to be dredged and extending at least one hundred (100) feet beyond the perimeter of the areas to be dredged.
 2. Fathometer soundings shall be taken to an accuracy of 0.1 foot.
- C. Lead Soundings
 1. Take soundings using a nine-inch diameter, perforated lead disk weighing 6.6 pounds.
 2. Lead soundings shall be taken in areas where the Engineer

finds fathometer soundings to be impractical or not of sufficient accuracy.

3. Take lead soundings in the presence of the Engineer prior to commencement of dredging.
4. Take soundings by gently lowering the lead disk until the weight is fully supported by the bottom and slack appears in the line.
5. Take soundings to an accuracy of 0.1 foot.

3.02 DREDGING OPERATIONS

- A. All dredging methods shall be subject to the approval of the Engineer.

The entity performing the Work of this Section may allow the overflow of water containing suspended materials during the loading of the barge (scow). Overflow shall not create turbidity.

- B. Perform dredging to elevations shown on the Contract Drawings. Materials underlying the allowable overdredge limits shall not be disturbed during dredging.
- C. Upon completion of dredging, remove any material that may have been deposited in areas adjacent to the dredged areas, as shown by the soundings required in 3.04 herein.
- D. Dredging on side slopes will be permitted only where ordered by the Engineer.
- E. Dredging outside the limits of the area to be dredged or below the allowable overdredge limits shown on the Contract Drawings will not be permitted.
- F. Up to a distance of 75 feet of the face of wharf or other structures, replace any material removed outside the limits of the area to be dredged or below the allowable overdredge limit with material of equivalent weight, strength and stability as the in-situ material; as approved by the Engineer and at no cost to the Authority. Since overdredging in these areas may affect the stability of the structures, the Contractor shall be liable for any damage to said structures which occurs as the result of dredging beyond the aforesaid limits.
- G. Exercise extreme care when operating in the vicinity of any structure and repair, to the satisfaction of the Engineer and at no additional cost to the Authority, all damage occurring as the result of the operations of the Work of this Contract.

3.03 DISPOSITION OF DREDGED MATERIAL

- A. Disposition of dredged material shall be to the location

required by notes on the contract drawings.

B. Comply with all applicable requirements of each of the following:

1. The permits stipulated in the Section of Division 1 - GENERAL PROVISIONS entitled "Laws and Ordinances";

2. All local, state and Federal agencies which would have jurisdiction, if the Authority were a private corporation.

C. Perform operations and use equipment for Work under this Contract in such a way that no dredged materials leak into or are deposited into navigable channels during their removal or transportation. Should leakage occur, remove such materials and immediately correct the condition that caused such leakage or discharge at no additional cost to the Authority.

D. Scows used to transport dredged material shall be completely emptied during emptying operations.

3.04 POST-DREDGING SOUNDINGS

After dredging to required elevation(s), obtain soundings in the manner specified in 3.01 B and 3.01 C herein after at least one change in tide has occurred.

END OF SECTION

DIVISION 2

SECTION 02483

DREDGING - NO BARGE OVERFLOW PERMITTED

PART 1 - GENERAL

1.01 SUMMARY

- A. This Section specifies requirements for dredging of all materials of whatever nature encountered within the areas shown on the Contract Drawings including materials that may slough in from the side slopes.

1.02 QUALITY ASSURANCE

- A. Verify that the entity performing dredging has within the two (2) years preceding the date of submission of the Proposal for this Contract, been engaged in dredging within the navigable waters of the United States, as defined in 33 CFR 329.4, and within such time has successfully completed at least one dredging contract involving dredging of a quantity of material not less than that required for Work of this Contract. In addition, verify that such entity has successfully completed, at any time, at least one contract for dredging of a quantity of material within the navigable waters of the United States, as defined herein, using the dredging method or methods selected by the Contractor for use under this Contract.
- B. Establish and maintain control of dredging and disposition operations to ensure that the following are in compliance with Contract requirements:
 - 1. Perform dredging to the lines and grades shown on the Contract Drawings.
 - 2. Dispose of dredged materials as stipulated in 3.03 herein.

1.03 Not Used.

1.04 SUBMITTALS

For Submittals, see Appendix A

PART 2 - PRODUCTS

Not applicable.

PART 3 - EXECUTION

3.01 PREPARATION

- A. In the event that floating fender bumpers (such as camels or deadmen) interfere with operations of the Work of this Contract, temporarily relocate them to an area

approved by the Engineer and then re-secure them in the original area when operations in that immediate area are complete, or when so directed by the Engineer.

B. Fathometer Soundings

1. Prior to commencement of dredging to be performed under this Section of the Specifications, take continuous profile fathometer soundings at a maximum spacing of ten (10) feet shown throughout the areas to be dredged and extending at least one hundred (100) feet beyond the perimeter of the areas to be dredged or to the face of the bulkhead or pier as applicable.
2. Fathometer soundings shall be taken to an accuracy of 0.1 feet.
3. All fathometer data shall be signed by a certified hydrographer licensed in the State of New York.

C. Lead Soundings

1. Take soundings using a nine-inch diameter, perforated lead disk weighing 6.6 pounds.
2. Lead soundings shall be taken in areas where the Engineer finds fathometer soundings to be impractical or not of sufficient accuracy.
3. Take lead soundings in the presence of the Engineer prior to commencement of dredging.
4. Take soundings by gently lowering the lead disk until the weight is fully supported by the bottom and slack appears in the line.
5. Take soundings to an accuracy of 0.1 feet.

3.02 DREDGING OPERATIONS

A. All dredging methods shall conform to the following and shall be subject to the approval of the Engineer:

1. Dredge using an environmental bucket(s).
2. The environmental bucket shall meet the following specifications:
 - a). The bucket must be constructed with sealing gaskets or overlapping sealed design at the jaws, and seals or flaps positioned at locations of vent openings to minimize the loss of material during transport through the water column and into the barge.
 - b). Any seals or flaps designed and/or installed at the jaws and locations of vent openings must tightly cover these openings while the bucket is lifted through the water column and into the barge. If excessive loss of water and/or sediments from the bucket is observed from the time of its breaking the water surface to crossing the barge gunwale, the Engineer shall halt dredging operations and inspect the bucket for defects. Operations shall be suspended until all necessary repairs or

replacements are made.

3. All materials dredged including water that may inadvertently become trapped in the bucket during dredging shall be deposited into the barge (scow).
 4. No barge (scow) overflow is permitted.
 5. Ensure that the entity performing the dredging Work of this Section minimizes the amount of water entering the barge (scow) by such methods as taking full depth cuts of material to be dredged and using appropriately sized buckets.
 6. The bucket must be lowered to the level of the barge gunwales prior to the release of the load.
- B. Perform dredging to elevations shown on the Contract Drawings.
- C. Upon completion of dredging, remove any material that may have been deposited in areas adjacent to the dredged areas, as shown by the soundings required in 3.04 herein.
- D. Within a distance of 50 feet from the face of wharf or other structures, replace material removed outside the limits of the area to be dredged or below the "Allowable Overdredge" with material of equivalent weight, strength and stability as the in-situ material, as approved by the Engineer and at no additional cost to the Authority. Since dredging beyond the "Allowable Overdredge" may affect the stability of the structures, the Contractor shall be liable for any damage to said structures which occurs as the result of dredging beyond the aforesaid limits. Also, in the event that fines or penalties are levied by regulatory agencies because of dredging outside the limits of dredging or below the allowable overdredge, the Contractor shall assume the risk of all fines or penalties imposed.
- E. Exercise extreme care when operating in the vicinity of any structure and repair, to the satisfaction of the Engineer and at no additional cost to the Authority, all damage occurring as a result of the operations of the Work of this Contract.

DISPOSAL OF DREDGED MATERIAL

- A. Dispose of dredged material at a permitted and operational upland disposal facility(ies).
- B. As stipulated in the enclosed New Jersey Department of Environmental Protection (NJDEP) Waterfront Development Permit, Water Quality Certificate, Acceptable Use Determination, dated May 10, 2007, in accordance with Special Condition 25 (page 123), material dredged from Berths 5, 7, 9, 15, 16, 17, 19, 21, and 23, included in this Contract, may be authorized for disposal at the Newark Bay Confined Disposal Facility (NBCDF).
- C. Comply with all applicable requirements of each of the following:

1. The permits stipulated in the Section of Division 1 - GENERAL PROVISIONS entitled "Laws and Ordinances";
2. All local, state and Federal agencies that would have jurisdiction, if the Authority were a private corporation.
 - a. Perform operations and use equipment for Work under this Contract in such a way that no dredged materials leak into or are deposited into navigable channels during their removal or transportation. Should leakage occur, remove such materials and immediately correct the condition that caused such leakage or discharge at no cost to the Authority.
 - b. Decant water shall be discharged at the dredging site in accordance with the following conditions:
 - i). A barge load must be allowed to settle for a minimum of 24 hours prior to discharge.
 - ii). The discharge must be visually monitored at all times. Should a visible plume be observed, discharge must cease immediately and additional settling time provided prior to continuing the discharge.

3.04 POST-DREDGING SOUNDINGS

After dredging to required elevation(s), obtain soundings in the manner specified in 3.01 B herein.

END OF SECTION

SECTION 02483

DREDGING - NO BARGE OVERFLOW PERMITTED

APPENDIX "A"

SUBMITTALS

- A. Submit the following in accordance with the requirements of "Shop Drawings, Catalog Cuts, and Samples" of Division 1 - GENERAL PROVISIONS:
1. Original bathymetric data on compact disks (CD's). Such CD's shall become the property of the Authority.
 2. Calculations of the total volume of material to be dredged to design depth and to design plus paid overdepth.
 3. Unless stipulated otherwise in any of the permits issued for Work under this Contract, submit drawings showing the plan layout of the soundings taken before and after dredging and indicating the depths below mean low water (MLW NGVD 1929). The drawings shall be to a scale of 1 inch equals 40 feet. Submit such drawings as follows:
 - a. Soundings for a pre-dredging survey, as required by 3.01B and 3.01C herein, with an estimate of the total volume of material to be removed, not less than thirty (30) calendar days prior to commencement of dredging. Volumes shall be for the design depth (Dredge Line) as well as for the design depth plus paid overdepth as shown on the drawings.
 - b. Soundings for a post-dredging survey as required by 3.04 herein, with a calculation of the volume of material actually removed, immediately after completion of dredging "Material for Upland Disposal". Volumes shall be for the design depth, the design depth plus paid overdepth and for the total volume removed. Show data points for recordings less than the "Dredge Line" depth in green and recordings deeper than the "Dredge Line" depth plus two (2) feet (deeper than the "Allowable Overdepth") in red.
- B. Submit to the Engineer for approval drawings and performance specifications for the environmental bucket.

