

Torres Rojas, Genara

FOI#12729

From: rgtaylor@att.com
Sent: Monday, October 24, 2011 5:40 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Robert
Last Name: Taylor
Company: AT&T Corp
Mailing Address 1: 440 Hamilton Ave
Mailing Address 2: 4th Floor
City: White Plains
State: NY
Zip Code: 10601
Email Address: rgtaylor@att.com
Phone: 888-478-0374
Required copies of the records: Yes

List of specific record(s):

I am requesting copies of any contract and associated contract change orders the PANYNJ has in place with Troy Banks, Inc. headquarterd at 2216 Kensington Ave, Buffalo, NY 14226.

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

July 17, 2012

Mr. Robert Taylor
AT&T Corp.
440 Hamilton Avenue, 4th Floor
White Plains, NY 10601

Re: Freedom of Information Reference No. 12729

Dear Mr. Taylor:

This is a response to your October 24, 2011 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of the contract between the PA and Troy Banks, Inc.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/12729-C.pdf>. Paper copies of the available records are available upon request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

Attachment



THE PORT AUTHORITY OF NY & NJ

April 21, 2011

VIA DHL AND EMAIL: tranallo@troybanks.com

Thomas T. Ranallo
President
Troy & Banks, Inc.
2216 Kensington Avenue
Kensington at Saratoga
Buffalo, NY 14226

Re: Telecommunications Audit Services for the Port Authority of New York and New Jersey Contract # 4600008597; Purchase Order 4500062329 (the "Letter of Proposal Acceptance")

Dear Mr. Ranallo:

The Port Authority of New York and New Jersey (the "Port Authority") hereby awards a contract to Troy & Banks, Inc. ("Troy & Banks" or the "Contractor") for the performance of the attached described telecommunications billing audit services, subject to the provisions of the Contract, as defined below.

The term of the Contract shall be in effect for a two (2) year base period to commence on June 1, 2011 and shall expire on or about May 31, 2013, unless sooner terminated or extended pursuant to the provisions hereof.

The "Contract" between the parties shall consist of the following documents as attached items stated in order of precedence in case of direct conflict or inconsistency between or among said documents:

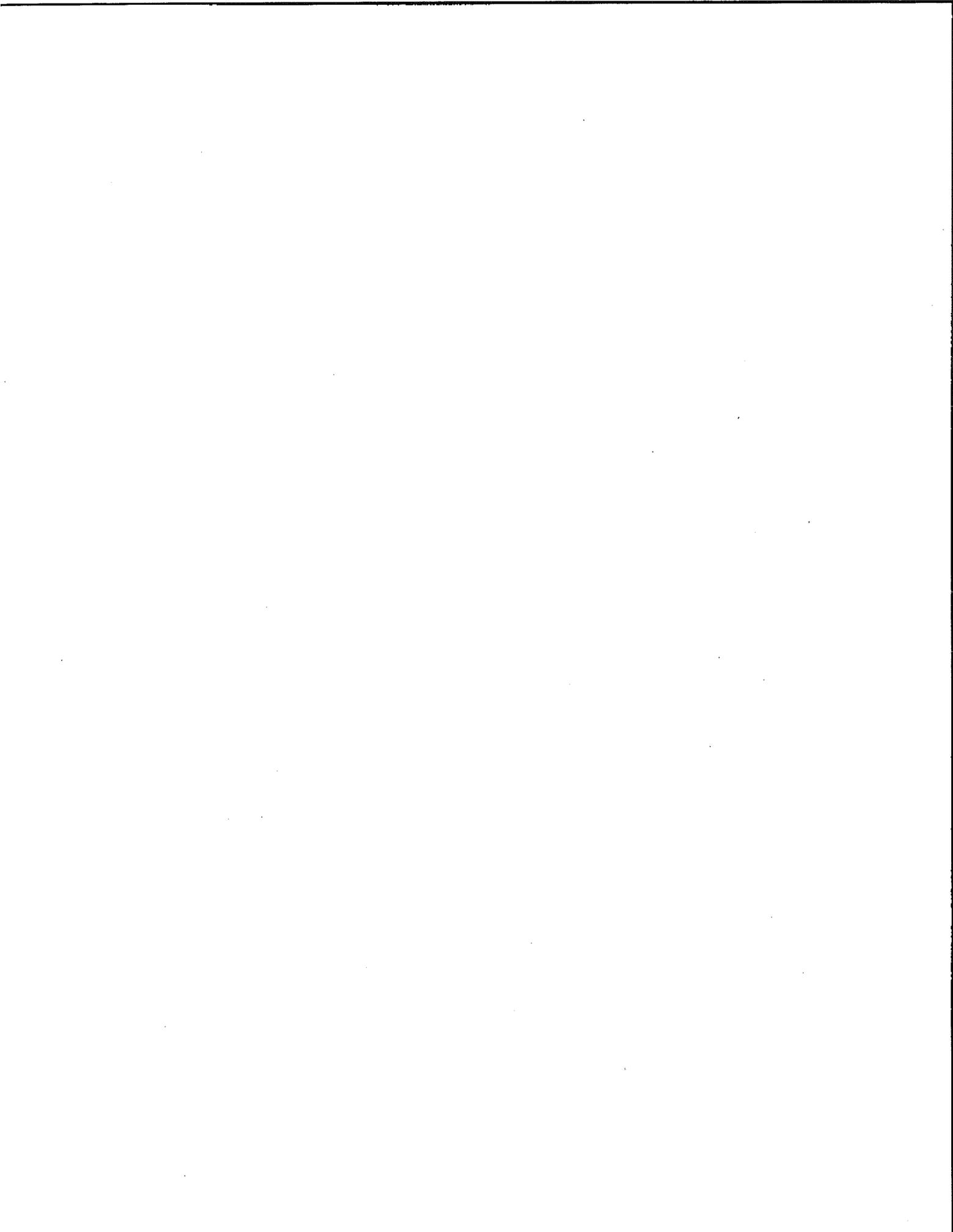
1. This Letter of Proposal Acceptance;
2. The Non Disclosure Agreement;
3. The attached Port Authority Standard Contract Terms and Conditions;
4. Troy & Banks Proposal entitled: "The Port Authority of New York and New Jersey Agreement for Telecommunications Billing Audit", (the "Troy & Banks Proposal").

Niagara Frontier Transportation Authority government contract with Troy & Banks for telecommunications audit services dated June 17, 2010, served an important role in the procurement process for this Contract.

Payment: The parties hereto agree to the terms of the Cost Proposal set forth in Part V entitled "Cost Proposal" of the Troy & Banks Proposal, made a part hereof, which states that the Contractor shall not receive any payment of any kind in connection with this Contract, other than as specified therein; all out of pocket and other expenses incurred by Troy & Banks in connection with the performance of the services under this Contract shall be borne solely by Troy & Banks.

Scope of Services: The scope of services to be performed by Troy & Banks in connection with this Contract, is set forth in the Troy & Banks Proposal attached hereto.

*One Madison Avenue
New York, NY 10010
T: 212 435 7000*





THE PORT AUTHORITY OF NY & NJ

Upon expiration or earlier termination of this Contract, Troy & Banks shall no longer have any permission to perform any services covered under the scope of work of this Contract. If after the expiration or earlier termination of this Contract Troy & Banks receives any information or documents relating to Port Authority accounts from any utility provider, automotive fuel provider, or any other vendor, whether by mistake or otherwise, Troy & Banks, must promptly notify the Port Authority.

This Contract, and any claim, dispute or controversy arising out of, under or related to this Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of law principles.

Insurance Procured by the Contractor

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

Commercial General Liability Insurance - \$ 5 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - \$ 5 million combined single limit per accident for bodily injury and property damage liability. \$ 25 million each accident on airside.

In addition, the liability policy (ies) shall name "The Port Authority of New York and New Jersey and its wholly owned entities, their commissioners, directors, officers, partners, employees and agents as additional insured", including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Moreover, the Commercial General Liability Policy shall not contain any provisions for exclusions from liability other than provisions for exclusion 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 and severability of interests clause for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. Furthermore, the Contractor's insurance shall be primary insurance as respects to the above additional insureds. Any insurance or self insurance maintained by the above additional insureds shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

The certificate of insurance and liability policy (ies) must contain the following endorsement for the above liability coverages:

"The insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."

The Contractor shall also take out, maintain, and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than \$1 million each accident.

One Madison Avenue
New York, NY 10010
T: 212 435 7000



THE PORT AUTHORITY OF NY & NJ

Each policy above shall contain a provision that the policy may not be canceled, terminated, or modified without thirty (30) days' prior written notice to the Port Authority of New York and New Jersey, Att: Nancy Johnson, at the location where the work will take place and to the General Manager, Risk Management.

The Port 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 Port Authority may consider such cost as an out-of-pocket expense for the Contractor.

Within five (5) days after the award of this agreement or Contract and prior to the start of work, the Contractor must submit an original certificate of insurance, to the Port Authority of New York and New Jersey, Contract Administrator Nancy Johnson, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), stating the agreement/contract number prior to the start of work. The General Manager, Risk Management must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

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 Manager shall so direct, the Contractor shall suspend performance of the Contract at the premises. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended (whether or not because of omission of the 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 Contractor to the Port Authority.

Renewal certificates of insurance or policies shall be delivered to the Contractor Administrator, Nancy Johnson Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy.

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

CITS#3813N

The above referenced purchase order number will be used for reference on all invoices submitted to the Port Authority.

Questions regarding the Contract may be directed to the Project Manager: Wilfredo Lasalle at 212-435-3221 (wlasalle@panynj.gov) Any notices to the Port Authority by mail should be sent to the following addresses:

Wilfredo Lasalle, IT Manager Customer Service
Technology Services Department
The Port Authority of New York and New Jersey
One Madison Avenue, 7th floor
New York, NY 10010
(212)-435-3221

*One Madison Avenue
New York, NY 10010
T: 212 435 7000*



THE PORT AUTHORITY OF NY & NJ

Any other questions related to procurement of this Contract may be directed to Nadine Aziz of the Port Authority's Procurement Department at 212-435-3934.

