

October 31, 2013

**SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF LEGAL SUPPLEMENTAL STAFFING SERVICES AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2014, 2015, AND 2016 (RFP #35248)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the "Authority") hereby invites your Proposal for providing legal supplemental staffing services, as requested on an “as-needed” basis. The selected firm(s) (“Consultant(s)”) shall enter into an agreement with the Authority for the years 2014, 2015 and 2016.

Attached hereto is a copy of the Authority’s Standard Agreement (the “Agreement”), including Attachment A (scope of the tasks for performance of the subject services). You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material.

**I. PROPOSER REQUIREMENTS:**

Only firms that can comply with the following should submit proposals, as only proposals submitted by such firms will be considered. It should be noted that a determination that a Proposer meets the requirements as indicated below is no assurance that the Proposer will be deemed most qualified in connection with other proposal requirements contained herein. Firms must demonstrate:

- A. At least three (3) years of continuous experience during the last five (5) years immediately prior to the date of the submission of its Proposal in the performance of legal staffing services;
- B. A minimum average of ten (10) legal placements per month within the New York metropolitan area during the past twelve (12) months; and
- C. Staff responsible for managing the Authority’s account have provided similar services for at least three (3) years of the last five (5) years.

**II. PROPOSAL FORMAT REQUIREMENTS:**

To respond to this Request for Proposals (“RFP”), the Proposer shall submit a concise Proposal complying with the following requirements:

- A. To be acceptable, this Proposal shall be of no more than twenty-four (24) pages (single-sided) or twelve (12) pages (double-sided) using 12 point or greater font size not including resumes. Each resume shall be 2-page maximum, single-sided or one-page double-sided, using 12 point or greater font size. Product brochures and other sales literature will not be accepted as substitutes for written responses to this RFP. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name” and **RFP Number 35248** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the requirements specified below in Section III.

- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, Two Montgomery Street, 3<sup>rd</sup> Floor, Jersey City, NJ 07302, Attention: **RFP Custodian**. Do not address your Proposal to any other name. You are required to submit one (1) reproducible original and four (4) copies, along with five (5) compact disc copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.
- D. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with requirement may lead to delays in agreement awards and agreement payments, which shall be the responsibility of the Proposer.
- E. Your Proposal should be received in sufficient time so that the Authority receives them **no later than 2:00 p.m. on November 22, 2013**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the ‘Subject’ above. The Authority assumes no responsibility for delays caused by any delivery services.
- F. If your Proposal is to be delivered by messenger, please note that only individuals with proper identification (e.g., photo identification) will be permitted access to the Authority’s offices. Messengers without proper identification shall be turned away and their packages not accepted.

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

To respond to this RFP, provide the following information:

- A. In the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion), signed by an officer of your company.
- B. The Proposer shall submit a letter on its letterhead demonstrating compliance with each of the “Proposer Requirements” set forth above. Compliance shall be demonstrated by written proof of the number of placements per month from one year prior to the date of the RFP response; the names and qualifications of managers who shall be responsible for managing the Authority’s account (including a detailed explanation of their three (3) years of experience); and written proof of the firm’s three (3) consecutive years of experience (demonstrated through documentation of placements for the three (3) years prior to the date of the response to the RFP). An officer or principal member of the firm shall sign this letter.
- C. Complete a copy of Attachment C (Company Profile). Provide all requested information.
- D. Positions for which your firm may be asked to provide staff may include, but are not limited to, the following:
  - 1. Legal Secretary
  - 2. Litigation Legal Secretary
  - 3. Paralegal
  - 4. Litigation Management Paralegal
  - 5. Litigation Management Specialist

Complete Attachment D-1 (Placement History) for each of the Staffing positions (identified above) and placed by you within the New York metropolitan area during the past 12 months. Each such placement shall have been for an actual continuous assignment of not less than six (6)

months (i.e., placements where the staffing position was for at least such a duration, but the placement was dismissed by the employer for unsatisfactory performance, shall not be counted). Provide all requested information. This list may be used to perform reference checks. Complete Attachment D-2 (Quality and Efficiency of Placements) for Supplemental Staffing positions identified above which shall indicate:

1. the number of resumes rejected;
  2. the number of interviewees rejected;
  3. percentage of placements cancelled prior to completion of the assignment because of a deficiency in the skills of the person placed in the past 12 months;
  4. length that individual has been with your firm; and
  5. placement cancelled by client/agency and explanation of cancellation.
- E. Provide a description of your proposed management approach, including the methods and tools your firm uses to determine the qualifications of the supplemental staff you employ and refer to your clients. Identify equal employment opportunity approaches used by your firm.
- F. Provide a description of your firm's experience in the performance of the required services; include the qualifications and experience of staff managing the Authority's account.
- G. Proposer shall provide the percentage markup as provide in Paragraph 6A of the Agreement regarding compensation. The mark-up shall include all applicable overhead expenses (e.g. vacation, holiday, sick pay, worker's compensation, office rent & insurance) and profit.
- H. Include a complete list of your firm's affiliates.
- I. The Proposer is expected to agree with the form of agreement and its terms and conditions. The Proposer should therefore not make any changes in the Agreement nor restate any of its provisions in your Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.
- J. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

#### **IV. ORAL PRESENTATIONS:**

After review of all proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given brief advance notice. The presentation should be limited to 30 minutes, and include the material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than two (2) other senior staff members who are proposed to work on this project. Notification of presentation scheduling is made via e-mail. Provide the name and e-mail address of the person

who should be contacted for presentation scheduling, as well as an alternate in the event that person is unavailable.