END OF APPENDIX "A"



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

(See Issuing Division below)



PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 0000-02-0021.1 WFD060001 Application No. 0000-02-0021.1 WFD060001

Issuance Date: May 10, 2007 Effective Date: May 10, 2007 Expiration Date: May 10, 2012

| | | |
|---|--|---|
| Name and Address of Applicant The Port Authority of New York and New Jersey 2 Gateway Center, 14 th Floor SW Newark, NJ 07102 | Name and Address of Owner Same As Applicant | Name and Address of Operator Same as applicant |
|---|--|---|

| | | |
|--|---|--|
| Location of Activity/Facility (Street Address) Port Newark & Elizabeth Cities of Newark & Elizabeth Counties of Essex and Union | Issuing Division Office of Dredging and Sediment Technology | Statute(s) NJSA 58:10A NJSA 12:5-3 |
|--|---|--|

| | |
|--|---|
| Type of Permit: Waterfront Development Permit/ Water Quality Certificate/Acceptable Use Determination | Maximum Approved Volume: 853,000 cubic yards |
|--|---|

This permit grants permission to:

Perform routine maintenance dredging of the existing berths to their current depths ranging between -40 to -50 feet below MLW at Port Newark and Port Elizabeth, (Berths 2 through 98) with the exception of berths 6, 8, 10, 12, & 14. Dredging at these berths is to be addressed under separate permit application. Deepening will occur at berths 53, 55, 56, 57, 58, 60, 62, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, to a depth of 50' mean low water. The maximum allowable overdredge for all berths is limited to two feet. The estimated quantities of dredged material to be removed is as follows: Holocene/Maintenance material to be placed at an approved upland location is approximately 380,000 cubic yards; Pleistocene red-brown clay from deepening work is approximately 473,000. An Acceptable Use Determination (AUD) has been issued with this permit which regulates the beneficial use of the dredged material from this project.

This permit authorizes one-time dredging of each of the berths during its five-year term. Additional dredging episodes of any specific berth(s) during the five-year term of this permit may only be performed under a new permit or a modification to this permit. A decision as to whether and what additional sampling and testing may be required shall be made on a case-by-case basis.

The approved plan consists of eight sheets entitled "New Jersey Marine Terminals, Multi-Facility Maintenance Dredging and Berth Deepening," dated September 6, 2006.

This permit is hereby conditioned upon the permittee receiving Army Corps of Engineers authorization for the project prior to the initiation of dredging under this permit.

Prepared By: Gary Nickerson May 10, 2007
Gary Nickerson Date
 (See Page 7 of 7 pages for Chief's signature.)

| | |
|--------------|--|
| Revised Date | Approved by the Department of Environmental Protection |
| | Name (Print or Type) _____ Title _____ |
| | Signature _____ Date _____ |

*The word permit means "approval, certification, registration, etc." (General Conditions are on Page Two)

This permit is subject to the following general conditions:

1. This permit is revocable, or subject to modification or change at any time, pursuant to the applicable regulations, when in the judgement of the Department of Environmental Protection of the State of New Jersey such revocation, modification or change shall be necessary.
2. The issuance of the permit shall not be deemed to affect in any way action by the Department of Environmental Protection of the State of New Jersey on any future application.
3. The works, facilities, and/or activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
4. No change in plans or specifications shall be made except with the prior written permission of the Department of Environmental Protection of the State of New Jersey.
5. The granting of this permit shall not be construed to in any way affect the title or ownership of property, and shall not make the Department of Environmental Protection or the State a party in any suit or question of ownership.
6. This permit does not waive the obtaining of Federal or other State or local government consent when necessary. This permit is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
7. A copy of this permit shall be kept at the work site, and shall be exhibited upon request of any person.
8. In cases of conflict, the conditions of this permit shall supersede the plans and/or engineering data.

The project is authorized under, and in compliance with, the Rules of Coastal Zone Management (N.J.A.C. 7:7E) governing: Finfish Migratory Pathways (7:7E-3.5), Ports (7:7E-3.11), Maintenance Dredging (7:7E-4.6), New Dredging (7:7E-4.7), Dredged Material Disposal (7:7E-4.8), Port Use Rule (7:7E-7.9), Dredged Material Placement on Land (7:7E-7.12), Marine Fish and Fisheries (7:7E-8.2), and Water Quality (7:7E-8.4).

This permit is approved, subject to, and in accordance with the Tidelands grants issued to the City of Newark on June 10, 1946, Liber W-2, page 117; to the Port of NY Authority on March 21, 1972, Liber P-3, page 40 & to Port of NY Authority on March 21, 1972, Liber E-8. Issuance of this permit does not in any way relinquish the State's ownership interest in the subject property, if any exists. The project site is located on Tidelands Map No. 665-2142 and Newark-Elizabeth Meadowlands.

This permit is issued subject to and provided that the following conditions can be met to the satisfaction of the New Jersey Department of Environmental Protection (NJDEP) Office of Dredging and Sediment Technology. All conditions must be met prior to construction unless otherwise specified. Compliance with Administrative conditions shall be determined once copies of all specified permits, certifications, plans, agreements, etc. have been received, not less than 30 days prior to construction, and approved by the NJDEP Office of Dredging and Sediment Technology. All Physical Conditions are subject to on-site compliance inspection by the NJDEP Bureau of Coastal and Land Use Enforcement. As per N.J.A.C. 7:7-1.4, you must notify the NJDEP Bureau of Coastal and Land Use Enforcement, (401 East State Street, P.O. Box 422, Trenton, NJ 08625), in writing at least 3 days prior to commencement of construction or site preparation.

This permit shall be RECORDED in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES in the applicable counties) in the county wherein the lands included in the permit are located within ten (10) days after the receipt of the permit by the applicant and verified notice shall be forwarded to the NJDEP Office of Dredging and Sediment Technology immediately thereafter.

This permit is NOT VALID until the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the NJDEP Office of Dredging and Sediment Technology, 6th floor Assistant Commissioner's Suite, P.O. Box 028, Trenton, New Jersey 08625.

ADMINISTRATIVE CONDITIONS

1. The permittee shall allow an authorized representative of the NJDEP the right to inspect construction pursuant to N.J.A.C. 7:7-1.5.
2. The permittee shall obtain all required local, state and federal approvals.
3. Prior to initiation of dredging, the permittee shall receive Army Corps of Engineers authorization for the project. A copy of said authorization shall be forwarded to this Office upon receipt by the permittee.

PHYSICAL CONDITIONS

4. In order to protect winter flounder spawning habitat, dredging of berths 92, 94, 96 and 98 shall not be permitted between February 1 and May 31 of any given year.
5. The dredged material from this contract shall be removed using a closed clamshell environment bucket until refusal at which time a clamshell bucket or excavator shall be used to remove the remaining material to project depth.

6. If during the term of this permit, it is determined that blasting of rock material is necessary, the permittee shall provide written notice to the Department and shall provide a copy of the approved blast plan by the ACOE, NY District.
7. The permittee shall employ the services of an independent dredging inspector to monitor dredging activities twice per week. The permittee shall submit the resume of the dredging inspector to the Department for review and receive written approval prior to the initiation of dredging.
8. The dredge shall be operated so as to control the rate of descent of the bucket so as to maximize the vertical cut of the clamshell bucket while not penetrating the sediment beyond the vertical dimension of the open bucket (i.e. overfilling the bucket). This will reduce the amount of free water in the dredged material, will avoid overfilling the bucket, and minimize the number of dredge bucket cycles needed to complete the dredging contract. The dredging contractor shall use appropriate software and sensors on the dredging equipment to ensure consistent compliance with this condition during the entire dredging operation. The independent dredging inspector shall monitor the operation of the software and sensors during the inspections required by Condition #20 of this authorization. Any malfunction of the software and sensors on the dredge at any time shall be immediately reported to the independent dredging inspector and the permittee by the dredging contractor and shall be immediately repaired to working order.
9. The closed clamshell environmental bucket shall be equipped with sensors to ensure complete closure of the bucket before lifting the bucket. Said sensors shall be operational during the entire dredging operation.
10. Where a closed clamshell environmental bucket is required, it shall be lifted slowly through the water, at a rate of 2 feet per second or less.
11. Dredged material shall be placed deliberately in the barge in order to prevent spillage of material overboard.
12. A "No Barge Overflow" applies to the dredging of Maintenance/Holocene sediments. "Barge Overflow" is permitted for the dredging of Pleistocene sediments only.
13. All barges or scows used to transport sediment shall be of solid hull construction or be sealed with concrete.
14. The gunwales of the dredge scows shall not be rinsed or hosed during dredging except to the extent necessary to ensure the safety of workers maneuvering on the dredge scow.
15. All decant water holding scows shall be water tight and of solid hull construction.
16. Decant water from this project may only be discharged within the channel from where the sediments originated, in close proximity to the dredging contract area. Discharge to another receiving waterbody requires prior approval from the Department, and may require a New Jersey Discharge Pollutant Elimination System/Discharge to Surface Water (NJDPES/DSW) permit.
17. All decant water shall be held in the decant holding scow a minimum of 24 hours after the last addition of water to the decant holding scow. Said water contained in the decant holding scow may only be discharge after this mandatory 24 hour retention time.

Should the contractor wish to reduce the required holding time, the contractor shall demonstrate that the reduced holding time is sufficient to meet a total suspended solids (TSS) background value of 30 mg/L. This TSS action level is consistent with the ambient TSS results presented in the NY District study entitled "NY and NJ Harbor Deepening Project - Total Suspended Solids (TSS) Monitoring, Interim Report" (January 2006). The total suspended solids shall be

determined through gravimetric analysis. No discharge shall be permitted from the decant holding scow until the results of the gravimetric analysis have confirmed that the 30 mg/L background level has been achieved. No additional water shall be added to the decant holding scow between the time of sample acquisition and discharge. Upon successful demonstration that the reduced holding time is sufficient to meet the TSS background level of 30 mg/L, the monitoring of TSS may be suspended and the demonstrated settling time shall replace the 24 hour minimum. A successful demonstration of the reduced holding time efficiency shall be determined once three consecutive TSS analyses have confirmed that the 30 mg/L action level has been achieved by the reduced holding time.

Should the contractor wish to demonstrate this reduced holding time, all records including time of last addition of decant water into the scow, time of TSS sampling and the results of TSS sampling shall be submitted to the NJDEP as soon as they become available, together with a request for a reduced holding time.

18. During pumping of the decant water from the holding scow, great care shall be taken to avoid re-suspending or pumping sediment which has settled in the decant holding scow.
19. The dredging contractor shall complete and submit the attached Dewatering Form to the independent dredging inspector on a weekly basis as part of the Quality Control Report provided to the permittee. Said Dewatering Form shall be certified by the independent dredging inspector that they have witnessed the dewatering process during the preceding week. The permittee shall submit the completed Dewatering Form with appropriate certifications by fax to the Office of Dredging and Sediment Technology for the preceding week.
20. The independent dredging inspector shall perform inspections of the dredging contract a minimum of twice per week using the attached WQC Field Inspector form. The permittee shall submit the completed inspection forms to the NJDEP on at least a weekly basis.
21. **REPORTING REQUIREMENTS:** At the completion of **EACH WORK ORDER(S)**, the permittee shall submit the following information to the Department. This information shall be submitted within three months of completion of dredging.
 - Start and finish date of work order(s)
 - Post-dredge hydrographic survey
 - Completed "Notice of Completion of Work" attached for each work order(s).