Prior to the commencement of work, please submit to the Port Authority your insurance certificates as required above. You shall submit an original Certificate of Insurance to Risk Management Department at 225 Park Avenue South, New York, NY 10010.

If you are in agreement with the above, please indicate such agreement by signing at the lower left and returning both original copies of this document to the attention of Nadine Aziz at One Madison Avenue, 7th Floor, NY, NY 10010. When signed by the Port Authority you will receive an executed original copy of the document.

The parties hereto acknowledge that that they have caused this Letter of Proposal Acceptance to be signed by their proper and duly authorized representatives.

Sincerely,

Lillian D Valenti

Date *5/5/11*

Lillian Valenti
Director, Procurement Department
Port Authority of New York and New Jersey

AGREED:

Troy & Banks, Inc.

By:

Th T. Pull

Title:

President

Date:

4/25/11



SMART SOLUTIONSSM

**THE PORT AUTHORITY OF
NEW YORK & NEW JERSEY
Procurement Services Division
Telecommunication Billing Audit**

Thomas T. Ranallo, President
Troy & Banks, Inc.
2216 Kensington Avenue
Buffalo, New York 14226
(716) 839-4402



April 14, 2011

Ms. Nadine Aziz, Principal Buyer
Technology & Operational Procurement
Services Division
The Port Authority of NY & NJ
7th Floor
One Madison Avenue
New York, NY 10010

**RE: Telecommunication
Billing Audit**

Dear Ms. Aziz:

This letter and proposal shall serve as evidence of the intention of Troy & Banks, Inc. ("T&B") to enter into a contract with The Port Authority of New York and New Jersey ("PANYNJ") whereby T&B will perform telecommunication audit work.

Our firm has successfully performed telecommunication audits for similar transportation related entities such as Amtrak (please see attached letter of reference), Niagara Frontier Transportation Authority (please see attached current contract awarded by RFP), CSX Intermodal and the Kansas City Airport.

COMPANY BACKGROUND

Troy & Banks is a professional cost management and consulting firm specializing in solutions to reduce telecommunications expenses. Troy & Banks' services include invoice audit and verification, rate analysis and optimizations, negotiation and procurement, and other related telecommunications cost recovery, management and consulting services. T&B was founded in 1991 and currently provides consulting services to approximately 7,000 industrial, commercial and institutional locations worldwide.

Some of our New York and New Jersey clients include the New York State Police; The Metropolitan Opera; New York Stock Exchange; American Stock Exchange; Amtrak; Sheraton New York Hotel & Towers; New York State Police; New York Racing Association (Aqueduct, Belmont and Saratoga racetracks); Rockefeller Center; Mount Sinai Medical Center, NY; Town of West New York, NJ; Borough of Lodi, NJ; and, City of Garfield, NJ.

SCOPE OF WORK

T&B will audit PANYNJ's invoices from and payments to your telecommunications suppliers. The audit will include a review of all applicable tariffs and riders for the past six years. Our audit will ascertain whether the invoices are accurate and appropriate under tariffs and regulations. Our specialized audit master software is designed to

Port Authority of New York & New Jersey
Procurement Services Division
Telecommunication - Billing Audit

check for billing errors. If overbilling has occurred, we will prepare a claim letter, document our findings, and forward to the service providers requesting reimbursement plus interest. Our extensive experience has combined to produce millions of dollars in refunds and savings for our clients.

We are confident that the PANYNJ will conclude that our firm is the most experienced and qualified firm to perform the telecommunication billing audit.

I appreciate the opportunity to submit the enclosed proposal for your review and would welcome showing you and your staff why so many other municipalities and businesses have hired Troy & Banks, Inc. I can be reached at 1-800-499-8599. Thank you.

Sincerely,

Thomas T. Ranallo, President

TTR/mbm

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Attachments:

1. Amtrak – Letter of Reference
2. Niagara Frontier Transportation Authority – Contract
3. Troy & Banks Organizational Chart

I. Executive Summary

Founded in 1991, Troy and Banks, Inc. is a privately held, independent energy and telecommunications consulting company with corporate offices located in Buffalo, NY and incorporated in the State of New York. We have extensive experience working with municipalities and businesses in the audit and analysis of utility and communications account relationships. Troy & Banks has both the interest and ability to provide all of the telecommunications accounts audit services as required by the Port Authority of New York and New Jersey Procurement Department.

Our principle business is utility and telecommunication auditing and consulting. Our mission is to apply our vast technical and analytical experience to help our clients:

1. reduce the costs of utility, telecommunication and other "auditable" external charges,
2. recover payments made by our clients in error,
3. sort through the variety of service packages and options so they can make good choices among various providers,
4. research tariff options, billing histories, service classifications, rate changes, service option modifications, and contract changes, and
5. keep their costs as low as possible without sacrificing the services they require to achieve their own objectives.

An audit by Troy & Banks involves very little involvement on the part of The Port Authority of New York and New Jersey Procurement Department ("PANYNJ") after we have obtained the initial paperwork. To initiate a review, PANYNJ will simply provide us with one copy of each bill for every telecommunications account that will be subject to the audit. Troy & Banks will then extract the necessary billing detail electronically.

Our auditors will implement our sophisticated and proven audit techniques on your account relationships for the indicated location and time period, in search of recovery and savings opportunities. Once errors are found, we will implement the necessary changes and prosecute claims for recovery of overcharges. We will monitor the accounts to verify that all changes are executed and refunds or credits are issued to PANYNJ. Troy & Banks is compensated from the amount of any refund, credit, or reduction in the costs of current service; we do not add to your overhead.

The primary contact at Troy & Banks is:

Thomas T. Ranallo, President
2216 Kensington Avenue
Buffalo, NY 14226
(716) 839-4402 / (800) 499-8599
tranallo@troybanks.com

II. Scope of Services

The following is an outline of Troy & Banks' audit process and procedure. We will be able to start the audit upon notification of award by PANYNJ.

The technical approach to our audits is tailored to the needs of our clients. Typically we follow a three-phase process. There is an organizational phase (phase 1), an audit phase (phase 2), and a claims resolution phase (phase 3). They are described as follows:

PHASE I — AUDIT SET UP (Approx. 45 days)

- Compile client information (including invoice copies, account lists, facilities list, contact information, and contracts)
- Use available means to determine if there are additional Port Authority accounts with respective utilities for which the Port Authority did not provide account information
- Order Customer Service Records from all telecom providers
- Organize data for audit phase

PHASE II — DETAILED AUDIT/Audit Master Software™ (Approx. 2-8 weeks)

- Conduct detailed review of all monthly charges including rates, pic charges, taxes, riders, adjustments and special contracts
- Validate monthly charges against applicable rate cards, tariffs, and rate spreadsheets
- Conduct physical demark inspection to validate services
- Identify billing errors and cost saving recommendations

PHASE III — REFUND CLAIM NEGOTIATIONS & COST SAVINGS IMPLEMENTATIONS (Approx. 4-8 weeks)

- Report billing errors to utility vendors, requesting refunds
- Negotiate appropriate credits or refunds
- Prepare cost saving proposals for client approval
- Provide Final Management Summary Report documenting refund and cost saving issues

Troy & Banks will:

1. Obtain from PANYNJ account numbers from telecom vendors. If online information is not available, then obtain one (1) monthly copy of all invoices.
2. Obtain from PANYNJ all contracts executed with the telecom vendors.
3. Collect Customer Service Records (CSR's) and historical transcripts from the designated vendors.
4. Organize all invoice and data into our specialized Audit Master Software™ database.
5. Conduct a physical inventory of all services at PANYNJ locations. This visit would be coordinated with the proper PANYNJ personnel.

6. T&B will perform a detailed audit of PANYNJ's telecom accounts. Our analysts will review all monthly charges rendered by telecom providers for potential savings or billing discrepancies. Our specialized Audit Master Software™ is designed to check for billing errors in present tariff rates, discounts, contracts, or vendors. If over-billing has occurred, we will prepare a claim letter documenting our findings.
7. Report any errors we find to the appropriate vendors with supporting evidence and requests for reimbursement. These reports will be given simultaneously to the appropriate customer contact for PANYNJ.
8. Negotiate any refund claims (including applicable interest) directly with the telecom vendors as provided by law and regulation and consistent with the time periods established by applicable statutes of limitation. Confirm that all erroneous charges are removed from future billings. The service providers will prepare a statement of the amounts of each credit and an estimated date of receipt of the credit or refund.
9. Report any future reduction recommendations to the appropriate PANYNJ contact for acceptance or rejection.
10. Report to telecom vendors any future savings recommendations accepted and approved by PANYNJ.
11. Produce an information database for all accounts including consumption, costs, and other data.
12. Provide quarterly reports of progress and remit related telecom data
13. T&B will draft final report at the conclusion of our audit summarizing the total findings and recommendations.

In order for Troy & Banks to perform our audit, we will need the following items from the PANYNJ:

1. Copy of a summary account listing by vendor including account number and address, preferably in an electronic format – OR, if necessary - one (1) bill from each of the PANYNJ's accounts including all telecommunications accounts.
2. An executed Client Agreement and Letter of Authorization form.

Troy & Banks audit staff makes it a point to **minimize** the amount of time that PANYNJ's personnel will have to put into the audit. We have the experience to make this audit work "behind the scenes" directly with PANYNJ's vendors. We will review/analyze billings for all telecommunications accounts.