#### **V. SELECTION PROCESS:**

The selection process by which a firm shall be selected for the performance of the subject services shall include consideration of the following factors:

- A. Quality and efficiency of legal staff placements made in the past twelve (12) months
- B. Cost (Mark-Up)

#### **VI. ADDITIONAL INFORMATION:**

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information, may be found on the Authority website at <http://www.panynj.gov/business-opportunities/become-vendor.html>, and to Monitor <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6> for RFP updates and addenda. If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, will include clauses entitled “Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information” And “Non-Collusive Proposing And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a Proposal the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with his Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked “CERTIFICATION STATEMENT.”

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

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

Should you have any questions, please contact Ms. Susie Tom by email at [stom@panynj.gov](mailto:stom@panynj.gov). All such correspondence must have your name, title, company, mailing address, telephone number and state “RFP 35248” in the subject line. The Authority must receive all questions no later than 2:00 P.M., seven (7) calendar days before the RFP due date. Neither Ms. Tom nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

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

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

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

Sincerely,

Tim Volonakis  
Assistant Director  
Procurement Department

Attachments

## **ATTACHMENT A**

### **PERFORMANCE OF LEGAL SUPPLEMENTAL STAFFING SERVICES AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2014, 2015 AND 2016**

#### **I. BACKGROUND**

The Port Authority of New York and New Jersey (the “Port Authority” or “Authority”) is a municipal instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports); marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

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

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

The services of the Consultant shall generally consist of providing legal supplemental staffing for a variety of positions on an as-needed basis to the Authority during 2014 through 2016.

In addition to the qualifications requirements indicated herein, the staff proposed by the Consultant may be asked to comply with additional requirements, which may include but are not limited to, testing and/or demonstrating appropriate certification.

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

Staff to be provided by the Consultant may include but are not limited to the following positions:

##### **A. Legal Secretary**

Performs a wide variety of highly sensitive secretarial and administrative duties that may include but are not limited to: typing/word processing, proofreading and grammar checking and preparation of correspondence, memoranda, minutes, reports, statements, and other legal documents such as pleadings, interrogatories, motions, affidavits,

answers, demands, legal briefs or memoranda (along with exhibits, table of authorities, and table of contents). Maintains calendars; tracks incoming correspondence; schedules and coordinates meetings, depositions, and court appearances. Responsible for service of process; able to work in a fast pace environment with multiple attorneys. Screens and directs telephone calls and other administrative duties as required.

Requirements:

- 1) Five (5) years full-time legal work experience;
- 2) Ability to complete assignments with minimal supervision;
- 3) Utilize independent judgment, handle conflicting priorities, and work under pressure while meeting tight deadlines;
- 4) Type 80 wpm;
- 5) Strong oral and interpersonal skills.

**B. Litigation Legal Secretary**

Performs a wide variety of highly confidential/sensitive secretarial and administrative duties that may include but are not limited to: preparation of legal blue backs; preparation of motions, memoranda of law, and briefs; ability to file legal documents with the Court; preparation of exhibits; handle multiple telephone lines and take detailed messages; organize legal files (both paper and electronic); photocopying and vela binding; preparation of Affidavits and Certificates of Service; familiarity with legal citations; excellent proofreading and grammar skills; format legal documents; and sort/distribute mail.

Requirements:

- 1) Five (5) years full-time legal work experience;
- 2) Ability to complete assignments with minimal supervision;
- 3) Knowledge and familiarity with legal documents (i.e., summons and complaint, answers, demand packages, bills of particulars, interrogatories);
- 4) Utilize independent judgment, handle conflicting priorities, and work under pressure while meeting tight deadlines;
- 5) Knowledge of Federal Express Manager;
- 6) Knowledge of Outlook (including how to send meeting invites);
- 7) Knowledge of Full Authorities and the ability to prepare a table of contents and table of authorities;
- 8) Type 80 wpm (speed typing);
- 9) Take dictation or fast long-hand;
- 10) Strong oral and interpersonal skills;
- 11) A team player who is energetic and proactive in learning and assisting others. Self-reliant and can work independently in the absence of a large support staff of paralegals to assist in the preparation of legal documents.

### C. Paralegal

Preparation of legal documents including but not limited to permits, licenses, leases, contracts and operating agreements, documents related to zoning, and occupancy of space at various Authority facilities. Assists/handles all aspects of discovery, maintains files, and writes reports. Interacts with in-house attorneys, claims representatives and may supervise clerical staff.