ACCEPTABLE USE DETERMINATION

22. The 380,000 cubic yards of non-HARS suitable dredged material from this project shall be mixed with a minimum of 8% Portland cement only.
23. Placement of material at Freshkills Landfill requires approval from New York State DEC and should be pursued through a separate application.

24. Prior to the Port Authority issuing a work order(s) to the designated dredging contract for a specific berth or group of berths, the Port Authority or its designated contractor must submit the following to the Office for review and approval of an AUD for the specific work order(s):
- List of berths to be dredged
 - Amount of dredged material to be removed under the work order(s)
 - Schedule for the work order(s)
 - Location of placement sites for the material

This does not apply to the maintenance dredging of berths 62-96 that were authorized in the April 2, 2007 AUD issued from this Office regarding Work Orders 1, 2 and 3 of Contract MFP-684.002.

25. The non-HARS suitable material from this project has been characterized with respect to New Jersey's Non-Residential Direct Contact Soil Cleanup Criteria (NRDCSCC) and available placement sites for the material as follows:

Berths 2, 3, 4, 5, 7, 9, 11, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25 exceed the NRDCSCC and thus may be authorized for disposal in the Newark Bay Confined Disposal Facility (NBCDF) based on review of available placement sites at the time of issuance of this permit. At the time an AUD request is submitted by the Port Authority for dredging these berths as required by Condition #24, the Department will revisit this determination based on available placement sites to accept material from these berths, and the Department shall give priority to the upland placement site over the Newark Bay Confined Disposal Facility.

Berths 22, 24, & 26 through 96 meet New Jersey's NRDCSCC and are acceptable for placement at the following upland placement site:

EnCap site

The material from this project is only acceptable for use as PDM cap material consistent with the fill protocol approvals issued for the EnCap site on November 7, 2002 (as amended on April 29, 2004, and May 24, 2006 (Protocol for PDM barrier layer).

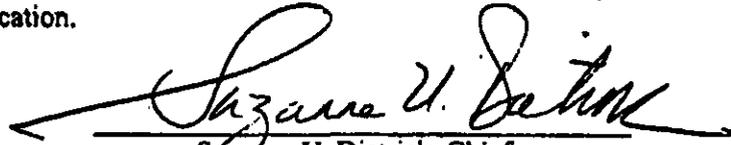
The designated contractor shall comply with all conditions specified in the AUDs issued for the placement of processed dredged material (PDM) on the Avon, Lyndhurst and Rutherford Landfills dated January 17, 2003, and dated April 17, 2003 for the Kingsland Landfill.

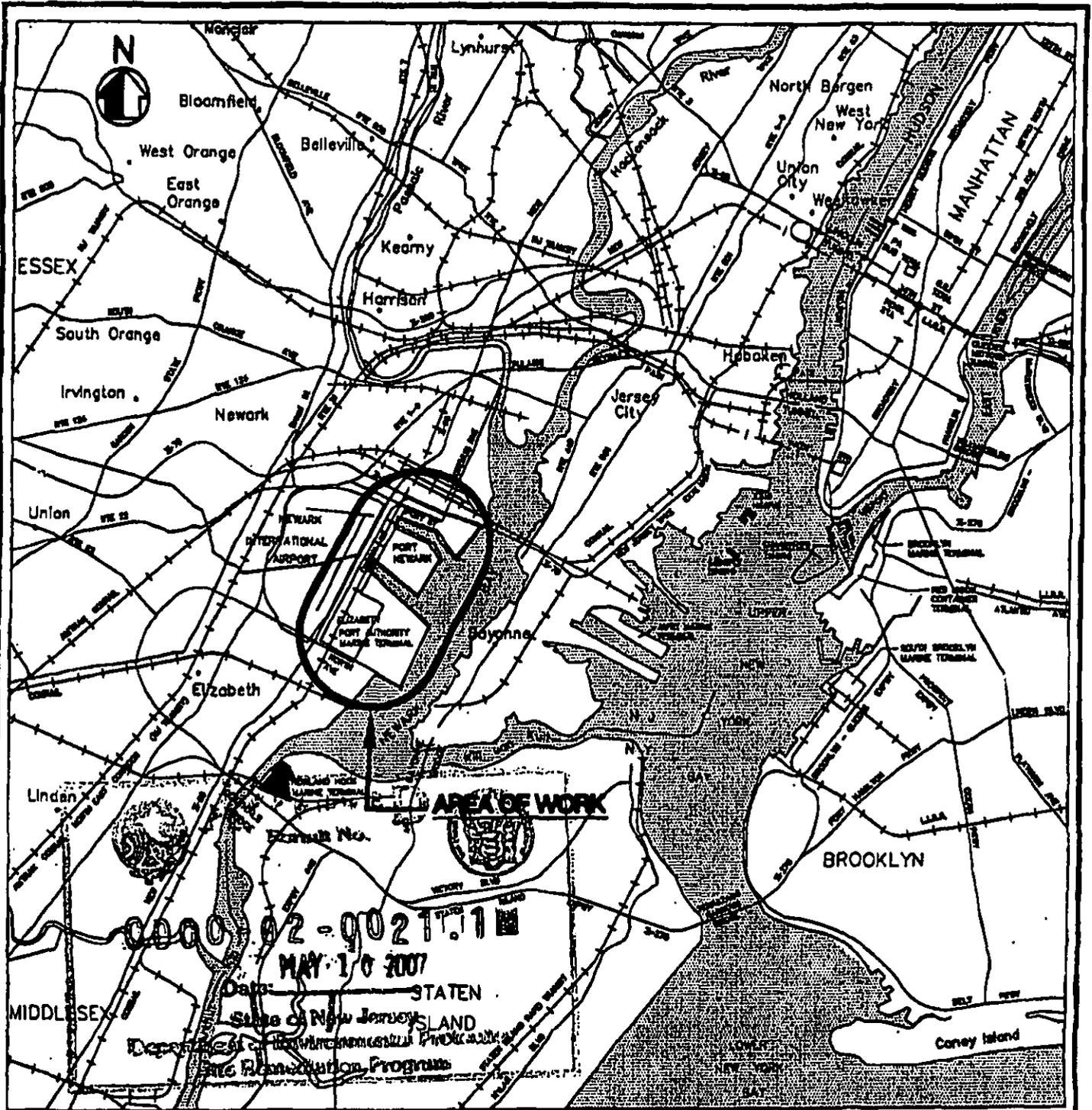
The designated contractor shall comply with all conditions relating to processed dredged material placement as specified in the Remedial Action Workplan approvals and Closure Plan approvals issued for the Avon, Lyndhurst and Rutherford landfills dated September 18, 2001, as modified on October 29, 2002, and all amendments thereto. The designated contractor shall comply with all conditions specified in the Closure Plan approval issued for the Kingsland Landfill on January 27, 2003 and all amendments thereto.

26. The identified processing facility for the non-HARS suitable material shall comply with all conditions imposed in the WFD/AUD and any subsequent modifications or renewals thereto for the dredged material processing facility.
27. All trucks used to transport processed dredged material to the above referenced placement sites shall be tarped pursuant to the applicable State DOT requirements or applicable regulatory agency requirements.

28. If the permittee elects to dispose/use the dredged material from this project at an alternate location, written authorization must be obtained from the Office of Dredging and Sediment Technology prior to the transport of any dredged material to said alternate disposal location. Any alternate disposal/use location must obtain all required state, local and federal permits before the Office would grant a modification of this permit to transport dredged material to the alternate location.

5/10/07
DATE


Suzanne U. Dietrick, Chief
Office of Dredging and Sediment Technology



LOCATION MAP

N.T.S.

LEGEND:

-  AREAS TO BE DREDGED IN PLAN VIEW
-  LIMITS OF MAINTENANCE DREDGING IN SECTIONAL VIEW
-  AREAS TO BE DEEPEMED IN SECTIONAL VIEW
-  MATERIAL SLOUCHING IN FROM SIDE SLOPES IN SECTIONAL VIEW, NO DREDGING ALLOWED IN THESE ZONES

ABBREVIATIONS:

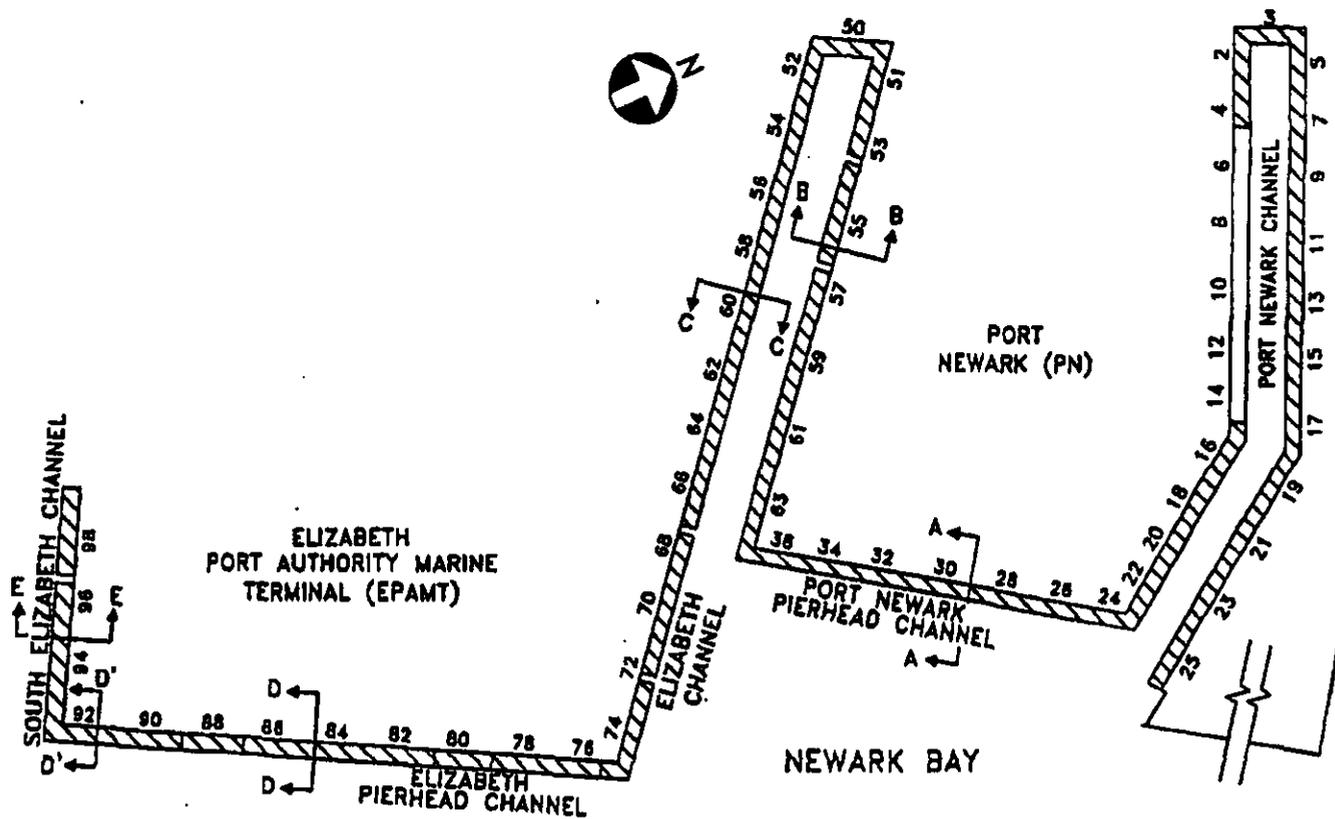
- MLL.W. MEAN LOW WATER
- ELEV. ELEVATION
- N.T.S. NOT TO SCALE
- PN PORT NEWARK
- EPAMT ELIZABETH-PORT AUTHORITY MARINE TERMINAL