Each step of the audit process requires that data is tracked and logged. Invoice copies, transcripts, account numbers, vendors and their representatives, phone numbers, fax numbers, e-mails, vendor addresses, updated tariff information, audit results, claim items, claim dates, claim results, refund results, public service complaint submissions, and hearing dates and resolutions all contribute to the data that needs to be managed, analyzed and organized. All information logged can be used to produce various types of status reports and a database of this information will be provided to PANYNJ at the end of the Phase II detailed audit period.

Our auditors make sure that customers are only charged approved and agreed upon telecom rates, tariffs, and service options. We research tariff options, billing histories, service classifications, rate changes, service option modifications, and contract changes.

On the average, we review \$250 million telecom related invoices annually or \$4.5 billion since 1991. Our audits have resulted in over \$500 million in overbilling claims submitted to various telecom companies throughout the United States.

We uncover the mistakes that increase your operating costs. In some circumstances these mistakes have been ongoing for months or even years. We make sure those mistakes are corrected immediately to reduce your costs and secure any refunds due.

When the telecom companies attempted to limit accessibility of information to the customer and representative, critical to the evaluating of charges rendered, it was Troy & Banks who successfully argued our rights, and the rights of all customers. When the telecom companies attempted to create restrictive non-disclosure and general release forms, infringing upon the rights of consultants to disclose successful representation of telecom customers, Troy & Banks successfully negotiated acceptable terms of language in the non-disclosure and general releases that are currently used by the telecom companies in the refund process.

1. Methodology used to implement the recommended changes with each telecom provider:

Once discrepancies or potential changes to accounts are identified, Troy & Banks prepares a claim letter for the telecommunication provider, documenting our findings. If necessary, we then personally follow up with each telecommunication provider to ensure that the changes specified have taken place. We then continue to monitor your accounts to ensure that the billing errors have stopped and the appropriate changes were implemented.

2. Methodology used to recover overpayments and how far back they will go:

T&B will audit invoices from and payments to your telecom suppliers. The audit will include a review of all applicable tariffs and riders for the past six years. Our audit will ascertain whether the invoices are accurate and appropriate under tariffs and regulations. Our specialized audit master software is designed to check for billing errors. If overbilling has occurred, we will prepare a claim letter, document our findings, and forward to the service providers requesting reimbursement plus interest. Our extensive experience has combined to produce over \$500 million in refunds and savings for our clients.

In some instances we have on file tariff leafs dating back 12 years for all small, mid-size and large industrial and commercial rate classes. We have developed our library to include old tariff leafs to ensure the availability of applicable laws for the entire audit period defined by the state statute of limitations.

3. Any other services T&B will provide for the fee submitted to either ensure successful completion of this project and/or to enhance the efficiency of this project:

T&B is committed to ensuring a timely and successful completion of every audit undertaken. All of our audits are monitored by an audit coordinator and tracked in our database. This helps to ensure that all audits are progressing smoothly. T&B also has a team dedicated to following up on requests for billing records, as well as claims submitted on your behalf, ensuring that requests for information and claims are responded to promptly.

4. T&B's quality control/assurance program:

At the onset of the audit, you will be provided with a primary contact for information about the audit. That representative will be available at any time to answer questions related to the progress of the audit. In addition, you will be sent copies of any correspondence we send to the telecommunication companies, providing you with information on what issues we are addressing.

III. Detailed Response

Troy & Banks is equipped to perform the scope of work required by the PANYNJ.

For the Telecommunications Audit, Troy & Banks will:

- a. audit/analyze telecommunications bills
- b. perform a comprehensive analysis of billing information
- c. review contracts
- d. examine multiple billings for the same location and telecom type
- e. recalculate a sample of representative bills
- f. determine that accounts are being billed under the correct rate
- g. recalculate bills, if applicable, to determine if charges would be lower
- h. identify future cost reduction items
- i. identify unused or dead services
- j. perform physical inspections of demarcs

In operation since 1991, Troy & Banks is a utility, telecommunications, and cable franchise fee consulting firm, specializing in auditing municipal and commercial customer accounts for billing errors and overcharges. Troy & Banks also presents and prosecutes claims for refunds, credits and rate changes to utility and telecom companies.

Troy & Banks is a prime vendor with no subcontractors, incorporated in the State of New York and a member of the Better Business Bureau, whose principle business activities also include the review, analysis and securing of refunds/credits for electric, gas, water, telecommunications, cable franchise fee, and workers compensation.

A privately held corporation, Troy & Banks is incorporated in the State of New York. Our corporate office is located in Buffalo, New York with branch offices in six additional states. Founded in 1991, our clients have taken us into all 50 states.

Our office locations are as follows:

Corporate/Remittance Address:

BUFFALO - NEW YORK

2216 Kensington Avenue

Kensington at Saratoga

Buffalo, NY 14226

(800) 499-8599 / (716) 839-4402

Telefax (716) 839-4452

WORLD WIDE WEB

www.troybanks.com

save@troybanks.com

Branch Offices:

ARIZONA

10148 Main Sail Drive
Mesa, AZ 85208

CALIFORNIA

398 East Carob Avenue
Fresno, CA 93654

FLORIDA

2330 Warbler Circle
Lakeland, FL 33810

FLORIDA

11048 Main Sail Drive
Ft. Lauderdale, FL 33026

NEW YORK

Rockefeller Ctr., POB 3968
New York, NY 10185

NEW YORK

450 Jericho Tpk., Ste. 203
Mineola, NY 11501

NEW YORK

4764 Summerhurst Drive
Liverpool, NY 13088

OREGON

21370 Serango Drive
West Linn, OR 97068

TEXAS

7458 Carriage Pass
San Antonio, TX 78249

Since 1991, Troy & Banks, Inc. has partnered with over 7,000 clients. We have successfully represented over 500 cities, towns and villages, 1,000 public school districts, 50 colleges, 100 hospitals, 50 library systems and more than 100 state agencies.

An intricate part of Troy & Banks' success is the implementation of a "team approach" of specialists. Our staff has accumulated over 300 years of combined professional, "in the field", auditing and consulting experience. What distinguishes our firm from others is our comprehensive staff which includes former utility and telecommunication company executives, managers and field personnel. Our regulatory consultants worked extensively at the New York State Public Service Commission (PSC) in both the utility and telecommunications divisions.

The Troy & Banks "team" has successfully produced the following work product for our clients:

- * Negotiated over \$25 million in utility and telecommunication refunds
- * Reduced our clients expenses in excess of \$250 million

Our consultants have:

- * Served with various State Public Service Commissions
- * Served as municipal account managers
- * Testified in Public Service Commission rate case proceedings
- * Executed over 1,000 electrical engineer site surveys
- * Represented major industrial consumers with respect to natural gas transportation contracts, cogeneration development, electric and natural gas litigation, hydroelectric power allocations and international trade law enforcement
- * Represented clients in a number of electric rate cases on a variety of avoided cost and rate matters
- * Represented major corporations and associations with respect to telecommunication tariffs, contracts, and FCC regulatory matters

Organizational Chart – (please see attached .pdf document):

Troy & Banks has clearly assembled a first class consulting team with a proven track record of success. Our firm will bring the knowledge, professionalism and expertise of our team to effectively and successfully handle all work required under this project.

The following represent some of the individuals who would be directly involved in the telecom audit process.

THOMAS T. RANALLO, President

- Founder - Troy & Banks, Inc.
- 15 years of management experience in the utility and telecom-auditing fields
- Successfully negotiated over \$50 million in over billing refunds
- Successfully managed multiple site, multi-faceted audits for the following large clients: AMTRAK, New York Stock Exchange, Bausch & Lomb, City of Albany, City of Buffalo, U.S. Postal Service - Northeast Region, M&T Bank, Niagara Frontier Transportation Authority, HSBC Bank, Buffalo and Rochester City School Districts, and Off-Track Betting Corporation - Capital & Western Region
- Has had professional consulting training from the Center for Communications Management Information including courses in the following:
 - 1998 – *“Telecommunication Audit Secrets”* – Covering rules and regulations, options with competing providers and auditing essentials
 - 1999 – *“Advanced Auditing Sessions”* - Covering frame relay technology, FCC’s de-tariffing order, traffic analysis essentials and precision auditing exercises
 - 2002 – *“Advanced Auditing Sessions”* - Covering frame relay technology, FCC’s de-tariffing order, traffic analysis essentials and precision auditing exercises
 - 2002 – *“Frame Relay Service and Billing”* - Covering frame relay technology
- Institute on Public Utility Law
 - 2006 – This continuing educational conference included sessions on Network Reliability and Security, status of Telecom Competition Three, Wind Energy, Fixed-Price Commodity Option, and Utility Land Use Issues

KEITH WIESE, Pre-Audit and Audit Coordinator

- Organize audit data
- Order telecommunication histories and customer service records
- Coordinate the distribution of audit information to the appropriate auditors
- Perform follow-up work for the auditors
- Verify applicable credits and refunds

Telecommunications Team:

GARY L. SHARP, Senior Telecommunications Audit Manager

- Former New York Telephone employee
- 17 years experience managing large scope telecommunication audits
- 27 years of private communications consulting
- Specialized in telecommunications consulting for numerous brokerage firms and financial institutions, including: Kidder Peabody, Shearson Lehman, Bear Sterns, First Boston, A.G. Edwards, and CBOE
- Successfully negotiated over \$20 million in over-billing refunds

ANDREW L. FIORETTI, Senior Technical Analyst

- 21 years experience in telecommunications and IT infrastructure including design, implementation and auditing services for major corporations and institutions nationally and abroad
- Actively worked in the field as a corporate advisor providing valuable recommendations for recovery of overcharges, as well as making useful and seamless recommendations for cost savings measures moving forward
- Extensive in-depth, working knowledge of IT infrastructure and telecommunications for targeting potential savings areas

JOHN J. COYNE, Senior Auditor

- 17 years experience as a telecommunication auditor
- Specializes in billing verification and IT Financial Management
- Handles more complex telephone service and billing complaints
- Worked for various telecommunications companies in marketing/sales and managing of installation and repair work

Additional Support Staff:

The following individuals are responsible for the coordinating of office and support work. Their primary responsibilities in support of the audit process are records attainment and retention, data entry and management, application development and claim generation.