#### Requirements:

- 1) Knowledge of litigation documents including pleadings, interrogatories, motions, affidavits, answers, and demands;
- 2) Knowledge and ability to perform legal research;
- 3) Ability to complete assignments with minimal supervision, handle conflicting priorities, and work under pressure while meeting tight deadlines;
- 4) Strong oral and interpersonal skills, and the ability to use independent and mature judgment a must;
- 5) Knowledge of matter management system, PC applications (MS Outlook, Access, PowerPoint, Word, etc.) and Nexis-Lexis/Westlaw;
- 6) Associate's Degree and Paralegal Certificate

### D. Litigation Management Paralegal

Responsible for performing a wide variety of highly sensitive case matters, and records management duties including, but not limited to: operating high-volume optical imaging system (Bell & Howell) and working with computer-based case management system (Law Manager) identifying, categorizing, and filing litigation documents in written and/or electronic format (e.g., through the PACER system); extracting case data from documents and entering said data into document management system; maintaining computer-based records concerning court and EBT calendar; and maintaining (and organizing) case documents and files.

#### Requirements:

- 1) Independent, possessing good judgment, initiative, and tact;
- 2) Thorough understanding of litigation management, legal document types, and requirements for the maintenance of litigation files;
- 3) Two (2) years full-time paralegal work experience;
- 4) Demonstrated ability to complete assignments with minimal supervision, handling conflicting priorities, and work under pressure while meeting tight deadlines;
- 5) Strong interpersonal and oral communication skills;
- 6) Knowledge of matter management system (Law Manager) and PC applications (MS Outlook, Access, PowerPoint, Word, etc.), Nexis-Lexis/Westlaw, and electronic scanning procedures and processes;

- 7) Bachelor's of Science or Bachelor's of Arts Degree and Paralegal certificate from ABA approved program (three (3) years or more experience can be substituted for certificate).

E. Litigation Management Specialist

Responsible for performing a wide variety of highly sensitive case, matter, and records management duties that include any or all the following: maintaining well organized case documents and files; accurately identifying, categorizing, and filing litigation documents; separating, sorting, and photocopying litigation-type mail; operating high-volume optical imaging system; processing case file requests and return transactions; and assembling physical case folders and files for new litigation.

Requirements:

- 1) Independent, possessing good judgment, initiative and tact;
- 2) Thorough knowledge of legal documents and their function, and maintenance of litigation file and records management;
- 3) Demonstrated ability to complete assignments with minimal supervision, handling conflicting priorities, and work under pressure while meeting tight deadlines;
- 4) Strong interpersonal and oral communication skills;
- 5) Knowledge of matter management system (Law Manager) and PC applications (MS Outlook, Access, PowerPoint, Word, etc.), Nexis-Lexis/Westlaw, and electronic scanning procedures and processes;
- 6) Five (5) years experience performing comparable services.

\* \* \*

**ATTACHMENT B**

**REQUEST FOR PROPOSALS FOR LEGAL SUPPLEMENTAL STAFFING SERVICES  
AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2014-2016 (RFP #35248)**

**AGREEMENT ON TERMS OF DISCUSSION**

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

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure (FOI Code) adopted by the Port Authority’s Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

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

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

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

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

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**ATTACHMENT C**

**LEGAL SUPPLEMENTAL STAFFING SERVICES  
AS REQUESTED ON AN "AS-NEEDED" BASIS DURING 2014-2016 (RFP #35248)**

**COMPANY PROFILE**

Company Name: \_\_\_\_\_

Company Web Address: \_\_\_\_\_

Federal Employer Identification Number (EIN) \_\_\_\_\_

Home Office Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Local Office Mailing Address (if different):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Phone & Fax Numbers: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Officers and/or Principals: \_\_\_\_\_

(names and titles)  
\_\_\_\_\_  
\_\_\_\_\_

Affiliate(s) & Subsidiary (ies): \_\_\_\_\_

(Include EIN #, and Address)

Attach sheet if needed

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Number of years in Recruitment of Legal temporary staff: \_\_\_\_\_

Total Number of Account Managers: \_\_\_\_\_

Number of Active Clients: \_\_\_\_\_





**P.A. Agreement #\*\*\*-14-\*\*\***  
DATE

FIRM  
STREET  
CITY, STATE ZIP

Attention: NAME, TITLE

**SUBJECT: PERFORMANCE OF LEGAL SUPPLEMENTAL STAFFING SERVICES  
AS REQUESTED ON AN "AS-NEEDED" BASIS DURING 2014, 2015 AND  
2016**

Dear \*\*\*:

1. The Port Authority of New York and New Jersey ("Authority"), hereby offers to retain FIRM NAME ("the Consultant" or 'you') to provide expert professional services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, on an "as-needed" basis during 2014, 2015, and 2016. The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

This Agreement shall be signed by you and the Authority's Director of Procurement. As used herein and hereafter, the "Director" shall mean the General Counsel or Deputy General Counsel of the Authority, acting either personally or through their duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

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

2. Personnel provided by you shall be required to work at any location as mutually agreed upon, prior to the performance of services, but generally at the Authority's offices within the Port District, and generally at 225 Park Avenue South, NY, NY. Personnel shall work during the days and hours as ordered by the General Counsel. As used herein, "Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

Requests to provide legal or other qualified personnel will be made in accordance with the following general procedures:

A. Any request by the Authority for you to provide legal or other qualified personnel will be either by e-mail, or telephone, as determined by the Authority. A job description including any position requirements will accompany each inquiry.