New Jersey Marine Terminals
Multi-Facility Maintenance Dredging
and Berth Deepening

LOCATION MAP

Sheet 1 of 8 September 6, 2008



| NEW JERSEY MARINE TERMINAL BERTHS | |
|-----------------------------------|--------------|
| BERTH NUMBER | BERTH DEPTH* |
| 1 | 35 |
| 3 | 35 |
| 4 | 35 |
| 5 | 35 |
| 6 | 35 |
| 7 | 35 |
| 8 & 9 | 40 |
| 9 | 35 |
| 11 | 35 |
| 12 | 40 |
| 13 | 35 |
| 14 | 40 |
| 15 | 35 |
| 16 | 35 |
| 17 | 35 |
| 18 | 35 |
| 19 | 35 |
| 20 & 22 | 35 |
| 21 | 40 |
| 23 | 40 |
| 24 | 40 |
| 25 | 40 |
| 26 | 35 |
| 27 | 40 |
| 28 | 40 |
| 32 | 40 |
| 34 | 35 |
| 36 | 35 |

| NEW JERSEY MARINE TERMINAL BERTHS | |
|-----------------------------------|--------------|
| BERTH NUMBER | BERTH DEPTH* |
| 38 | 35 |
| 39 | 40 |
| 40 | 40 |
| 41 | 40 |
| 42 | 40 |
| 43 | 40 |
| 44 | 40 |
| 45 | 40 |
| 46 | 40 |
| 47 | 30 |
| 48 | 40 |
| 49 | 30 |
| 50 | 40 |
| 51 | 30 |
| 52 & 54 | 40 |
| 53 | 30 |
| 55 | 45 |
| 56 | 50 |
| 57 | 30 |
| 58 & 59 | 50 |
| 60 | 30 |
| 61 | 40 |
| 62 & 64 | 35 |
| 63 | 35 |
| 65 | 45 |
| 66 | 45 |
| 67 | 45 |
| 68 | 45 |
| 69 | 45 |
| 70 | 45 |
| 71 | 45 |
| 72 & 74 | 50 |
| 73 | 50 |
| 75 | 50 |
| 76 | 50 |
| 77 | 40 |
| 78 | 45 |
| 79 | 45 |
| 80 | 45 |
| 81 | 45 |
| 82 | 45 |
| 83 | 45 |
| 84 | 45 |
| 85 | 45 |
| 86 | 45 |
| 87 | 45 |
| 88 | 45 |
| 89 | 45 |
| 90 | 45 |
| 91 | 45 |
| 92 | 45 |
| 93 | 45 |
| 94 | 45 |
| 95 | 45 |
| 96 | 45 |
| 97 | 45 |
| 98 | 45 |
| 99 | 45 |
| 100 | 45 |

LOCATION MAP
N.T.S.

NOTE:

BERTHS 8, 8, 10, 12, & 14 WILL BE THE SUBJECT OF A SEPARATE PERMIT APPLICATION.

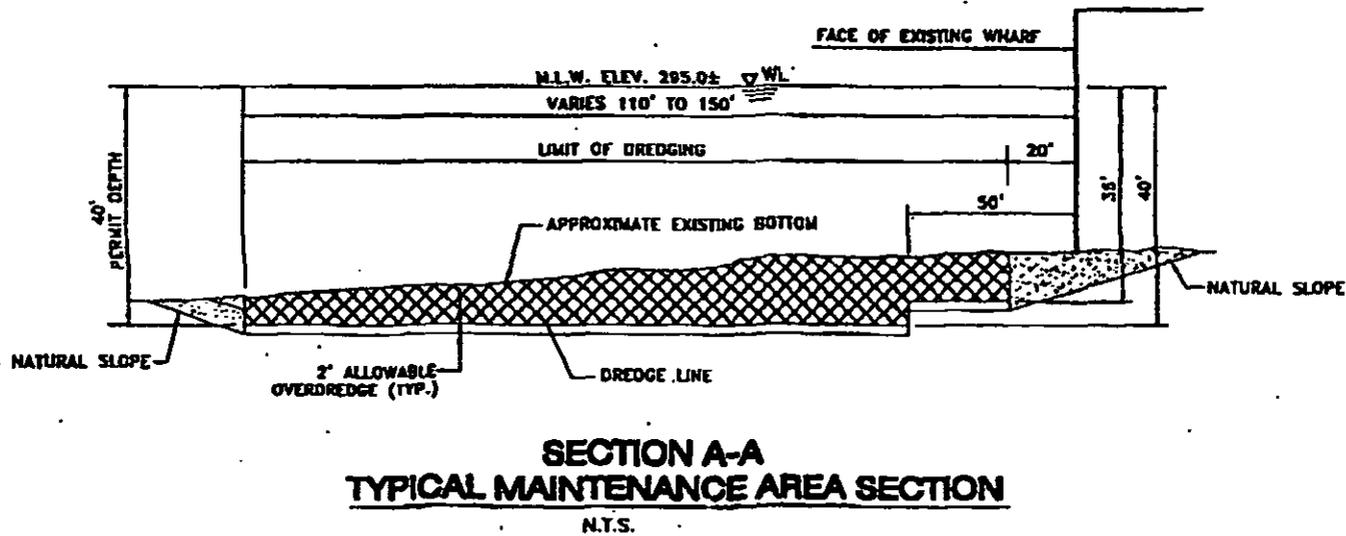
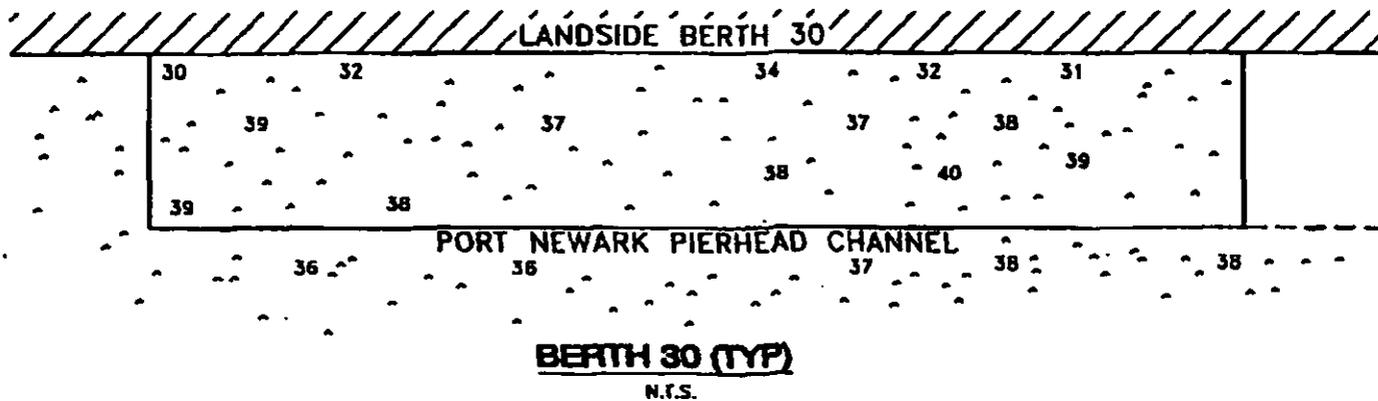
New Jersey Marine Terminals

Multi-Facility Maintenance Dredging and Berth Deepening

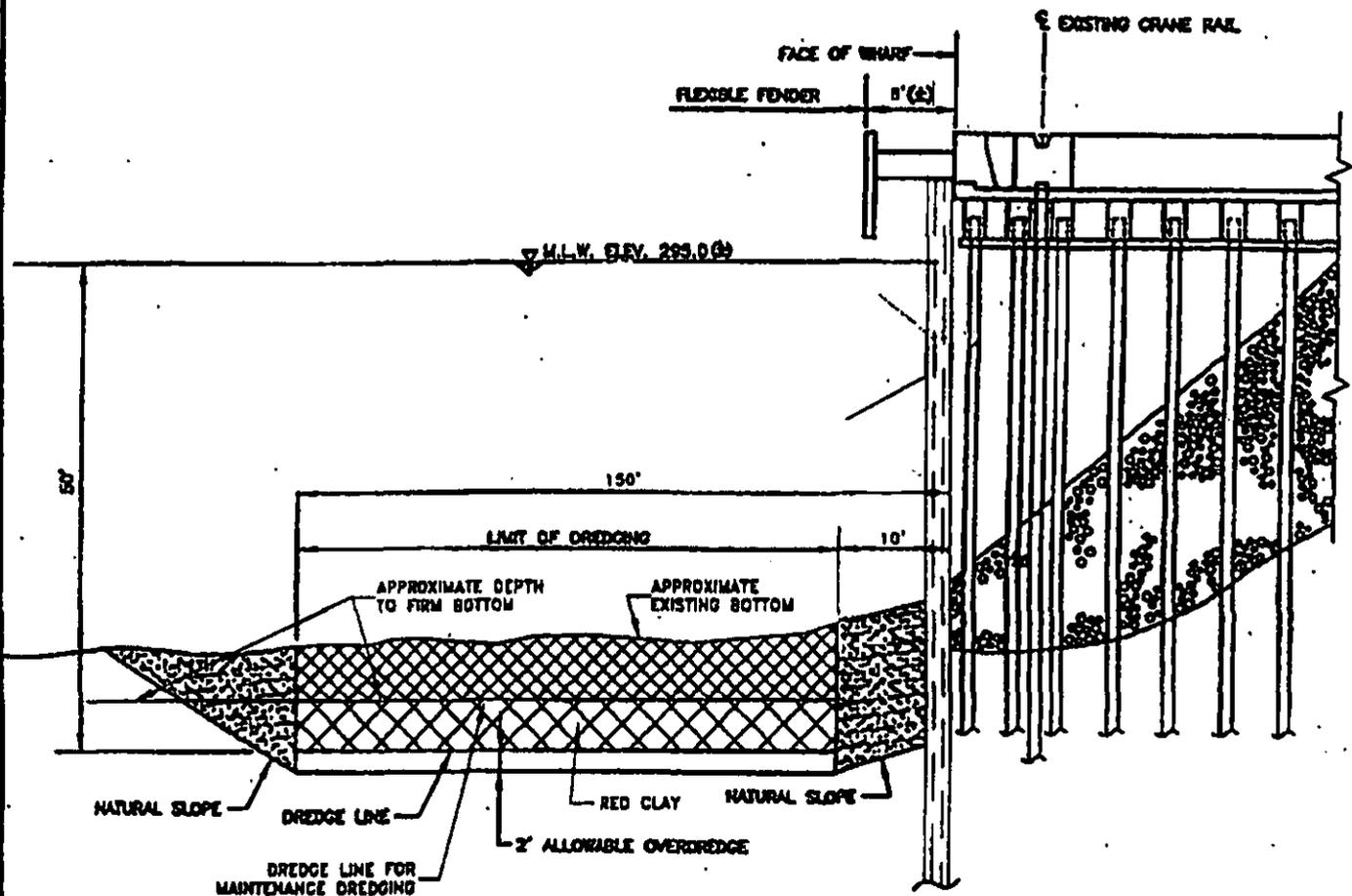
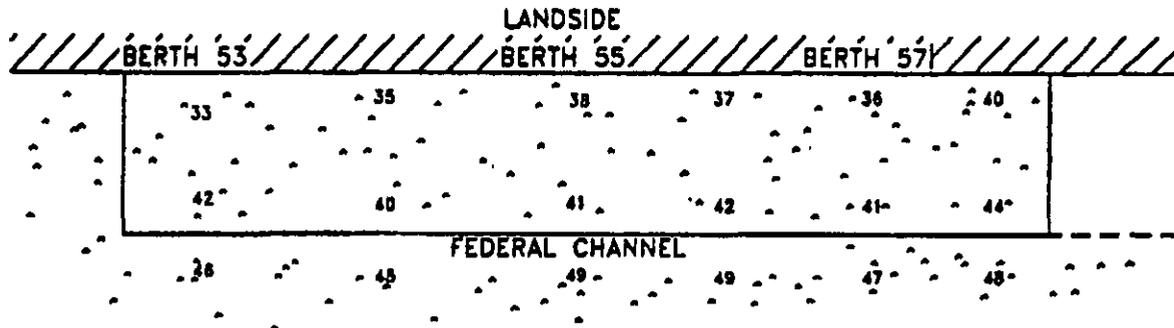
SITE MAP