Ms. Paula Gregorio-Hebler
Ms. Courtney McCann
Ms. Molly Myers
Mr. Robert Nusall

At Troy & Banks, our greatest resources are our experienced staff, our specialized Audit Master Software™ for the analysis of invoices, and our extensive national tariff library. As part of our business philosophy or general methods used in doing business, Troy & Banks employs a number of strategies to insure maximum cost recovery as follows:

To maximize cost recovery Troy & Banks is committed to RESEARCH:

Troy & Banks is committed to the research process required for auditing success. In fact, Troy & Banks often initiates independent research efforts for the purpose of applying information to existing and future audits. Members of our administrative team are exclusively dedicated to the process of tariff research. We have ongoing research projects in the areas of sales, GRT, franchise, federal excise, and state excise taxes. We continually research existing PUC hearings and dockets.

To maximize cost recovery Troy & Banks is committed to PERSISTENCE:

Our auditors don't take "no" for an answer. When telecommunication companies deny our claims for over billing, we don't roll over – we fight for what is right.

Example – Amtrak (National Railroad Transportation Company) Audit – Troy & Banks successfully audited federal agencies such as AMTRAK. AMTRAK is almost wholly owned by the U.S. Department of Transportation, operating in 45 states across the U.S. The Office of the Inspector General-Audit contracted with Troy and Banks to complete an audit of over 500 facilities serviced by over 150 utility and telecom providers. Their total telecommunications expenditures exceed \$20 million annually. Our auditors identified an overbilling at Penn Station, New York, NY resulting in a \$1.1 million refund.

To maximize cost recovery Troy & Banks is committed to being CONSERVATIVE AND THOROUGH:

Some consultants submit many claims hoping that 20% are resolved favorably. We prefer to eliminate as much risk as possible, preferring to validate our work prior to submission of claims and change requests. Telecom companies, PUC's and taxing entities are more responsive to auditing firms that approach audits carefully, avoiding submittal of frivolous claims.

In some instances we have on file tariff leaves dating back 20 years for all commercial rate classes. We have developed our library to include old tariff leaves to ensure applicable laws for the entire audit period defined by the state statute of limitations.

IV. References

Name of firm/organization: New York Stock Exchange
Address: 11 Wall Street, New York, NY 10005
Point of Contact: Mr. Edward Roehrig, Managing Dir., Global Real Estate
Telephone: (212) 656-3043
E-mail: eroehrig@nyx.com

Name of firm/organization: New York State Police
Address: Building 22, 1220 Washington Ave., Albany, NY 12226-2252
Point of Contact: Mr. Stephen Vagianelis, Ass't. Dir. Financial Admn.
Telephone: (518) 457-6767 Fax: _____
E-mail: SVaglone@troopers.state.ny.us

Name of firm/organization: M & T Bank
(over 400 branches nationwide)
Address: 428 Evans Street - Williamsville, NY 14221
Point of Contact: Mr. Paul Collins
Telephone: (716) 633-2454 Fax: (716) 633-2458
E-mail: pcollins@mandtbank.com

Name of firm/organization: New Era Cap Co., Inc.
Address: 8061 Erie Road, Derby, NY 14047
Point of Contact: Mr. James Hycner
Telephone: (716) 549-0445 x1157
E-mail: Jim.Hycner@neweracap.com

Name of firm/organization: Town of Cheektowaga, NY
Address: 3301 Broadway Street, Cheektowaga, NY 14225
Point of Contact: Mr. Brian Krause, Director of Finance
Telephone: (716) 686-3465
E-mail: bkrause@tocny.org

Name of firm/organization: Onondaga-Cortland-Madison BOCES
(324 component school districts)
Address: 6820 Thompson Rd., PO Box 4754, Syracuse, NY 13221
Point of Contact: Ms. Deborah Ayers, Assistant Superintendent for Admin.
Telephone: (315) 433-2414 Fax: (315) 437-4816
E-mail: dayers@ocmboces.org

Name of firm/organization: Calspan, Corp.
Address: 4455 Genesee Street, Buffalo, NY 14225
Point of Contact: Mr. Peter Sauer, Chief Financial Officer
Telephone: (716) 631-6850 Fax: (716) 631-6852
E-mail: peter.sauer@calspan.com

V. Cost Proposal

This Agreement is entered into as of _____ between Troy & Banks, Inc. and
Port Authority of NY & NJ - Procurement Department with an address at
7th Floor, One Madison Avenue, New York, NY 10010

In consideration of the mutual agreements hereafter set forth, Troy & Banks and the Port Authority of NY & NJ - Procurement Department agree as follows:

1. The Client engages TB to conduct an audit or survey of Client's telecommunications ("Telecom") service accounts for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. TB agrees to conduct such audit.
2. Overcharges Resulting in Refunds, Credits, or Rebates – For any refunds, credits or rebates obtained by TB for prior overcharges, billing errors or costs in excess of those permitted by applicable contracts, tariffs, statutes, rules or regulations, TB shall be paid a one-time 15% contingency fee for refunds and credits identified/facilitated by TB and received by the Port Authority, to be distributed to TB upon receipt by the Port Authority.
3. Cost Reductions or Savings – TB shall be paid a 15% contingency fee for 18 months of savings for each recommendation identified and implemented, to be distributed to TB monthly upon receipt of said savings by the Port Authority.
4. TB has made and makes no guarantee or assurance of any credit or refund amount or cost saving results.
5. **If Client does not receive refunds, credits, or reductions in future billings, there will be no fee for TB services,**
6. This Agreement sets forth the entire understanding and agreement between the parties.

Port Authority of NY & NJ -
Procurement Department

Troy & Banks, Inc.

By: _____
Name: _____
Title: _____
Telephone: _____
Telefax: _____

By: _____
Thomas T. Ranallo, President

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted, "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Manager of the Facility for the time being or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority's Manager, Purchasing Services Division. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

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

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;

- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically

acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

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

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

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

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

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

4. Personal Non-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 Contractor with any liability, or held personally liable to the Contractor 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.

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of the Port Authority

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

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

7. Rights and Remedies of the Contractor

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

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be

made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

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

9. Harmony

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

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

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with

or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

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

12. Provisions of Law Deemed Inserted

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

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation,

by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.
- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port

Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

- i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

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

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and

maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter

requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements is not to be construed as a submission by the Port Authority to the application to itself of such requirements.

- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.
- e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

- 1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
 - 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
 - 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
 - 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
 - 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
 - 6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
 - g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.
 - h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment

of any of its personnel who may be injured.

19. Assignments and Subcontracting

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, the Port Authority, third persons (including Contractor's employees, employees, officers, and agents of the Port Authority), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining 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 provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

21. Approval of Methods

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Facility Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to the Port Authority and a receipt will be issued therefor.

26. Property of the Contractor

- a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

28. Invalid Clauses

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

29. Approval of Materials, Supplies and Equipment

Only Port Authority approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by the Port Authority. Any alternate

product so approved by the Port Authority may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as "Intellectual Property Rights", in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor's or Port Authority's use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port 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.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

32. Designated Secure Areas

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time ("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 designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive 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 Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the 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 Contractor shall request a description from the 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 Manager during the term of the Contract.

33. 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 construction sites and facilities (including rental spaces) to any person that declines to abide by Port 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 Contractor, its staff and subcontractors and their staffs 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:

- Contractor/ Subcontractor identity checks and background screening

The Port 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, or the like.

The Contractor may be required to have its staff, and any subcontractor's staff, material-men, visitors or others over whom the Contractor/subcontractor 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 Contractor and subcontractors may also be required to use an organization designated by the Authority to perform the background checks.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port 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 can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) 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 will 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 Contractor's and the subcontractor's staff, the Authority will supply such identification at no cost to the Contractor or its subcontractors. 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 Contractor or subcontractor to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor shall be billed for the cost of the replacement identification credential. Contractor's and subcontractor's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

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

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor 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 Contract, 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 Contract may require access to Port 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 if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to 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 Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

- (1) require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to CI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.
- (3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;
- (4) specific guidelines and requirements for the handling of CI to ensure that the storage and protection of CI;

- (5) restrictions on the transfer, shipping, and mailing of CI information;
- (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing CI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to CI, from viewing such information;
- (7) require that CI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
- (8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority awarded contract.
- (9) prohibit the publication, exchange or dissemination of CI developed from the project or contained in reports, except between Contractors and subcontractors, without prior approval of the Port Authority;
- (10) require that CI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- **Audits for Compliance with Security Requirements**

The Port Authority may conduct random or scheduled examinations of business practices under this section entitled "NOTIFICATION OF SECURITY REQUIREMENTS" and the Handbook in order to assess the extent of compliance with security requirements, 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.

34. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs

Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

38. Confidential Information/Non-Publication

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

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, 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 Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract."

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

39. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following holidays will be observed at the Site:

- | | |
|----------------------------|------------------------|
| New Year's Day | Labor Day |
| Martin Luther King Jr. Day | Columbus Day |
| Presidents Day | Veterans Day |
| Memorial Day | Thanksgiving Day |
| Independence Day | Day After Thanksgiving |
| Christmas Day | |

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

42. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

The Port Authority by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which the Port Authority may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

44. Contractor's Vehicles – Parking - Licenses

At the discretion of the Manager, the Port Authority may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by the Port Authority for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

45. Manager's Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

46. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding \$1,000,000, for:

- (a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
- (b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

47. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained on the Port Authority Website at <http://www.panynj.gov/business-opportunities/supplier-diversity.html> or by contacting the Port Authority's Office of Business and Job Opportunity at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business and Job Opportunity, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business and Job Opportunity, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business and Job Opportunity. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or

service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract 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 Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, 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.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or 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 individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the bidder 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 Contract.
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract; or (ii) the preparation of specifications or request for submissions in connection with this Contract.