B. All personnel shall be pre-screened by you and only those candidates meeting the specifications of the Authority's job description shall be made available for the Authority's consideration.

C. You shall provide a resume and direct hourly labor rate quotation covering the services of each employee submitted for consideration.

D. You shall clearly indicate if the employee proposed by you is a former Authority employee.

E. Resumes will be reviewed by Authority staff and only personnel deemed most qualified will be interviewed, as determined by the Authority staff.

F. The Authority will provide your firm with the name(s) of the candidate(s), at which time your firm shall contact an Authority designated firm, or firm proposed by you and approved by the Authority for the purpose of performing a background check(s). Once the appropriate background check(s) has been completed, the designated/approved firm will notify your firm of its findings, at which time your firm shall forward back to the Authority only the names of candidates who have received a satisfactory background check.

Background checks shall be compensable as out-of-pocket expenses as provided herein in Paragraph 8C below.

G. You shall confirm by letter the acceptance of any personnel selected. As required by the Authority, said letter shall state the individual's name, Social Security Number, anticipated start date, direct hourly labor rate, and the billing rate and include such documentation as required to demonstrate the validity of qualification information contained in the resume submitted by your firm (e.g. Paralegal Certificate, a list of telephone numbers and contact names actually contacted by you to verify the individual's work experience, etc.). If requested by the Authority and upon selection of your employee for performance of the required services, said letter shall also include a statement from you confirming that you have verified the following information: true identity, criminal history, credential validation; and have disclosed your findings to the Authority.

The Authority reserves the right to hire any personnel placed by your firm, when said personnel have been continuously working at the Authority for a period of at least six (6) months. There shall be no additional compensation due you in the event the Authority so hires said personnel. No contract between you and your employee shall prohibit such employment by the Authority.

3. All personnel shall work under Authority supervision but shall continue to be your employees and not those of the Authority, and you, as the employer, shall remain responsible for all compensation due to said personnel and for all other payments, deductions from payments, benefits, actions, duties, responsibilities, taxes, obligations and the like, whether required by law or by contract, arising out of the employer-employee relationship.

Further, your firm shall not supply the Authority with "independent contractors". No "consultant" type arrangements will exist between your firm and those personnel you may supply to the Authority, nor shall you reduce any of the Personnel's wages by using "travel pay" "recruiting expenses" or other methods to avoid the withholding or payment of any required tax

or insurance payments. The implementation of any such arrangements by you with personnel that you supply to the Authority shall be cause for the immediate cancellation of this Agreement.

4. You shall agree to allow all your employees assigned to the Authority to observe all holidays and official closings granted by the Authority. However, except as indicated in Clause 6B below, compensation for said holidays and official closings shall not be the responsibility of the Authority.

The Authority observed, or will observe, the following holidays during 2014, however, other holidays may be observed in future years:

<b>DATE</b>	<b>HOLIDAY</b>	<b>DAY OF THE WEEK</b>
January 1, 2014	New Year's Day	Wednesday
January 20, 2014	Martin Luther King, Jr. Day	Monday
February 17, 2014	Presidents' Birthday	Monday
May 26, 2014	Memorial Day	Monday
July 4, 2014	Independence Day	Friday
September 1, 2014	Labor Day	Monday
October 13, 2014	Columbus Day	Monday
November 11, 2014	Veterans Day	Tuesday
November 27, 2014	Thanksgiving Day	Thursday
November 28, 2014	Day After Thanksgiving	Friday
December 25, 2014	Christmas Day	Thursday

5. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the amount of \$500,000/year unless you are specifically authorized in writing to so continue by the General Counsel. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

6. As full compensation for all your services and obligations hereunder, the Authority will pay you the total of the amounts computed under subparagraphs A, B and C below, subject to the limits on compensation and provisions set forth in paragraph 5 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A and B hereunder except when compensation has been approved in advance and in writing by the General Counsel:

A. An amount for each of your employees whose services are supplied to the Authority, in accordance with this Agreement, computed at the direct hourly rate (actual hourly rate paid to said employee by you) for that employee, as agreed upon, prior to the performance of any services by said employee hereunder, in writing by you and the General Counsel, times the number of hours actually worked by said employee for the Authority (provided the employee shall be compensated by you at said agreed upon rate and, if compensated at a lesser rate as

determined from your payroll records, the compensation to you shall be computed on the basis of said lesser rate), plus \*\*% (mark-up) of said rate. Personnel shall work during the days and hours as ordered by the General Counsel. The hours of work are typically from 9:00 a.m. to 5:00 p.m. and are billable as a seven (7) hour day.