Sheet 2 of 8 September 8, 2008

* BERTH DEPTHS PROVIDED ARE THE CURRENTLY AUTHORIZED DEPTHS.



New Jersey Marine Terminal
 Multi-Facility Maintenance Dredging
 and Berth Deepening
SECTION A-A MAINTENANCE (TYP)
 Sheet 3 of 8 September 6, 2008

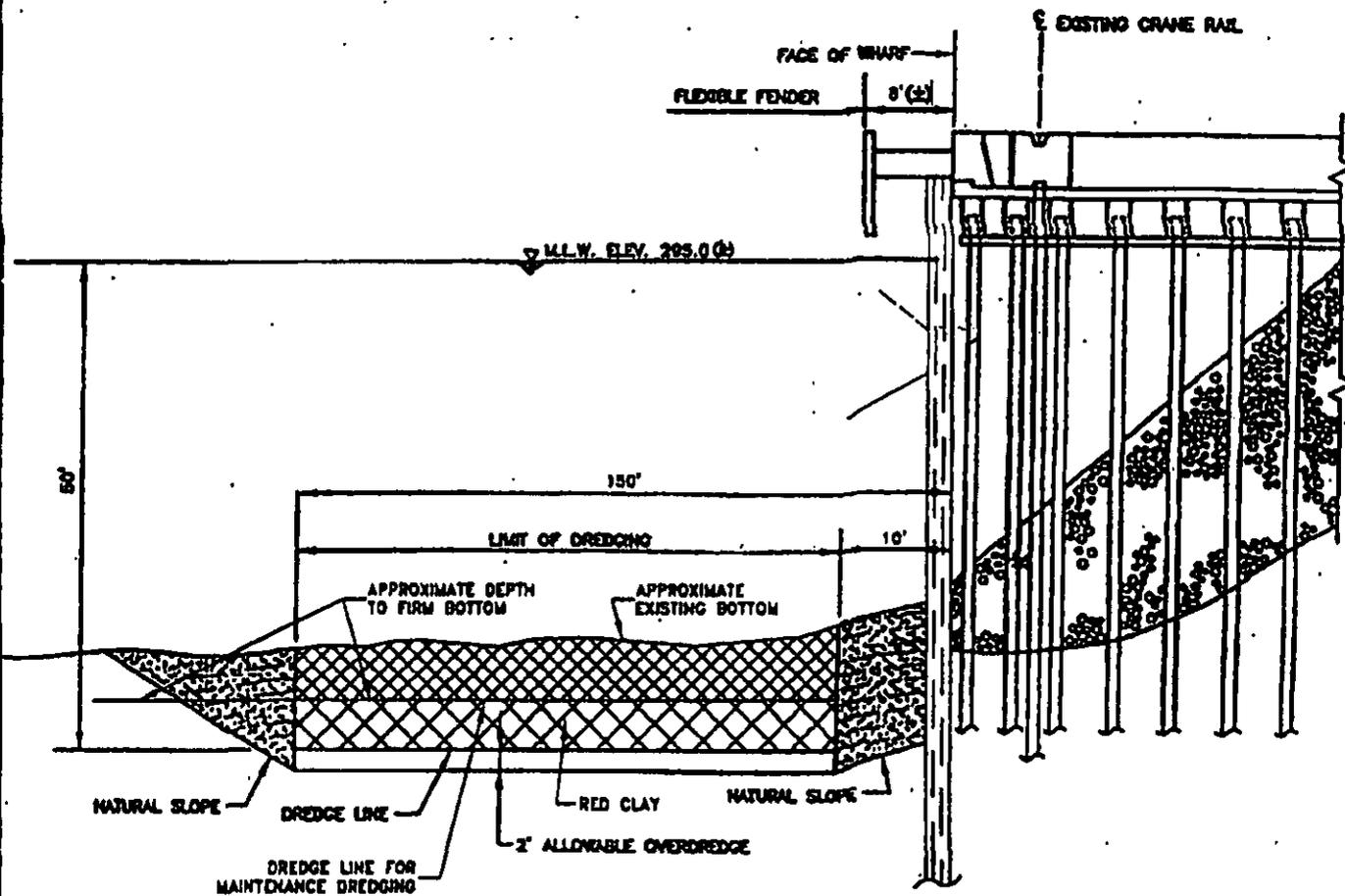
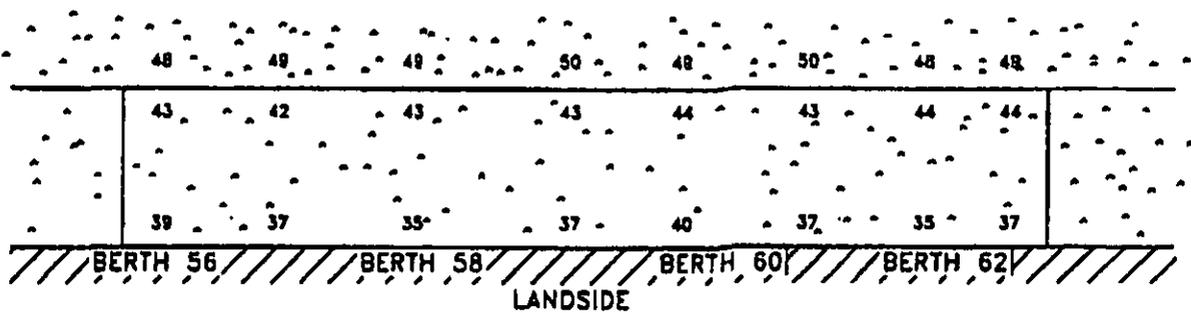


SECTION B-B
N.T.S.

New Jersey Marine Terminals
Multi-Facility Maintenance Dredging
and Berth Deepening

SECTION B-B
BERTHS 53, 55, 57

Sheet 4 of 8 September 6, 2008



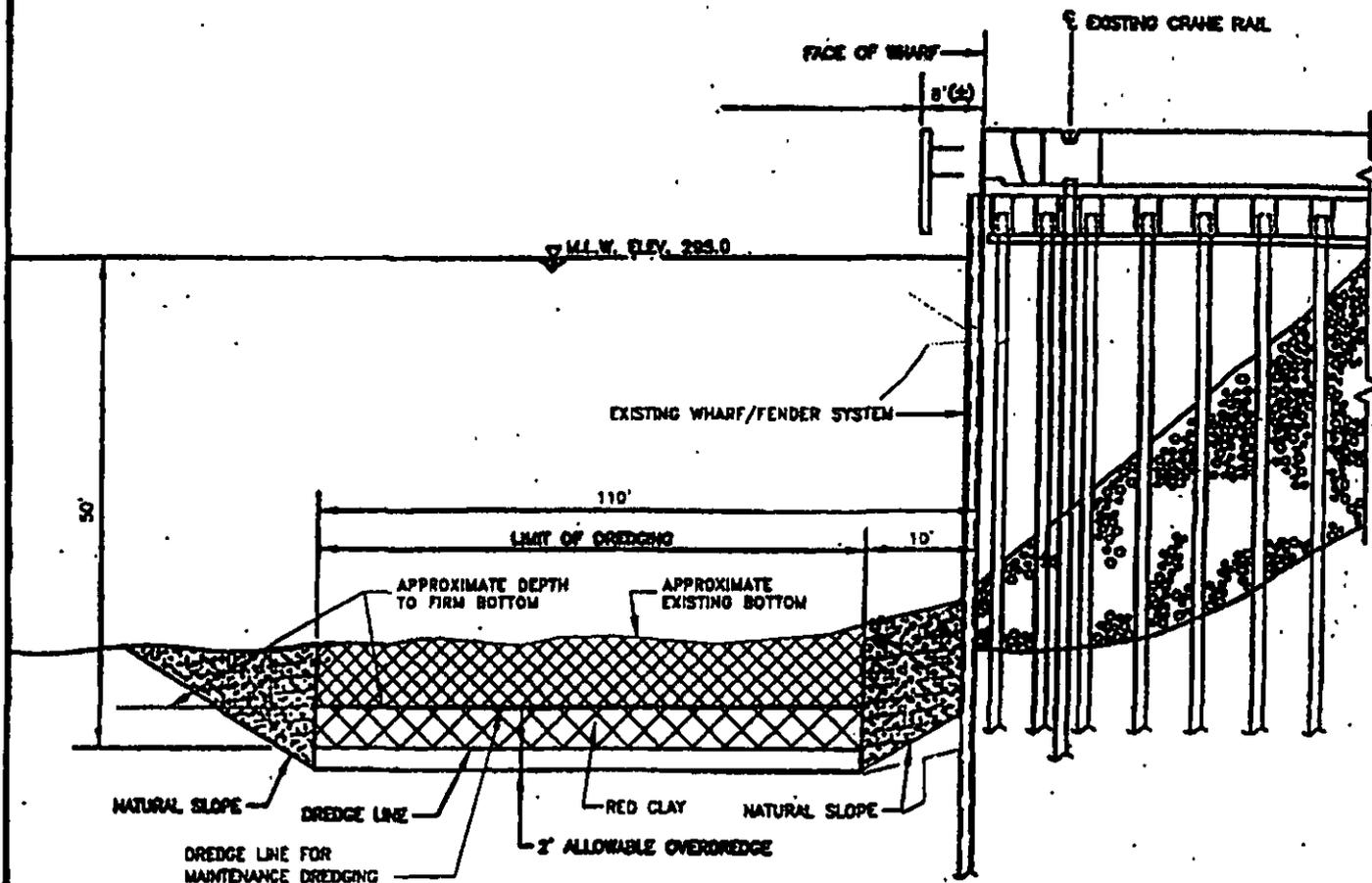
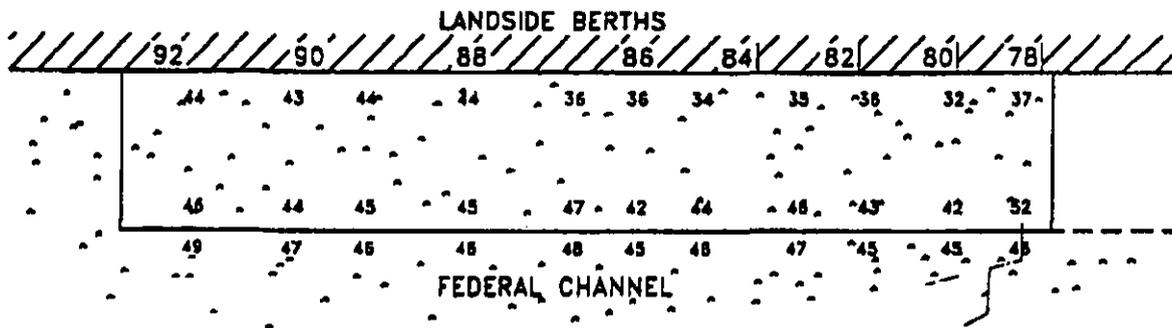
SECTION C-C
N.T.S.