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement that sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (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 Contract, 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 Contract. As a result of such disclosure, The Port 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 Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of

bids on this Contract 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 Bidder 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 Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications 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 Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract 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 Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

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

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state 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.

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port 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 Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money,

goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

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

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

5. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor 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 Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, 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 Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor 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 Contractor's part. The Contractor 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 contract which results, directly or indirectly, from the Services provided by the Contractor hereunder.

6. Definitions

As used in this section, 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 Bidder by whatever titles known.

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;
Bidder - shall mean Bidder;
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean executing this Contract.



April 12, 2010

VIA DHL AND EMAIL: tranallo@troybanks.com

Thomas T. Ranallo
President
Troy & Banks, Inc.
2216 Kensington Avenue
Kensington at Saratoga
Buffalo, NY 14226

Re: Utility and Automotive Fuel Billing Audit Services for the Port Authority of New York and New Jersey Contract # RCOOAUDIT1 (the "Letter of Proposal Acceptance")

Dear Mr. Ranallo:

The Port Authority of New York and New Jersey (the "Port Authority") hereby awards a contract to Troy & Banks, Inc. ("Troy & Banks" or the "Contractor") for the performance of the attached described utility and automotive fuel billing audit services, subject to the provisions of the Contract, as defined below.

The term of the Contract shall be in effect for a two (2) year base period to commence on or about April 15, 2010 and shall expire on or about April 14, 2012, unless sooner terminated or extended pursuant to the provisions hereof. There are also two one-year extension options to be exercised at the sole discretion of the Port Authority. If the Port Authority shall elect to exercise the option(s) to extend this Contract, then, at least thirty (30) days prior to the expiration date, the Port Authority shall send Troy & Banks a notice that it is extending the term of this Contract for the applicable option period, upon the same terms and conditions as the base term of the Contract. The same procedure shall apply with respect to extending the term of this Contract for succeeding option periods.

The "Contract" between the parties shall consist of the following documents as attached items stated in order of precedence in case of direct conflict or inconsistency between or among said documents:

1. This Letter of Proposal Acceptance;
2. The Non Disclosure Agreement;
3. The attached Port Authority Standard Contract Terms and Conditions;
4. Troy & Banks Proposal entitled: "The Port Authority of New York and New Jersey Agreement for Utility and Automotive Fuel Billing Audit Services dated March 15, 2010, including all attachments (the "Troy & Banks Proposal").

Rockland County's government contract with Troy & Banks for utility audit services (Federal I. D. # 161464075) dated September 7, 2007, which is attached hereto as Exhibit A served an important role in the procurement process for this Contract.

Payment: The parties hereto agree to the terms of the Cost Proposal set forth in Part V of the Troy & Banks Proposal, made a part hereof, which states that the Contractor shall not receive any payment of any



THE PORT AUTHORITY OF NY & NJ

kind in connection with this Contract, other than as specified therein; all out of pocket and other expenses incurred by Troy & Banks in connection with the performance of the services under this Contract shall be borne solely by Troy & Banks.

Scope of Services: The scope of services to be performed by Troy & Banks in connection with this Contract, is set forth in Part II of the Troy & Banks Proposal.

Upon expiration or earlier termination of this Contract, Troy & Banks shall no longer have any permission to perform any services covered under the scope of work of this Contract. If after the expiration or earlier termination of this Contract Troy & Banks receives any information or documents relating to Port Authority accounts from any utility provider, automotive fuel provider, or any other vendor, whether by mistake or otherwise, Troy & Banks, must promptly notify the Port Authority.

This Contract, and any claim, dispute or controversy arising out of, under or related to this Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of law principles.

Insurance Procured by the Contractor

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

Commercial General Liability Insurance - \$ 5 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - \$ 5 million combined single limit per accident for bodily injury and property damage liability, \$ 25 million each accident on airside.

In addition, the liability policy (ies) shall name "The Port Authority of New York and New Jersey and its wholly owned entities, their commissioners, directors, officers, partners, employees and agents as additional insured", including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Moreover, the Commercial General Liability Policy shall not contain any provisions for exclusions from liability other than provisions for exclusion 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 and severability of interests clause for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. Furthermore, the Contractor's insurance shall be primary insurance as respects to the above additional insureds. Any insurance or self insurance maintained by the above additional insureds shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

The certificate of insurance and liability policy (ies) must contain the following endorsement for the above liability coverages:



THE PORT AUTHORITY OF NY & NJ

"The insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."

The Contractor shall also take out, maintain, and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than \$1 million each accident.

Each policy above shall contain a provision that the policy may not be canceled, terminated, or modified without thirty (30) days' prior written notice to the Port Authority of New York and New Jersey, Att: Nancy Johnson, at the location where the work will take place and to the General Manager, Risk Management.

The Port 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 Port Authority may consider such cost as an out-of-pocket expense for the Contractor.

Within five (5) days after the award of this agreement or Contract and prior to the start of work, the Contractor must submit an original certificate of insurance, to the Port Authority of New York and New Jersey, Contract Administrator Nancy Johnson, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), stating the agreement/contract number prior to the start of work. The General Manager, Risk Management must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

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 Manager shall so direct, the Contractor shall suspend performance of the Contract at the premises. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended (whether or not because of omission of the 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 Contractor to the Port Authority.

Renewal certificates of insurance or policies shall be delivered to the Contractor Administrator, Nancy Johnson Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy.

The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract.
CITS#3265N

The above referenced purchase order number will be used for reference on all invoices submitted to the Port Authority.



THE PORT AUTHORITY OF NY & NJ

Questions in regard to the Contract may be directed to the project Managers: Nancy Johnson at 212-435-8045 (njohnson@panynj.gov) or Christine Weydig (cweydidg@panynj.gov) at 212-435-5460. Any notices to the Port Authority by mail should be sent to the following addresses:

Nancy Johnson, Manager
Maintenance Management Improvement Program
Office of the Chief Operating Officer
The Port Authority of New York and New Jersey
233 Park Avenue South, 4th floor
New York, NY 10003
(212)-435-8045

Or

Christine Weydig, Deputy Director
Energy Management
Office of Environmental and Energy Programs
The Port Authority of New York and New Jersey
225 Park Avenue South, 11th floor
New York, NY 10003
(212) 435-5460

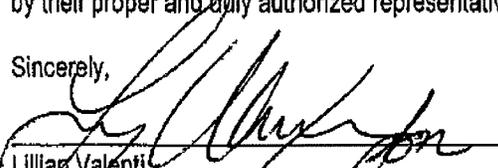
Any other questions related to procurement of this Contract may be directed to Nadine Aziz of the Port Authority's Procurement Department at 212-435-3934.

Prior to the commencement of work, please submit to the Port Authority your insurance certificates as required above. You shall submit an original Certificate of Insurance to Risk Management Department at 225 Park Avenue South, New York, NY 10010.

If you are in agreement with the above, please indicate such agreement by signing at the lower left and returning both original copies of this document to the attention of Nadine Aziz at One Madison Avenue, 7th Floor, NY, NY 10010. When signed by the Port Authority you will receive an executed original copy of the document.

The parties hereto acknowledge that that they have caused this Letter of Proposal Acceptance to be signed by their proper and duly authorized representatives.

Sincerely,



Lillian Valenti
Director, Procurement Department
Port Authority of New York and New Jersey

Date 4/15/10

APPROVED:	
FORM	TERMS
	

AGREED:
Troy & Banks, Inc. 
By: _____
Title: Pres.
Date: 4-15-10

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
BETWEEN**

(Troy & Banks, Inc.)

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 _____, 20____, 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 Troy & Banks, Inc. having an office and place of business at 2216 Kensington Ave., Buffalo, NY 14226(address) ("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 Utility and Automotive Fuel Billing Audit Services - _____ (insert description of project/work) (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:

"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; 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.

"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 foregoing, 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:

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.

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.

"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) Critical Infrastructure Information, (iii) Sensitive Security Information, and (iv) Limited Access Safety and Security Information.

"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.

"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 or by the terms of this Agreement.

"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 "PCI," as provided for in the referenced rules and regulations and any amendments thereto.

"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.

"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.

"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.

"Related Party" and **"Related Parties"** means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient's outside consultants, 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.

"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) and any amendments thereto.

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

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, and applicable legal requirements. Confidential Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

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.

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. To assist Recipient in its determination of the adequacy of its Confidentiality Control Procedures, Recipient has been provided with a copy of the Port Authority's Information Security Handbook.

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.

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.

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.

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 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 other form, such Confidential Information shall be completely removed so as to make such Confidential Information 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 a copy of Confidential Information, 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 0.

If to the Port _____
Authority: _____

The Port Authority of New York and New Jersey
225 Park Avenue South, ___th Floor
New York, NY 10003

with a copy to: The Port Authority of New York and New Jersey
225 Park Avenue South - 15th Floor
New York, NY 10003
Attn: General Counsel

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.