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

B. In the case of a week which does not contain a holiday or holidays observed by the Authority, all hours worked by your employees for the Authority in excess of forty (40) hours per week will be compensated as overtime. In the case of a week, which does contain a holiday or holidays observed by the Authority, all hours worked on days other than the holiday or holidays in excess of forty (40) hours plus all hours worked on such holiday(s) will be compensated as overtime. Compensation for any overtime payable under this Agreement will be paid only if your employees are paid for overtime. Compensation to your employees for overtime services worked by said employees shall be computed as above in 6A except that 1.5 times the direct hourly labor rate shall be used in lieu of the direct hourly rate (provided the employee shall be compensated by you at the said agreed upon overtime hourly labor rate), but without applying the markup specified above. In applying the markup for overtime work it shall be applied to the direct hourly labor rate times the total hours of overtime work actually performed by your employee. The General Counsel must approve all overtime in advance.

Those employees that have been assigned to the Authority, and have performed the original services, for which they were assigned, for a period of twelve (12) months, may be considered for an increase in their direct hourly labor rate. Said increase may be requested by you in writing to the General Counsel. In requesting such increases, you must demonstrate that the increase is in compliance with each of the following conditions: a) is in accordance with the program of periodic merit and cost of living increases normally administered by you; and b) is in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to you in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary, if any, to be applicable under this agreement will therefore, in all cases be finally determined by General Counsel, in his sole and absolute discretion. The Authority reserves the right to approve, or disapprove, any such adjustment in the direct hourly labor rate. A request for said adjustment does not give rise to any obligations on the part of the Authority, or limit the Authority's ability to approve any requested salary adjustment at any time. Salary adjustments, as are all direct hourly labor rates paid by the Authority hereunder, are subject to the prior written approval of the General Counsel.

C. An amount equal to the out-of-pocket expenses, approved in advance by the General Counsel, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of

outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for mailing and delivery charges for submittal of drawings, specifications and reports; long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

You shall obtain the General Counsel's written approval prior to making expenditures for out-of-pocket expenses in excess of \$100 per specific expenditure and for all overnight trips which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

When the Consultant uses his personal vehicle to provide services within the Port District, as approved in advance, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate, as determined by the General Services Administration (GSA) - <http://www.gsa.gov/portal/content/100715>, per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the General Counsel. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as provided herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the General Counsel. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality.

General Services Administration (GSA) Rates:

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

D. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

7. You shall assume full responsibility and make full financial restitution to the Authority for any items whatsoever provided by the Authority to those personnel provided by you, for use by them in the performance of services hereunder which are not returned to the Authority upon the Authority's request for said items or which are returned in a damaged state. Said items may include but are not limited to computers, computer programs, and computer disks. A receipt, signed by the temporary legal or other personnel provided by you, indicating a description of those items provided by the Authority to said personnel shall serve as proof of receipt of said items. A copy of this receipt shall be transmitted to your representative as noted above. The temporary personnel shall not make use of any item, or make any disclosure of any information, entrusted to the temporary personnel, unless expressly authorized by the General Counsel.

8. When required by the General Counsel, your employees shall wear safety shoes and any other safety clothing items, which shall not be the financial responsibility of the Authority.

9. The Authority will supply weekly time sheets for your employees to fill out and have authorized by designated Authority supervisory staff. A copy of each time sheet shall accompany your billing invoice. Your employees may also be required to complete internal Authority time keeping documents on a daily basis.

10. Within thirty (30) days after certification by the Authority of the approved time sheet referred to in paragraph 9 above, the Authority will pay to you the sum calculated as a result of actual hours worked and mutually agreed upon rates, as provided above. You shall submit an invoice containing your Taxpayer's Identification Number and the Purchase Order Number (as provided to your representative by the Authority), your Port Authority Vendor Number, Agreement Number, employee's name and the time period of the bill. Invoices shall be sent to the administrator(s) designated by the General Counsel.

For the purposes of this agreement, the weekly billing period shall start at 12:01 A.M. Sunday and end at 11:59 P.M. the following Saturday.

11. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon seven (7) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the General Counsel through the date of termination, minus all prior payments to you.

In the case of notification of termination by you to the Authority, your letter shall be addressed to the Director, Procurement Department, with a copy to the General Counsel, and in the case of notification of termination by the Authority to your firm, the letter shall be addressed to you at the above address.

12. The Authority shall have the right to inspect all payrolls and other records upon which your compensation is based and these records shall be maintained by you for a period of two (2) years after the completion of services hereunder.

13. The length of assignment of each person shall be as determined by the General Counsel prior to the start of services and are generally anticipated, but not guaranteed, to be up to three (3) months. Longer or shorter assignments may occur. A maximum of five (5) days notice of termination may be given, but is not required, to each assignee without cause. No notice of termination may be given, at anytime, for termination with cause.

14. This Agreement, being based upon your special qualifications for the services herein contemplated, any assignment or other transfer of this Agreement, or of any part hereof, or of any moneys due or to become due hereunder without the express written consent of the Authority, shall be void and of no effect as to the Authority. Subcontracting is not permitted under this Agreement.