New Jersey Marine Terminals

**Multi-Facility Maintenance Dredging
and Berth Deepening**

**SECTION C-C
BERTHS 56, 58, 60, 62**

Sheet 5 of 8 September 6, 2006



SECTION D-D

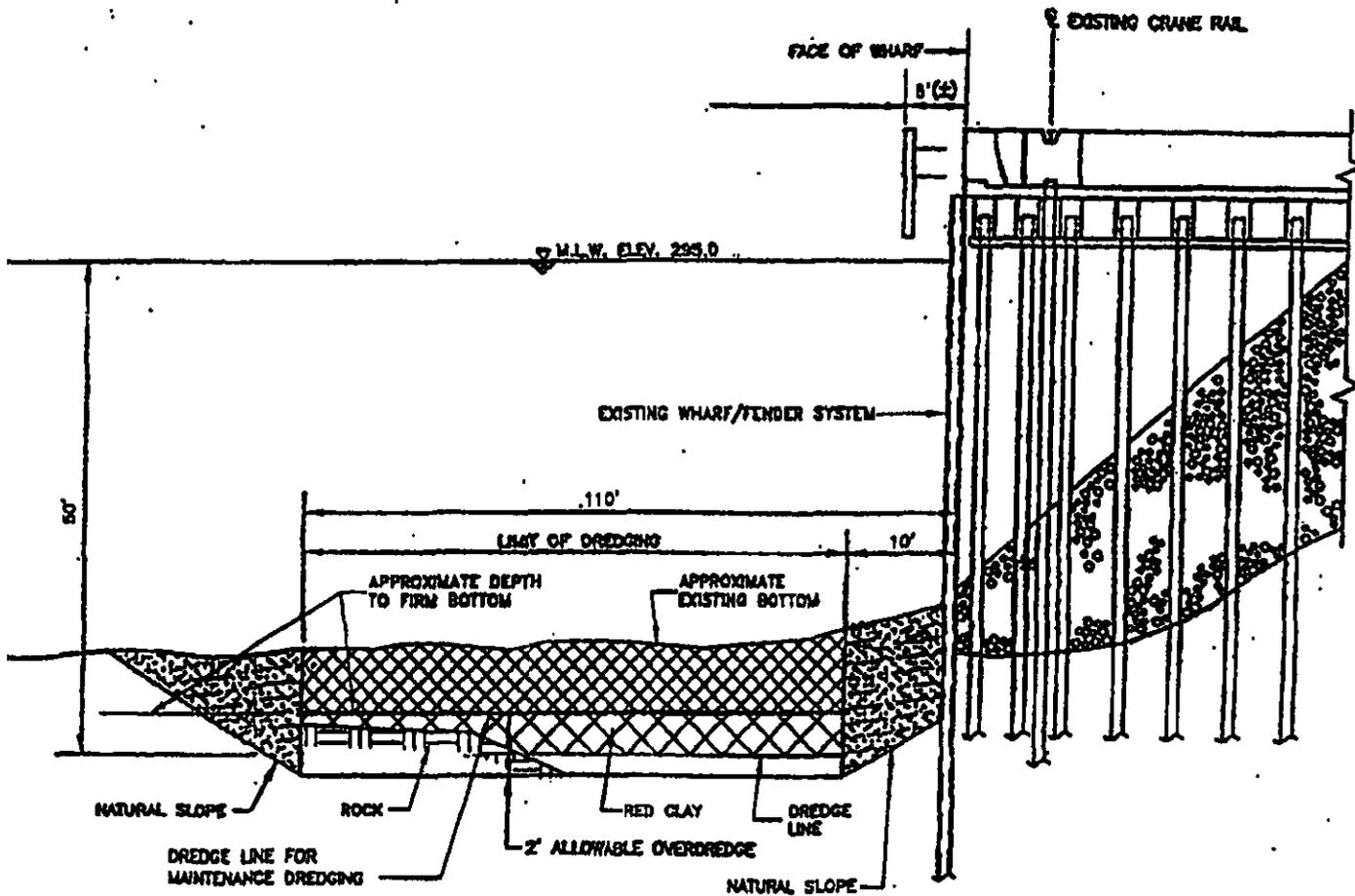
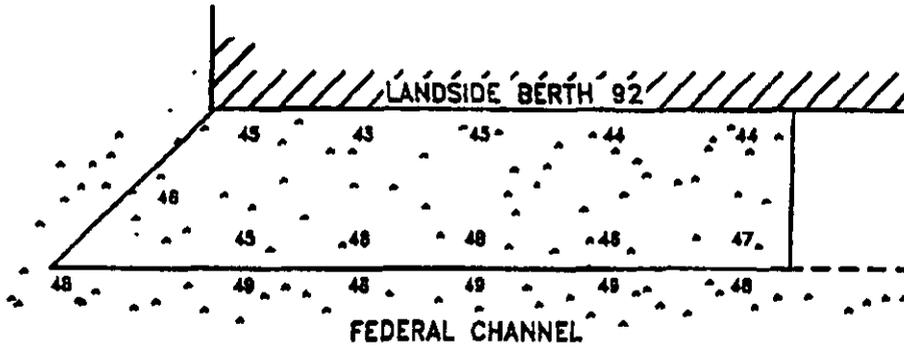
N.T.S.

New Jersey Marine Terminals

Multi-Facility Maintenance Dredging and Berth Deepening

**SECTION D-D
BERTHS 78, 80, 82, 84, 86, 88,
90, 92**

Sheet 6 of 8 September 6, 2006



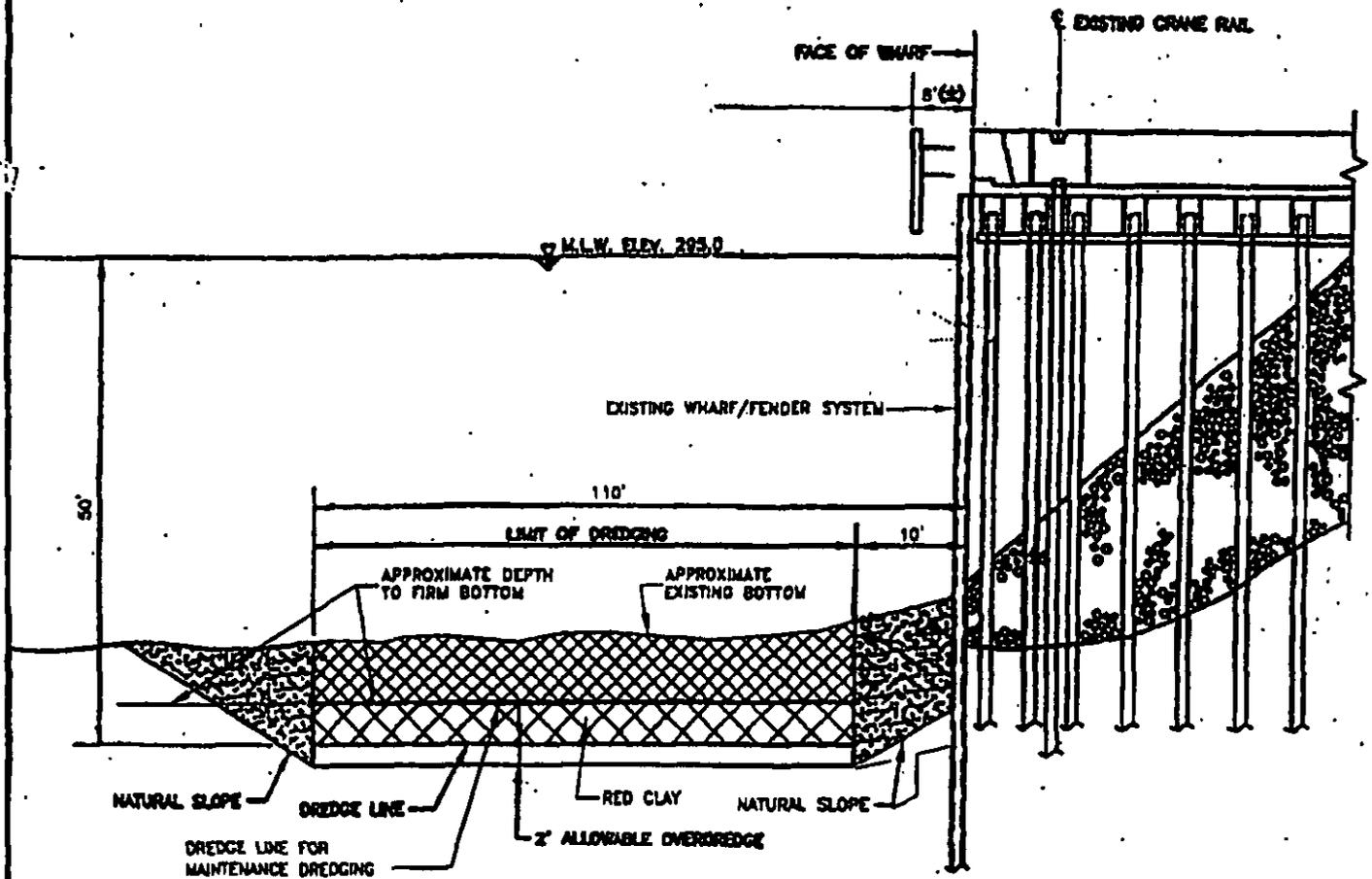
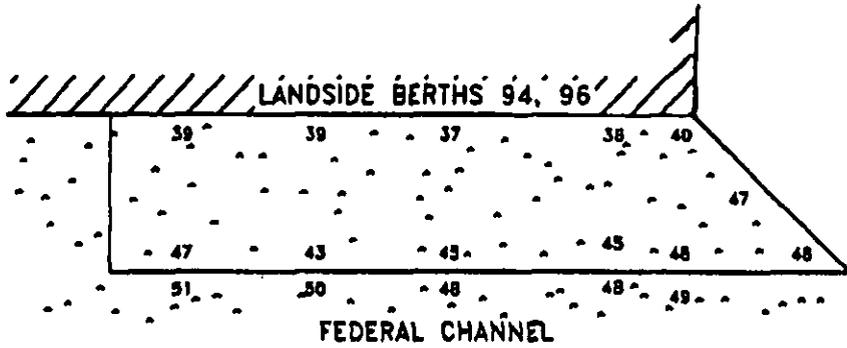
SECTION D'-D'
N.T.S.