[No further text on this page; signatures appear on next page]

EXHIBIT A

ACKNOWLEDGMENT BY RELATED PARTY ENTITY

The undersigned, _____ (name of authorized signatory), is the _____ (Title) of _____ (name of entity), a _____ (type of entity and jurisdiction of formation) ("Related Party"), located at _____ (address of entity), 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 _____ (describe scope of work of Related Party) in _____ connection with _____ (describe Project) 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"). 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: Thomas T. Rana
Title: Pres.
Date: 7/15/10

ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL

I, _____ (name of employee) ("**Related Party**"), am employed as a(n) _____ (job title) by _____ (name of employer). 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**".) I understand that because of my employer's relationship with _____ (name of Recipient, or the Port Authority if Related Party Individual is an employee of Recipient), 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: _____

Title: _____

Date: _____

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contractor- shall mean Troy & Banks, Inc.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and specifications for the Contractor's provision of utility and automotive fuel billing audit services, and shall include, but not be limited to: the Letter of Proposal Acceptance, the Non-Disclosure Agreement, this Standard Contract Terms and Conditions, Contractor's Proposal entitled: "The Port Authority of New York and New Jersey Agreement for Utility and Automotive Fuel Billing Audit Services", including the Cost Proposal, the Scope of Services, and all attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Facility Manager or Manager of the Facility- shall mean the Port Authority manager of the specific Facility the utility and automotive billing audit service work is being performed upon.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean the Director of the Office of Environmental & Energy Programs or the Chief Operating Officer, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean Nancy Johnson, Manager of the Maintenance Management Improvement Program, Office of the Chief Operating Officer, or her successor in duties, or Christine Weydig, Deputy Director, Energy Management, Office of Environmental and Energy Programs, or her successor in duties for the purpose of this Contract, each acting personally or through her duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority's Manager, Purchasing Services Division. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

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

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith, which is the subject of the utility and automotive billing audit services work, as described in this Contract.

Facility- shall mean the facilities for which the Port Authority gives Contractor permission to perform utility and fuel automotive fuel billing audits on, which shall be updated and amended by the Port Authority from time to time. The definition of Facility may include, but shall not be limited to:

- Port Authority of NY & NJ Offices located at 233 Park Avenue South, NY
- Port Authority of NY & NJ Offices located at 225 Park Avenue South, NY
- Port Authority of NY & NJ Offices located at One Madison Avenue, NY
- Port Authority of NY & NJ Offices located at 115 Broadway
- Port Authority of NY & NJ Offices located at 116 Nassau Street
- Port Authority of NY & NJ Offices located at One, Two, and Three Gateway, Newark, NJ
- Bathgate Industrial Park
- Bayonne Bridge
- Brooklyn PA Marine Terminal
- Essex County Resource Recovery Facility
- Goethals Bridge
- George Washington Bridge & Bus Station
- Hoboken South Water Front Development Facility
- Holland Tunnel
- Howland Hook Marine Terminal
- John F. Kennedy International Airport
- LaGuardia Airport
- Lincoln Tunnel
- Newark Legal Center
- Newark Liberty International Airport
- Outerbridge Crossing
- PATH
- PA Bus Terminal PA Industrial Park at Elizabeth
- Queens West Waterfront Development Facility
- Stewart Airport
- The Teleport
- World Trade Center
- Elizabeth Port Authority Marine Terminal
- PA Auto Marine Terminal, NJ
- Port Newark

Teterboro Airport

Port Authority Technical Center, Jersey City, NJ

Any other Port Authority facility which the Port Authority gives the Contractor permission to conduct utility and automotive fuel billing audits for.

Greenville Yard-PA Marine Terminal

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent

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

deemed to be agents, servants or employees of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

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

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

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

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

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

4. Personal Non-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 Contractor with any liability, or held personally liable to the Contractor 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.

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of the Port Authority

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

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

7. Rights and Remedies of the Contractor

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

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or

managing or general agent if the Contractor be a corporation.

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

9. Harmony

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

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

10. Claims of Third Persons

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

11. No Third Party Rights

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

12. Provisions of Law Deemed Inserted

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

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed

to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.
- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

- i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

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

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily

forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet set forth on the cover page of Contractor's Proposal entitled: "The Port Authority of New York and New Jersey Agreement for Utility and Automotive Fuel Billing Audit Services" as its address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at its address set forth in the Letter of Proposal Acceptance.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter

requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements is not to be construed as a submission by the Port Authority to the application to itself of such requirements.

- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.
- e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

- 1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
 - 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
 - 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
 - 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
 - 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
 - 6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
 - g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.
 - h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment

of any of its personnel who may be injured.

19. Assignments and Subcontracting

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, of the Port Authority, of third persons, or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or

alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining 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 provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

21. Approval of Methods

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility, the Manager, and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and

any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Facility Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to the Port Authority and a receipt will be issued therefor.

26. Property of the Contractor

- a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

28. Invalid Clauses

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

29. Approval of Materials, Supplies and Equipment

Only Port Authority approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by the Port Authority. Any alternate product so approved by the Port Authority may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as "Intellectual Property Rights", in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor's or Port Authority's use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port 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.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

32. High Security Areas

- a. Services under the Contract may be required in high security areas, as the same may be designated by the Manager from time to time. The Port Authority shall require the observance of certain security procedures with respect to the high security areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein.
- b. Twenty-four hours prior to the proposed performance of any work in a high security area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to high security areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the high security areas which will be in effect on the commencement date. The description of high security areas may be changed from time to time and at any time by the Manager during the term of the Contract.

33. Notification of Security Requirements

The Port Authority operates facilities and systems, at which terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the performance of the Contract work, including on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, as determined by the Authority. Background checks shall be performed at the discretion of the Port Authority. The Contractor shall and shall instruct its subcontractors to cooperate with Authority staff in adopting security requirements. These security requirements may include but may not be limited to the following:

i. Identity Checks and Background Screening

Contractor/subcontractor identity checks and background screening shall include but shall not be limited to: (1) inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; (2) screening of federal, state, and/or local criminal justice agency information databases and files; (3) screening of any terrorist identification files; (4) multi-year check of personal, employment and /or credit history; (5) access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Contractor may be required to have its staff, and any subcontractor's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. If the Authority directs the Contractor to have identity checks and background screening performed by a particular firm designated by the Authority, the Authority will compensate the Contractor for the cost of such screening based on actual costs incurred as approved by the Port Authority Manager.

ii. Issuance of Photo Identification cards:

If the Authority requires facility-specific identification cards for the Contractor's and subcontractors' staff, the Authority will supply such identification cards at no cost to the Contractor.

iii. Access control, inspection, and monitoring by security guards:

The Authority will provide for facility access control, inspection and monitoring by Authority retained security guards. Should the Authority require the Contractor to hire security guards for the purpose of facility access control and inspection in lieu of or in addition to the Authority retained facility security guards, the Contractor will be reimbursed for the cost of such security guards based on actual costs reasonably incurred, as approved by the Port Authority Manager, and provided that the Contractor

submitted an estimate of such costs to the Port Authority Manager for prior approval before hiring such security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work at the facility at its own expense.

The Authority may impose, increase, and/or upgrade security requirements for the Contractor, subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

- iv. The Contractor and subcontractors, when appropriate, shall sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February 9, 2009)*.

34. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs

Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

38. Confidential Information/Non-Publication

- a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority

and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Contractor's Services under this Contract.

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, 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 Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract."

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

39. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following holidays will be observed at the Site:

New Year's Day

Labor Day

Martin Luther King Jr. Day	Columbus Day
Presidents Day	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Day After Thanksgiving
Christmas Day	

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

42. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

The Port Authority by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which the Port Authority may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

44. Contractor's Vehicles – Parking - Licenses

At the discretion of the Manager, the Port Authority may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by the Port Authority for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

45. Manager's Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the specifications. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder, including disputes relating to the payment of contingency fee(s), if any, to the Contractor. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

46. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding \$1,000,000, for:

- (a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
- (b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

47. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.

- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained by contacting the Port Authority's Office of Business and Job Opportunity at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business and Job Opportunity, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business and Job Opportunity, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business and Job Opportunity. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at http://www.panyj.gov/DoingBusinessWith/contractors/html/other_info.html. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract 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 Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, 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.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or 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 individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and

- f. the bidder 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 Contract.
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract; or (ii) the preparation of specifications or request for submissions in connection with this Contract.

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement that sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (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 Contract, 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 Contract. As a result of such disclosure, The Port 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 Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract 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 Bidder 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 Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications 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 Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a

false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract 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 Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

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

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state 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.

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port 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 Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

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

The Contractor 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 addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11,

1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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

5. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor 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 Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, 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 Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor 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 Contractor's part. The Contractor 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 contract which results, directly or indirectly, from the Services provided by the Contractor hereunder.

6. Definitions

As used in this section, 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 Bidder by whatever titles known.

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder;