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

16. The work product of the employees produced in accordance with the Agreement, tangible and intangible, shall be deemed to belong exclusively to the Authority, and the Authority shall have the exclusive right to obtain and to hold in its own name copyrights, patents, trade secrets or other proprietary rights and protection as may be appropriate to the subject matter, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Department in which the services are performed without express written authorization of the General Counsel. You agree to contract with your employees for the benefit of the Authority to ensure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

17. Confidential Information: For the purpose of this numbered paragraph and notwithstanding the definition of "confidential information" as set forth in the Authority's Code of Ethics and Financial Disclosure (see paragraph 24, below), confidential information shall mean all information disclosed to you or your employees which relates to the Authority's past, present, and future research, development and business activities including, but not limited, to software and documentation licensed to the Authority or proprietary to the Authority. Confidential information (for the purpose of this numbered paragraph) shall also mean any other tangible or intangible information or materials including, but not limited, to computer identification numbers, access codes, passwords, and reports obtained during the performance of your services

under this Agreement. You shall hold all such confidential information in trust and confidence for the Authority, and agree that you and your employees will not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement. You and your employees shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. If requested by the Authority you shall procure a similar written agreement from your employees for the benefit of the Authority. You and your employees shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder.

18. All contract documents, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and computer programs and codes, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. You hereby warrant and represent that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons (including your employees) whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. You shall insert this provision in each contract you shall enter into with personnel assigned to the Authority. Promptly upon request by the Authority, you shall furnish or obtain from the appropriate person a form of documentation satisfactory to the Authority to establish such ownership, but it is expressly understood and agreed that, as between the Authority and you the ownership 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 written document as provided for above. Such ownership may be transferred by the Authority. This Agreement shall not be construed, however, to require you to obtain for the Authority the right to use any idea, design, method, material, equipment, or other matter which is the subject of a valid patent, unless such patent be owned by you or one of your employees, in which case such right shall be obtained without additional compensation. It is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of communication, which has been or may be given by your or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may arise under valid existing or pending patents, if any.

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

## 20. NOTIFICATION OF SECURITY REQUIREMENTS

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

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

- Consultant identity checks and background screening

The Consultant may be required to have its staff, visitors or others over whom the Consultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and may also be required to use an organization designated by the Authority to perform the background checks.

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

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

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credential for the Consultant, the Authority will supply such identification at no cost to the Consultant. Such facility-specific identification credential shall remain the property

of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant shall be billed for the cost of the replacement identification credential. Staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

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

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Port Authority ("Secure Areas"). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated secure areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained consultant security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Consultant or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Agreement may require access to Authority information considered Confidential Information (“CI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of February, 2009, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of CI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request or at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>

- Audits for Compliance with Security Requirements

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

At the direction of the Authority, you shall be required to have your employees execute Authority approved non-disclosure agreements. Additional obligations with respect to confidentiality and document security are set forth in a Non-Disclosure and Confidentiality Agreement, between the Authority and Consultant (the “Confidentiality Agreement”; Exhibit I). Consultant hereby agrees to execute the Confidentiality Agreement.

21. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant in the performance of services hereunder:

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant arising out of or in connection with the performance of services hereunder;

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

D. The risk of claims, just or unjust, by third persons made against the Consultant or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder including claims against the Consultant or the Authority for the payment of workers’ compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both

before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event 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 statues respecting suits against the Authority, such defense to be at the Consultant's cost.

The provisions of this clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this clause if they were named at each place above at which the Authority is named, including a direct right of action against the Consultant to enforce the foregoing indemnity, except, however, that the Authority may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from his obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

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

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

## 22. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

### A. Commercial Liability Insurance:

1. The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractors' coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this Agreement, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily

injury and property damage. Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is directed to perform services airside in absence of an approved escort, the Commercial General Liability Insurance and Automobile Liability Insurance provided by the Consultant must contain limits of not less than \$25,000,000 combined single limit per occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the Authority and its related wholly-owned entities as additional insured and shall contain an endorsement provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured.

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

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

a) If the services of the Consultant, as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.

c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.

d) Coverage for work within 50 feet of railroad.

**B. Workers' Compensation Insurance:**

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.

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

a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.

b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.

c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

### C. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

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

2) If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Project Manager shall so direct, the Consultant shall suspend performance of the Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on account thereof. If the Agreement is not suspended (whether or not because of omission of the Project Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.

3) Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

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

5) The Authority may at any time during the term of this Agreement change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Management for the Authority may consider such cost as an out-of-pocket expense.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- G. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

- A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;
- B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

The foregoing certifications, shall be deemed, to be made by the Consultant as follows:

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

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

Moreover, the foregoing certifications, if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

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

paragraph "24G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, or might require disclosure.

Under certain circumstances the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority. Furthermore, the

Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might, under this clause, make it unable to make the foregoing certifications, or might require disclosure.