New Jersey Marine Terminals

Multi-Facility Maintenance Dredging
and Berth Deepening

SECTION D'-D'
BERTH 92

Sheet 7 of 8 September 6, 2008



SECTION E-E

N.T.S.

New Jersey Marine Terminals

Multi-Facility Maintenance Dredging
and Berth Deepening

SECTION E-E
BERTHS 94, 96

Sheet 8 of 8 September 8, 2008



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

SEP 15 2008

REPLY TO
ATTENTION OF:

Regulatory Branch-Eastern Permits Section

SUBJECT: Permit Application Number NAN-2007-1429-EHA
by Port Authority of New York and New Jersey for Brooklyn
Port Authority Marine Terminal

Marc Helman
Port Authority of New York and New Jersey
Two Gateway Center; 14th Floor, SW
Newark, New Jersey 07102

Dear Mr. Helman:

Enclosed is a Department of the Army permit for your work.

You are required to submit to this office the dates of commencement and completion of your work. Enclosed are two forms for you to use to submit the required dates.

If for any reason, a change in your plans or construction methods is found necessary, please contact us immediately to discuss modification of your permit. Any changes must be approved before they are undertaken.

Sincerely,

Richard L. Tomer
Chief, Regulatory Branch

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee: Port Authority of New York and New Jersey
Two Gateway Center, 14th Floor, SW
Newark, New Jersey 07102
(973) 565-7564

Permit No.: NAN-2007-01429

Issuing Office: New York District Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

At the Brooklyn Port Authority Marine Terminal:

Dredge, with ten years maintenance, via environmental (closed) clamshell bucket, approximately 31,320 cubic yards of material from a 720 foot long by 250 foot wide berthing area at Pier 9A North to a depth of 35 feet below the plane of mean low water with a two foot maximum allowable overdepth.

Place the resultant dredged material, composed of 50% sand and 50% silt in sealed scows and allow to settle for a minimum of 24 hours prior to pumping off decant water back into the waterway at the dredging site. No barge overflow is permitted.

The dredged material will be transported to a state approved processing site and then beneficially reused on a state approved upland site.

Subsequent maintenance dredging would be undertaken an additional two or three times, with approximately the same amount of dredged material removed and upland placement.

All work shall be performed in accordance with the attached drawings and special conditions (A) through (C) which are hereby made part of this permit, and the New York State Department of Environmental Conservation Permit No. 2-6199-00001/00004, incorporating the Section 401 Water Quality Certificate, which are hereby made a part of this permit.

Project Location: IN: Buttermilk Channel, a tributary to Upper New York Bay
AT: Borough of Brooklyn, Kings County, New York

Permit Conditions:
ENG FORM 1721, Nov 86

EDITION OF SEP 82 IS OBSOLETE.

(33 CFR 325 (Appendix A))

1145-2-303b (Newark Bay/Port Authority of New York and New Jersey/dredge with upland placement)

General Conditions:

1. The time limit for completing the work authorized ends on September 15, 2018. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

(A) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

(B) No dredging shall be permitted between November 16 and August 14 of any calendar year to protect federally managed species and their habitat.

(C) Dredging shall be conducted via environmental (closed) clamshell bucket with a maximum hoist speed of 2 feet per second to minimize turbidity in the waterway.

PERMITTEE: Port Authority of New York and New Jersey
PERMIT NO.: NAN-2007-1429

Further Information:

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

(x) Section 404 of the Clean Water Act (33 U.S. Code 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization:**

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

PERMITTEE: Port Authority of New York and New Jersey
PERMIT NO.: NAN-2007-1429

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

PERMITTEE: Port Authority of New York and New Jersey
PERMIT NO.: NAN-2007-1429

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Peter J Ziff

8/26/08

(PERMITTEE)

(DATE)

Port Authority of New York and New Jersey

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Richard L. Tomer

September 15, 2008

FOR AND IN BEHALF OF

(DATE)

~~Richard L. Tomer~~
Colonel, U.S. Army
District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. A copy of the permit signed by the transferee should be sent to this office.

(TRANSFEREE)

(DATE)



NAN-2007-01429-614

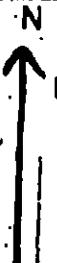
Lat, Long: 40°42'N, 74°00'W

0mi 1mi 2mi

Scale: 1:100,000 |-----|-----|-----|

0km 5km

Source: Port Authority Facilities Map



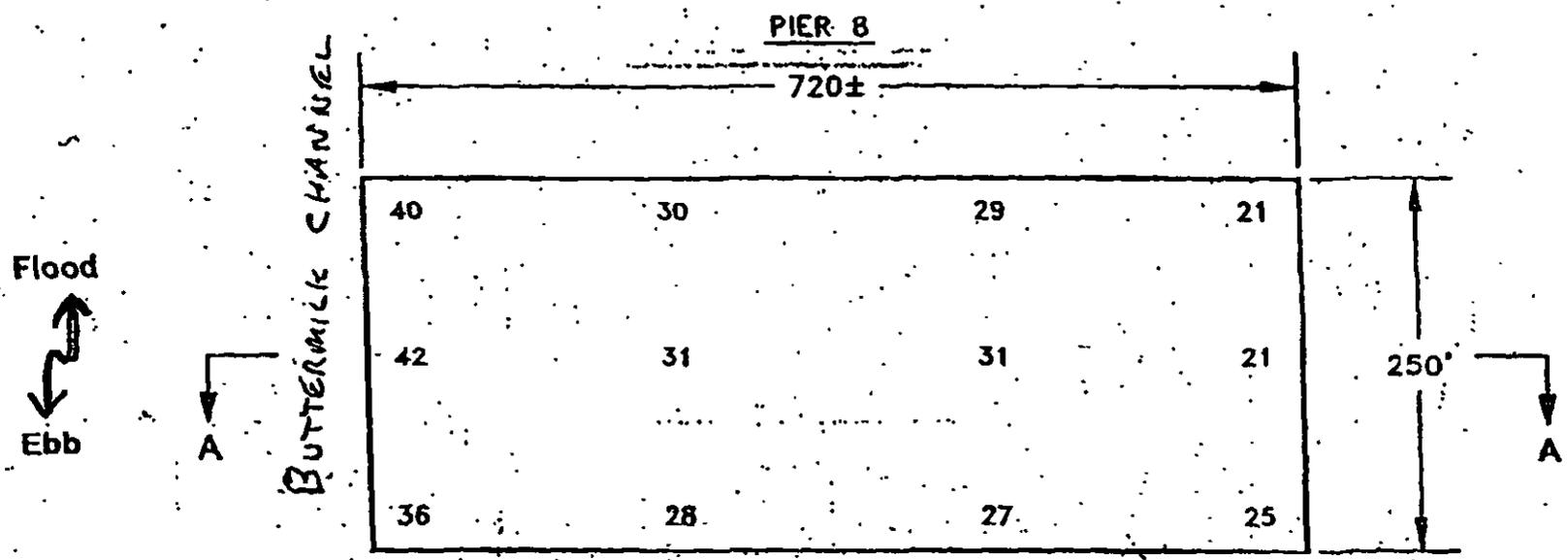
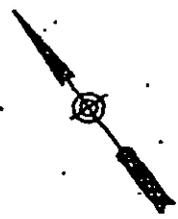
THE PORT AUTHORITY OF N.Y. AND N.J.

MAINTENANCE DREDGING OF THE BROOKLYN
P.A. MARINE TERMINAL -
BERTH 9A NORTH

SITE PLAN

Revised February June 2008

P:\GeoTechnical\CLAITENS\B BANT - REPAIR - SKETCHES - OCTOBER 2007\10.996301.dwg



PIER 9A
PLAN BERTH 9A NORTH
 N.T.S.

Dredge Volume: 31,320 Cubic Yards
Clamshell Dredge w/ Closed Bucket
Return Flow (Decant Water) at Dredge Site
Placement at a State-Approved Upland Site

Dredge to 35' below MLW
+2' allowable overdepth

Sediment ~50% Silt, ~50% Clay

LEGEND:

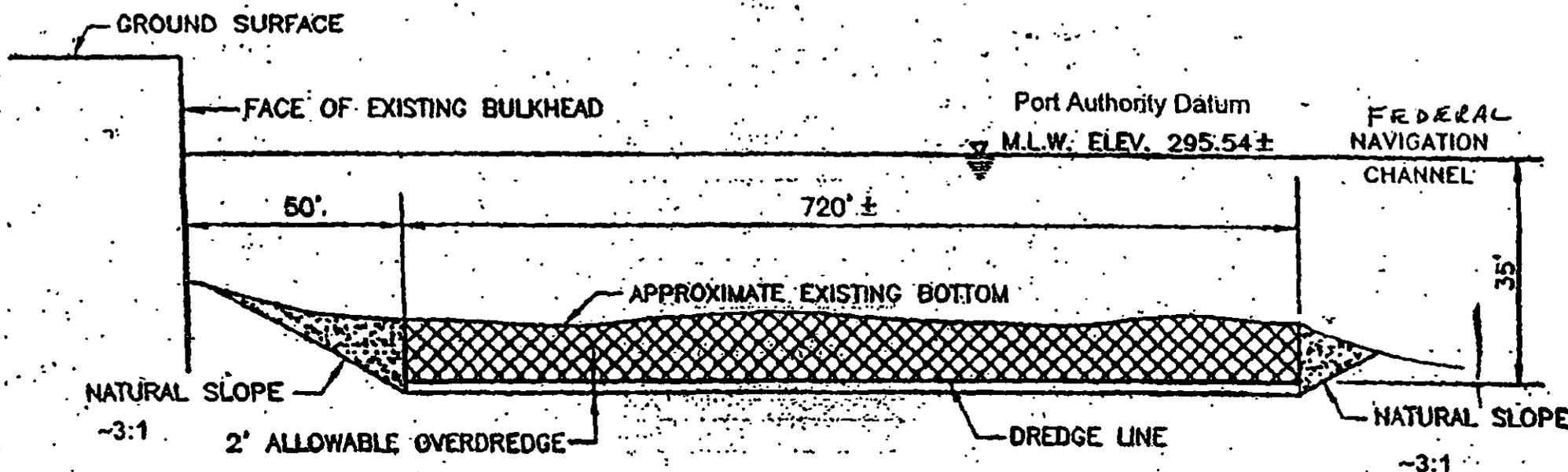
36 DEPTH BELOW M.L.W.
 (TYP.)
 Port Authority Datum

NAN-2007-01429-EHA

THE PORT AUTHORITY OF N.Y. & N.J.
 MAINTENANCE DREDGING OF THE BROOKLYN
 P.A. MARINE TERMINAL -
 BERTH 9A NORTH
 PLAN BERTH 9A NORTH
 Revised ~~Sketch~~ June 2008
 DATE: OCTOBER, 2007. DWG. NO. 3 OF 4

10.996301

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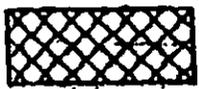


Pier 9A North
SECTION A-A
 N.T.S.