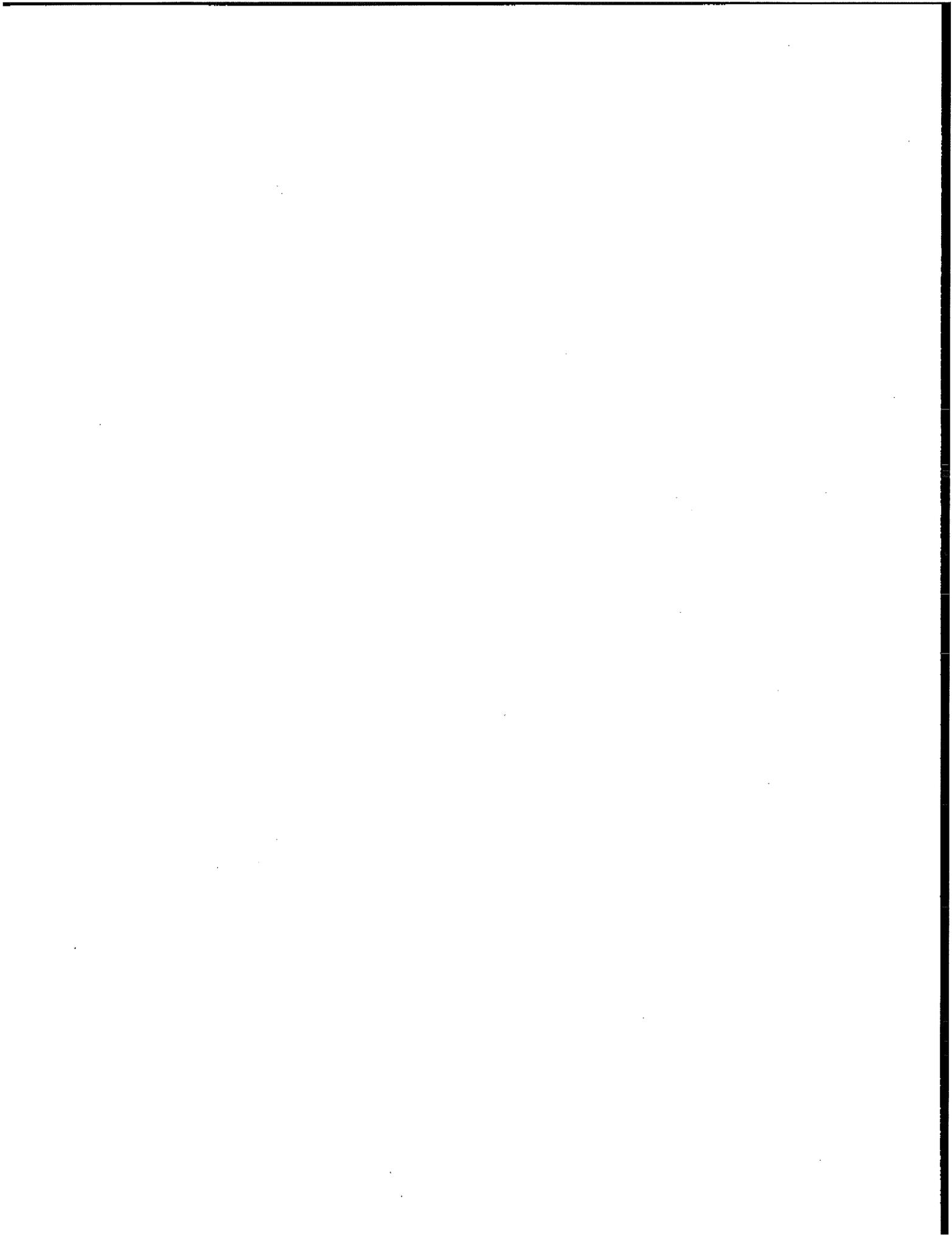
Bidding - shall mean executing this Contract.

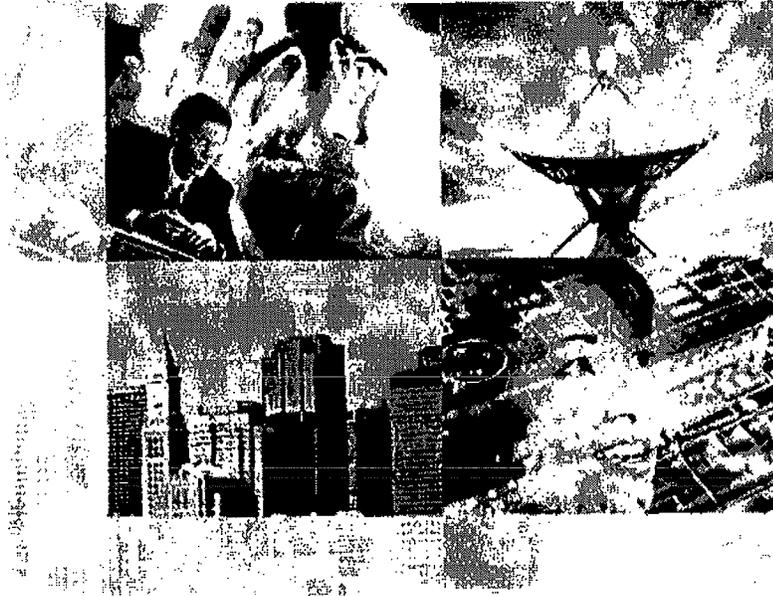
In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.





SMART SOLUTIONSSM

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

**Agreement for Utility and Automotive Fuel
Billing Audit Services**

Authorized Binding Signature: _____

Handwritten signature of Thomas T. Ranallo.

Thomas T. Ranallo, President
Troy & Banks, Inc.
2216 Kensington Avenue
Buffalo, New York 14226
(716) 839-4402





TROY & BANKS



March 15, 2010

Ms. Nadine Aziz
Principal Buyer
Technology & Operational
Procurement Services Division
The Port Authority of NY & NJ
7th Floor
One Madison Avenue
New York, NY 10010

RE: Utility and Automotive Fuel Billing Audit Services

Dear Ms. Aziz:

It is with great pleasure that Troy & Banks, Inc. is prepared to provide the utility and automotive fuel billing audit services as required by The Port Authority of New York and New Jersey ("PANYNJ" or "the Port Authority"). Such audit services will include electric, water, sewer, heating fuels (e.g., natural gas, propane, oil, steam), cogeneration facilities, and automotive fuels (e.g., diesel, gasoline, and alternative fuels).

Troy & Banks, Inc. ("Troy & Banks" or "T&B") is a privately held, independent energy and telecommunications consulting company with corporate offices located in Buffalo, NY. We have extensive experience working with New York and New Jersey State municipalities in the audit and analysis of utility and communications systems.

If PANYNJ so desires, an audit by Troy & Banks can involve very little involvement on the part of the PANYNJ after we have obtained the initial paperwork. To initiate a review, the PANYNJ will simply provide us with a comprehensive list of account numbers or one copy of each bill for every utility and automotive fuel account that will be subject to the audit. Troy & Banks is capable of extracting the necessary billing detail electronically from utility providers, with PANYNJ's prior consent. Our auditors will review the past six years of billing history pursuant to New York and New Jersey State Statute of Limitations Laws.

Our auditors will implement our sophisticated and proven audit techniques on your historical billing in search of recovery and savings opportunities. Once errors are found, we will implement the necessary changes and recover overcharge refunds due. We will monitor the accounts to verify that all changes are executed and refunds or credits are issued to the PANYNJ. Troy & Banks is only compensated from the amount of any refund, credit, or reduction in the costs of current service (as set forth in the Cost Proposal attached hereto as Part V); we do not add to your overhead.

We are confident that the PANYNJ will conclude that our firm is the most experienced and qualified firm to perform the utility audit. Troy & Banks understands and agrees with the scope of services and accepts all other requirements, terms, and conditions set by the PANYNJ, including but not limited to those described in the Standard Contract Terms and Conditions (attached hereto).

Port Authority of New York & New Jersey
Procurement Services Division
Utility Audit

I appreciate the opportunity to submit the enclosed proposal for your review and would welcome showing you and your staff why so many other businesses have hired Troy & Banks, Inc. I can be reached at 1-800-499-8599. Thank you.

Sincerely,

Thomas T. Ranallo, President

TTR/mbm

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I. Executive Summary

Founded in 1991, Troy & Banks, Inc. is a privately held, independent energy and telecommunications consulting company with corporate offices located in Buffalo, NY and incorporated in the State of New York. We have extensive experience working with municipalities and businesses in the audit and analysis of utility and communications account relationships. Troy & Banks has both the interest and ability to provide all of the utilities and automotive fuel billing audit services as required by the Port Authority of New York and New Jersey Procurement Department.

Our principle business is utility and telecommunication auditing and consulting. Our mission is to apply our vast technical and analytical experience to help our clients:

1. reduce the costs of utility, telecommunication and other "auditable" external charges,
2. recover payments made by our clients in error,
3. sort through the variety of service packages and options so they can make good choices among various providers,
4. research tariff options, billing histories, service classifications, rate changes, service option modifications, and contract changes, and
5. keep their costs as low as possible without sacrificing the services they require to achieve their own objectives.

If the Port Authority so desires, an audit by Troy & Banks can involve very little involvement on the part of The Port Authority of New York and New Jersey ("PANYNJ" or the "Port Authority") Procurement Department after we have obtained the initial paperwork. To initiate a review, PANYNJ will simply provide us with a list of utility and fuel account numbers or one copy of each bill for every utility account that will be subject to the audit. Troy & Banks will then extract the necessary billing detail electronically from utility providers, with PANYNJ's prior consent.

Our auditors will implement our sophisticated and proven audit techniques on your account relationships for the indicated location and time period, in search of recovery and savings opportunities. Once errors are found, we will present them to the Port Authority for approval before approaching the utility and automotive fuel providers to implement the necessary changes and prosecuting claims for recovery of overcharges. We will monitor the accounts to verify that all changes are executed and refunds or credits are issued to PANYNJ. Troy & Banks is compensated from the amount of any refund, credit, or reduction in the costs of current service (as set forth in the Cost Proposal attached hereto as Part V); we do not add to your overhead.

The primary contact at Troy & Banks is:

Thomas T. Ranallo, President
2216 Kensington Avenue
Buffalo, NY 14226
(716) 839-4402 / (800) 499-8599
tranallo@troybanks.com

We are confident that The Port Authority of New York and New Jersey Procurement Department will conclude that our firm is the most experienced and qualified firm to perform this utility and automotive fuel billing audit service. Troy & Banks understands and agrees with the scope of services and accepts all other requirements, terms, and conditions set by the PANYNJ.

II. Scope of Services

The following is an outline of Troy & Banks' audit process and procedure. We will be able to start the audit upon notification of award by the Port Authority.

Troy & Banks shall contact the Port Authority "Manager(s)" in connection with provision of utility and fuel automotive billing audit services described herein (including but not limited to requests for approvals, submittal of reports, and questions).

The Port Authority "Manager(s)" shall mean Nancy Johnson, Manager of the Maintenance Management Improvement Program, Office of the Chief Operating Officer, The Port Authority of New York and New Jersey, 233 Park Avenue South, 4th Floor, New York, NY 10003, (212) 435-8045, njohnson@panynj.gov or her successor in duties, or Christine Weydig, Deputy Director, Energy Management, Office of Environmental and Energy Programs, 225 Park Avenue South, 11th Floor, New York, NY 10003, (212) 435-5460, cweydig@panynj.gov or her successor in duties, each acting personally or through her duly authorized representative.