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

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

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

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

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

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

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

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense where the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she

may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

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

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

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

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

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

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

Without the express written approval of the General Counsel, you shall keep confidential, and shall require your employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

## 28. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a agreement if the Consultant has a substantial financial interest in the consultant or potential consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a consultant or potential consultant of the Authority, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the General Counsel in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the General Counsel, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The General Counsel may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the General Counsel and shall become a requirement, as though fully set forth in this Agreement. In the event the General Counsel shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the General Counsel to be no longer appropriate because of such preclusion, then the General Counsel shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements which result, directly or indirectly, from the services provided by the Consultant hereunder.

## 29. DEFINITIONS

As used in sections 23 through 28 above, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

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

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

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

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

30. The Authority promotes equal opportunity and affirmative action and requires that you will not discriminate against any employee or applicant for employment, because of race, creed, sex, color or national origin and that you will take affirmative action to ensure that they are afforded equal opportunities without discrimination because of race, creed, sex, color or national origin.

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

32. The entire Agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

33. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Director  
Procurement Department

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

**ACCEPTED:**  
FIRM NAME

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

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

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

**INSTRUCTIONS**

If the selected Consultant firm is not located in either the States of New York or New Jersey, change the number of the last paragraph of this Agreement from "33." to "35." and insert a new paragraph 34. as follows:

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

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
BETWEEN**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 225 Park Avenue South, New York, New York, 10003, and \_\_\_\_\_ having an office and place of business at \_\_\_\_\_ (“**Recipient**”).

**WHEREAS**, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to Recipient Confidential Information (as defined below) in connection with \_\_\_\_\_ (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

**WHEREAS**, the Recipient acknowledges that the Port Authority, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

**WHEREAS**, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, the Port Authority has collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the Project site, including the physical construction and current and future operations; and

**WHEREAS**, the Port Authority and Recipient (collectively, the “**Parties**”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, the Port Authority may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or its occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to the Port Authority, the Project, its occupants, and the surrounding communities; and

**WHEREAS**, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and

prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

**WHEREAS**, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, the Port Authority requires, as a condition of its sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

**WHEREAS**, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the provision by Port Authority of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **“Authorized Disclosure”** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Confidential Information, only to a Related Party that has a need to know such Confidential Information strictly for Project Purposes and that has agreed in writing to be bound by the terms of this Agreement by executing a form of Acknowledgment as set forth in Exhibit A or Exhibit B, as applicable; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority, and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project.

(b) **“Confidential Information”** means and includes collectively, Confidential Proprietary Information, Confidential Privileged Information, and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term Confidential Information shall also include all work product that contains or is derived from any of the forgoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others. The following Information shall not constitute Confidential Information for the purpose of this Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority, provided that such source is not subject to a confidentiality agreement, or similar obligation, or understanding with or for the benefit of the Port Authority, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.
- (iii) Information that is known to or was in the possession of the Recipient or a Related Party on a non-confidential basis prior to the disclosure of such Information by the Port Authority.

(c) **“Confidential Privileged Information”** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York, and/or New Jersey state laws or Federal laws, (ii) certain Critical Infrastructure Information, (iii) certain Sensitive Security Information, and (iv) Limited Access Safety and Security Information.

(d) **“Confidential Proprietary Information”** means and includes Information that contains financial, commercial or other proprietary, business Information concerning the Project, the Port Authority, or its facilities.

(e) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.

(f) **“Critical Infrastructure Information”** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations and any amendments thereto.

(g) **“Information”** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.

(h) **“Limited Access Safety and Security Information”** means and includes sensitive Information, the disclosure of which would be detrimental to the public interest and might compromise public safety and/or security as it relates to Port Authority property, facilities, systems and operations, and which has not otherwise been submitted for classification or designation under any Federal laws or regulations.

(i) **“Port Authority Handbook”** means the Port Authority of N.Y. & N.J. Information Security Handbook, as may be amended by the Port Authority, from time to time.

(j) **“Project Purposes”** means the use of Confidential Information strictly and only for purposes related to Recipient’s and its Related Parties’ participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.

(k) **“Related Party”** and **“Related Parties”** means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient’s outside consultants, attorneys, advisors, accountants, architects, engineers or subcontractors or subconsultants (and their respective directors, employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.

(l) **“Sensitive Security Information”** has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

2. **Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:

(a) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook, receipt of which is acknowledged by Recipient and shall be acknowledged in writing by each Related Party by signing the Acknowledgment attached hereto as Exhibit A or Exhibit B, as applicable, and applicable legal requirements. Confidential Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

(b) Recipient and each Related Party acknowledges and agrees that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the

United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) Recipient and each Related Party covenants to the Port Authority that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Confidential Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that all Confidential Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. The Confidentiality Control Procedures shall, at a minimum, adhere to, and shall not be inconsistent with, the procedures and practices established in the Port Authority Handbook.

(d) The Port Authority reserves the right to audit Recipient's Confidentiality Control Procedures, and those of each Related Party, as applicable, to ensure that it is in compliance with the terms of this Agreement.