Sediment ~50% Silt, ~50% Clay

Dredge Volume: 31,320 Cubic Yards
 Clamshell Dredge w/ Closed Bucket
 Return Flow (Decant Water) at Dredge Site
 Placement at a State-Approved Upland Site

LEGEND:



Dredge to 35' below MLW
 +2' allowable overdepth.
 INDICATES LIMITS OF DREDGING



INDICATES MATERIAL SLOUGHING IN FROM SIDE
 SLOPES. NO DREDGING ALLOWED IN THIS ZONE.

NAV-2007-01429-ETM

THE PORT AUTHORITY OF N.Y. AND N.J.
 MAINTENANCE DREDGING OF THE BROOKLYN
 P.A. MARINE TERMINAL -
 BERTH 9A NORTH
 SECTION A-A
 Revised February June 2008
 DATE: OCTOBER-2007 DWG. NO. 4 OF 4

New York State Department of Environmental Conservation

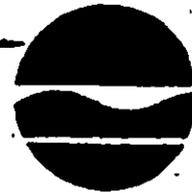
Division of Environmental Permits, Region 2

47-40 21ST Street, Long Island City, NY 11101-5407

Phone: (718) 482-4997 • FAX: (718) 482-4975

Website: www.dec.state.ny.us

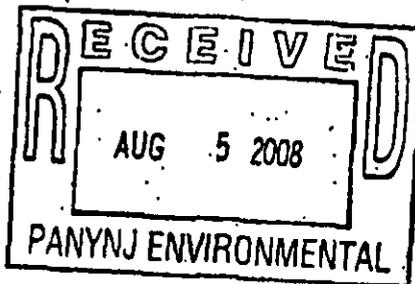
Received
via fax
8/5/08



Alexander B. Grannis
Commissioner

July 28, 2008

Marc Helman, Supervisor
Permits & Government Approvals
Port Authority of New York & New Jersey
Two Gateway Center
Newark, New Jersey 07102



Re: NYSDEC Permit No. 2-6199-00001/00004
Port Authority of New York & New Jersey
Brooklyn Port Authority Marine Terminal
Pier 9A North - Berth Area
Brooklyn, New York
6NYCRR Part 608 - Water Quality Certification
ECL Article 15 - Protection of Waters
NOTICE OF PERMIT ISSUANCE

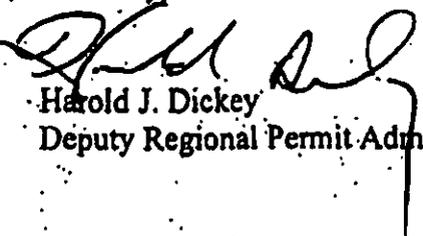
Dear Mr. Helman:

Enclosed is your NYSDEC Tidal Wetlands permit. Compliance with all permit conditions is required.

Please note that Natural Resource Permit Condition 3 requires the submission of the attached "Notice of Intent to Commence Work" prior to beginning the permitted activity.

Technical questions concerning the permit should be directed to Stephen Zahn in the NYSDEC Bureau of Marine Resources at 718 482-6464. Administrative questions should be directed to Tammy Greco in the NYSDEC Division of Environmental Permits at 718 482-4997.

Sincerely,


Harold J. Dickey
Deputy Regional Permit Administrator

cc: NYSDEC Marine Resources
NYSDEC Law Enforcement

PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To: PORT AUTHORITY OF NEW YORK & NEW JERSEY
225 PARK AVE SOUTH
NEW YORK, NY 10003

Facility: PA NY&NJ-BKLYN MARINE TERMINAL
BUTTERMILK CHANNEL
BROOKLYN, NY 11200

Facility Location: in KINGS COUNTY Village: Brooklyn
Facility Principal Reference Point: NYTM-E: 583.5 NYTM-N: 4504.2
Latitude: 40°41'04.0" Longitude: 74°00'42.6"
Project Location: 90 Columbia Street Pier 9A North at Brooklyn Port Authority Marine Terminal
Authorized Activity: Maintenance dredging of approximately 31,320 cubic yards of material from berth area for Pier 9A North with dredged material placement at the Fresh Kills landfill.

Permit Authorizations

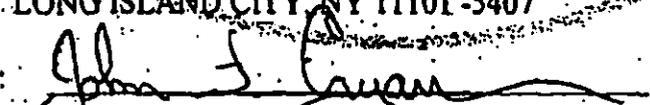
Water Quality Certification - Under Section 401 - Clean Water Act
Permit ID 2-6199-00001/00004
New Permit Effective Date: 7/28/2008 Expiration Date: 7/27/2018

Excavation & Fill in Navigable Waters - Under Article 15, Title 5
Permit ID 2-6199-00001/00005
New Permit Effective Date: 7/28/2008 Expiration Date: 7/27/2018

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: JOHN F CRYAN, Regional Permit Administrator
Address: NYSDEC REGION 2 HEADQUARTERS
47-40 21ST ST
LONG ISLAND CITY, NY 11101-5407

Authorized Signature: 

Date 07/28/08

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: WATER QUALITY CERTIFICATION; EXCAVATION & FILL IN NAVIGABLE WATERS

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by The Port Authority of NY and NJ.

2. Conformance with Plans - Addenda In addition to plans referenced in the Condition titled "Conformance with Plans," the activities authorized by this permit must be in strict conformance with the following approved plans and/or submissions made as part of the permit application:

a. Plans prepared by The Port Authority of NY and NJ, titled 'Maintenance Dredging of the Brooklyn P.A. Marine Terminal Berth 9A North', sheets 1-4 of 4, last revised June 2008, received by NYSDEC on June 23, 2008.

b. Letter from Matthew Masters of The Port Authority of NY and NJ, to John Cryan, Subject: Permit Application for Maintenance Dredging: Brooklyn Port Authority Marine Terminal, dated October 30, 2007, received by NYSDEC on November 6, 2007.

c. Letter from Marc Helman of The Port Authority of NY and NJ, to John Cryan, Subject: Permit Application for Maintenance Dredging: Brooklyn Port Authority Marine Terminal, dated June 20, 2008, received by NYSDEC on June 24, 2008.

3. Notice of Intent to Commence Work At least five (5) days prior to the commencement of the permitted activity in any given year, Permittee must complete and submit the attached "Notice of Intent to Commence Work" form to the NYSDEC Bureau of Marine Resources, 47-40 21st Street, Long Island City, New York 11101 (Attention: Marine Resources Program Manager).

4. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

5. Dredging Prohibited November 15th to June 1st Dredging is prohibited from November 15th to June 1st.

6. Dredged Material Placement Site At least 30 days prior to the start of work, Permittee must notify the NYSDEC Bureau of Marine Resources, 47-40 21st Street, Long Island City, NY 11101 (Attention: Marine Resources Program Manager) of the intended material placement site, and include a letter from the receiving facility confirming their acceptance of the material.

7. Environmental Bucket An 'environmental bucket' is required for dredging silt and/or other fine-grained unconsolidated material. At least 15 days prior to the anticipated start date of dredging, Permittee must provide drawings and performance specifications of the environmental bucket to:

NYSDEC Bureau of Marine Resources, 47-40 21st Street, Long Island City, NY 11101 (Attention: Marine Resources Program Manager).

a. The following bucket specifications are required:

i. The bucket must be constructed with sealing gaskets or overlapping sealed design at the jaws, and seals or flaps positioned at locations of vent openings to minimize the loss of material during transport through the water column and into the barge.

ii. Any seals or flaps designed and/or installed at the jaws and locations of vent openings must tightly cover these openings while the bucket is lifted through the water column and into the barge. If excessive loss of water and/or sediments from the bucket is observed from the time of its breaking the water surface to crossing the barge gunwale, the inspector shall halt dredging operations and inspect the bucket for defects. Operations shall be suspended until all necessary repairs or replacements are made.

b. Bucket hoist speed must be limited to approximately 2 feet per second. The bucket shall be lifted in a continuous motion through the water column and into the barge.

c. The bucket must be lowered to the level of the barge gunwales prior to the release of load.

d. There must be no barge overflow when dredging silt and/or other fine-grained unconsolidated material.

e. Discharge of excess water from the receiving barge may be conducted at the dredging site after a minimum settling period of 24 hours. If a visible plume is observed during discharge, the discharge action must cease, and an additional 24-hour settling period be observed prior to further discharge.

8. **Future Dredging Events** At least 60 days prior to any future rounds of dredging, beyond the initial round under the instant permit, Permittee must provide a sediment sampling plan and proposed dredging and disposal plan for review and approval to: NYSDEC Bureau of Marine Resources, 47-40 21st Street, Long Island City, NY 11101 (Attention: Marine Resources Program Manager).

9. **Minimize Adverse Impacts to Wetlands, Wildlife, Water** All work must be performed in a manner which minimizes adverse impacts to wetlands, wildlife, water quality and natural resources.

10. **Prior Approval of Changes** If the Permittee desires to make any changes in construction techniques, species to be planted, the site plan, any mitigation plan, scheduling or staging of construction, or any other aspect of this project, the Permittee shall submit a written request to the Regional Permit Administrator to make such proposed changes and shall not make such changes unless authorized in writing by the Department.

11. **Failure to Meet Permit Conditions** Failure of the permittee to meet all the conditions of this permit is a violation of this permit and grounds for an order to immediately cease the permitted activity at the project site.

12. **State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or

alteration.

13. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

14. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim of right to compensation shall accrue from any such damage.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a

separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC REGION 2 HEADQUARTERS
47-40 21ST ST
LONG ISLAND CITY, NY 11101 -5407

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification, Excavation & Fill in Navigable Waters.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.



Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.