(e) The Port Authority may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. The Port Authority may decline any request by the Recipient or any of its Related Parties to provide such item of Confidential Information if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(f) Nothing in this Agreement shall require the Port Authority to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Confidential Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(g) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority's prior written consent, neither the Recipient, nor any of the Related Parties shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or the content or import of such Confidential Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by Related Parties pursuant to this Agreement. Recipient shall, at the Port Authority's request, provide the Port Authority a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(h) As to all Confidential Information provided by or on behalf of the Port Authority, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Confidential Information is received by the Recipient or any Related Party, Recipient shall notify the Port Authority thereof, to the extent permitted by law, with sufficient promptness so as to enable the Port Authority to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Agreement, the Recipient shall immediately give the Port Authority written notice of that fact and a detailed account of the circumstances regarding such disclosure to the Port Authority.

4. **Retention Limitations; Return of Confidential Information.** Upon the earlier occurrence of either the Port Authority's written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or similar form, such Confidential Information shall be deleted and completely removed so that such Confidential Information is incapable of being recovered from all computer databases of the Recipient and all Related Parties. The Recipient may request in writing that the Port Authority consent to destruction of Confidential Information, writings and materials in lieu of delivery thereof to the Port Authority. The Port Authority shall not unreasonably withhold its consent to such request. If the Port Authority consents to such destruction, the Recipient and each Related Party shall deliver to the Port Authority a written certification by Recipient and such Related Party that such Confidential Information, writings and materials have been so destroyed within such period as may be imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain copies of Confidential Information (in any format), provided that (a) the Port Authority is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Confidential Information.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual (unless otherwise provided in this Agreement) or until such time as the Confidential Information is no longer considered confidential and/or privileged by the Port Authority.

6. **Severability.** Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** Recipient and each Related Party acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its facilities (including, without limitation, the Project site), its patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by Recipient or its Related Parties. The Port Authority shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Agreement and its enforcement. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this Agreement. **“Port Authority Legislation”** shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a **“notice”**) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

Original to the Port Authority: \_\_\_\_\_  
The Port Authority of New York and New Jersey  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: The Port Authority of New York and New Jersey  
225 Park Avenue South - 14<sup>th</sup> Floor  
New York, NY 10003  
Attn: General Counsel's Office c/o Caroline Ioannou, Law  
DISO

If to the Recipient: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. **Entire Agreement.** This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

12. **Parties Bound.** This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Agreement or to execute and deliver an Acknowledgement hereof.

13. **Authority.** The undersigned individual(s) executing this Agreement on behalf of the Recipient below represent(s) that they are authorized to execute this Agreement on behalf of the Recipient and to legally bind such party.

14. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority of any rights by ownership, license or otherwise in any Information.

15. **No Liability.** Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

16. **Construction.** This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

**RECIPIENT:**

Signature: \_\_\_\_\_

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

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

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

**EXHIBIT A**

**ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL**

I, \_\_\_\_\_ (“**Related Party**”), am employed as a(n) \_\_\_\_\_ by \_\_\_\_\_. I have been provided with and have read the Non Disclosure and Confidentiality Agreement between \_\_\_\_\_ (the “**Recipient**”) and The Port Authority of New York and New Jersey (the “**Port Authority**”) dated \_\_\_\_\_, \_\_\_\_\_ (hereinafter the “**Agreement**”), and the Port Authority Handbook attached to the Agreement. I understand that because of my employer’s relationship with \_\_\_\_\_, both my employer and I may be provided with access to, and/or copies of, sensitive security materials or confidential information. If it is required for me to review or receive Confidential Information, as it is defined in the aforementioned Agreement, I acknowledge that I will be bound by each and every term and provision contained therein, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of law and/or Port Authority policies and procedures, as well as for violation of federal and/or state regulations.

To the extent that I am currently in the possession of, or have previously come into contact with, marked information as it relates to the aforementioned Agreement, I agree to conform my handling procedures for Confidential Information to the practices and procedures set forth and defined herein, or risk loss of access to said Information, removal from said Project and/or subjecting myself to the aforementioned disciplinary actions and/or civil and criminal penalties.

Signed: \_\_\_\_\_

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

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

**EXHIBIT B**

**ACKNOWLEDGMENT BY RELATED PARTY ENTITY**

The undersigned, \_\_\_\_\_, is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ (“**Related Party**”), located at \_\_\_\_\_, and is duly authorized to execute this Acknowledgment on behalf of the above Related Party. The above Related Party is involved with the functions of \_\_\_\_\_ in connection with \_\_\_\_\_ for The Port Authority of New York and New Jersey (the “**Port Authority**”). I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and shall abide by all of the terms, requirements and conditions set forth in the Non Disclosure and Confidentiality Agreement dated \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ (the “**Recipient**”) and the Port Authority (hereinafter the “**Agreement**”), and by the Port Authority Handbook described in the Agreement. Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Agreement. The Related Party has notice and acknowledges that any breach or violation of such terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signed: \_\_\_\_\_

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

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