The technical approach to our audits is tailored to the needs of our clients. Typically we follow a three-phase process. There is an organizational phase (phase 1), an audit phase (phase 2), and a claims resolution phase (phase 3). These phases are described as follows:

PHASE I — AUDIT SET UP (Approx. 45 days)

- Compile and/or confirm client information as necessary (including invoice copies, account lists, facilities list, contact information, and contracts)
 - After notification of award, a list of PANYNJ facilities to be covered by the audit will be given by the PANYNJ to Troy & Banks, which may be periodically updated or amended by PANYNJ from time to time.
 - After notification of award, a utility and automotive fuel account list, including utility provider or other vendor names, to be covered by the audit will be given by the PANYNJ to Troy & Banks, which may be periodically updated or amended by PANYNJ from time to time.
 - After notification of award, and upon request by Troy & Banks, certain existing contracts executed with the utility or automotive fuel vendors for PANYNJ accounts which are the subject of the audit will be provided by the Port Authority in its discretion.
- Use available means to determine if there are additional Port Authority accounts with respective utilities for which the Port Authority did not provide account information

- Order transcripts from investor-owned, municipal and cooperative utility providers upon approval of the Port Authority
- Organize data for audit phase

PHASE II — DETAILED AUDIT/Audit Master Software™ (Approx. 2-8 weeks)

- Conduct detailed review of all monthly charges including rates, demand reads, taxes, riders, adjustments and special contracts
- Validate monthly charges against applicable rate cards, tariffs, and rate spreadsheets
- Identify billing errors and cost saving recommendations by [facility], utility type or automotive fuel type, account number and meter number where applicable
- Report billing errors and cost savings recommendations to the Port Authority for approval before pursuing refunds and/or credits with utility and automotive fuel providers

PHASE III — REFUND CLAIM NEGOTIATIONS
& COST SAVINGS IMPLEMENTATIONS (Approx. 4-8 weeks)

- Upon the approval of the Port Authority, report billing errors to utility and automotive fuel vendors, requesting refunds. The Port Authority may decide, in its discretion, that it wants to contact certain utility and automotive fuel vendors directly to request for refunds.
 - All errors will be tracked by facility, account number, and where applicable, by meter number
 - Upon the approval of the Port Authority, negotiate appropriate credits or refunds. The Port Authority may decide, in its discretion, that it wants to negotiate certain credits or refunds directly with certain utility and automotive fuel vendors.
 - All credits or refunds shall be identified by facility, account number, and where applicable, by meter number
 - Prepare cost saving proposals for Port Authority approval. All cost saving proposal shall be by facility, utility type or automotive fuel type, account number, and meter, where applicable. All cost saving proposals shall be discreetly identified
 - All cost saving proposals shall include specific implementation recommendations
 - Troy & Banks and the Port Authority shall agree upon the method of measuring actual cost savings for each recommendation
- Provide Final Management Summary Report (labeled as such) documenting refund and cost saving recommendations by facility, utility type or automotive fuel type and account number, and where applicable, by meter number

Troy & Banks will, subject to the approval of the Port Authority:

1. Obtain from PANYNJ account numbers from all utility and automotive fuel vendors which are the subject of the audit. If online (ie. electronic) information is not available, then obtain one (1) monthly copy of all invoices.
2. Obtain from PANYNJ contracts executed with the utility vendors for PANYNJ accounts which are the subject of the audit.
3. Collect Customer Service Records (CSR's) and historical transcripts from the designated utility and automotive fuel vendors.
4. Organize all invoice and data into our specialized Audit Master Software™ database.
5. Conduct a physical inventory (if necessary) of the utility and automotive fuel services which are the subject to the audit, at PANYNJ locations subject to the approval of the Port Authority, and on the terms and conditions set forth by the Port Authority. If Troy & Banks determines that such physical inventory is necessary, it shall provide advance notice to the Port Authority Manager(s) (as identified in the beginning of this Part II) who shall coordinate the possibility of such visit with the proper PANYNJ personnel. Troy & Banks shall be subject to all Port Authority security requirements for access to such specific Port Authority facility, and may need to obtain certain permits, as determined by the Port Authority, for entry into confined spaces or otherwise.
6. T & B will perform a detailed audit of PANYNJ's utility and automotive fuel accounts. Our analysts will review all monthly charges rendered by utility and automotive fuel providers for potential savings or billing discrepancies. Our specialized Audit Master Software™ is designed to check for billing errors in present tariff rates, discounts, contracts, or vendors. If over-billing has occurred, we will prepare a claim letter documenting our findings by facility, account number, and meter number, where applicable and seek the approval of the Port Authority before proceeding to discuss any aspects of the claim with the utility or automotive fuel providers.
7. Upon the approval of the Port Authority, report any errors we find to the appropriate vendors by facility, account number, and meter number, where applicable, with supporting evidence and requests for reimbursement. These reports will be first given to the Port Authority Manager(s) as identified herein for approval.8. Upon the approval of the Port Authority, negotiate any refund claims (including applicable interest) directly with the vendors as provided by law and regulation and consistent with the time periods established by applicable statutes of limitation. Confirm that all erroneous charges are removed from future billings. The service providers will prepare a statement of the amounts of each credit and an estimated date of receipt of the credit or refund. Any gross adjustments made by the service providers to the amounts estimated for credit or refund by Troy & Banks will be promptly reported to the Port Authority by Troy & Banks by facility, account number, and meter.
8. Report any future reduction recommendations to the appropriate PANYNJ Manager(s) by facility, utility type or automotive fuel type, account number, and meter number, where applicable for acceptance or rejection.

9. Report to utility vendors any future savings recommendations accepted and approved for implementation by PANYNJ by facility, account number, and meter number, where applicable.
10. Produce an information database for accounts over \$1,000.00 per month including consumption, costs, and other data.
11. Provide quarterly reports of progress and remit related utility data for the Port Authority including a facility by facility breakdown that includes account numbers and meter numbers, where applicable.
12. T&B will draft a final report (labeled as such) at the conclusion of our audit summarizing the total findings and recommendations (approved by the Port Authority) for the agency including a facility by facility breakdown. Troy & Banks will attach all detailed findings by account number and meter, as applicable.

In order for Troy & Banks to perform our audit, we will need the following items from the PANYNJ:

1. Copy of a summary account listing by vendor including account number and address, preferably in an electronic format – OR, if necessary - one (1) bill from each of the PANYNJ's accounts including all utility and automotive fuel accounts.
 - the summary account listing (which shall be provide after contract award) may require update from time to time by either the Port Authority or Troy & Banks (upon approval by the Port Authority)
2. An executed Client Agreement, and an executed Letter of Authorization form attached hereto for each utility and automotive fuel vendor applicable to the audit.
 - For purposes of this proposal, the executed "Client Agreement" shall mean the "Contract" as defined in the Port Authority's letter of proposal acceptance, which is comprised of the Port Authority letter of proposal acceptance, the non-disclosure agreement, the Standard Contract Terms and Conditions of the Port Authority, and this Troy & Banks proposal with all attachments.
 - A Sample Letter of Authorization form. Upon execution of the Client Agreement, a final Letter of that is agreeable to the Port Authority will be executed by the Port Authority for each service provider or vendor from whom bills are to be audited under the Client Agreement.

Troy & Banks audit staff makes it a point to minimize the amount of time that PANYNJ's personnel will have to put into the audit. We have the experience to make this audit work "behind the scenes" directly with PANYNJ's vendors. We will review/analyze billings for all accounts relating to the utilities and automotive fuels requested to be audited by the Port Authority.

Each step of the audit process requires that data is tracked and logged. Invoice copies, transcripts, account numbers, vendors and their representatives, phone numbers, fax numbers, e-mails, vendor addresses, updated tariff information, audit results, claim items, claim dates, claim results, refund results, public service complaint submissions, and hearing dates and resolutions all contribute to the data that needs to be managed,

analyzed and organized. All information logged can be used to produce various types of status reports and a database of this information will be provided to PANYNJ at the end of the Phase II detailed audit period.

Our auditors make sure that customers are only charged approved and agreed upon utility rates, tariffs, and service options. We research tariff options, billing histories, service classifications, rate changes, service option modifications, and contract changes.

On the average, we review \$250 million in electric, gas and telecom invoices annually or \$4.5 billion since 1991. Our audits have resulted in over \$200 million in overbilling claims submitted to various utility and telecom companies throughout the United States, as well as municipal owned companies.

We uncover the mistakes that increase your operating costs. In some circumstances these mistakes have been ongoing for months or even years. We make sure those mistakes are corrected immediately to reduce your costs and secure any refunds due.

When the utility companies attempted to limit accessibility of information to the customer and representative, critical to the evaluating of charges rendered, it was Troy & Banks who successfully argued our rights, and the rights of all customers. When the utility companies attempted to create restrictive non-disclosure and general release forms, infringing upon the rights of consultants to disclose successful representation of utility customers, Troy & Banks successfully negotiated acceptable terms of language in the non-disclosure and general releases that are currently used by the utility companies in the refund process.

1. Methodology used to implement the recommended changes with each utility provider:

Once discrepancies or potential changes to accounts are identified, Troy & Banks prepares a claim letter for the utility or telecommunication provider, documenting our findings. If necessary and upon approval from the Port Authority, we then personally follow up with each utility or telecommunication provider to ensure that the changes specified have taken place. We then continue to monitor your accounts to ensure that the billing errors have stopped and the appropriate changes were implemented.

2. Methodology used to recover overpayments and how far back they will go:

T&B will audit invoices from and payments to your utilities suppliers. The audit will include a review of all applicable tariffs and riders for the past six years. Our audit will ascertain whether the invoices are accurate and appropriate under tariffs and regulations. Our specialized audit master software is designed to check for billing errors. If overbilling has occurred, we will prepare a claim letter, document our findings, seek the approval of the Port Authority to proceed, and upon approval, forward the

claim letter with findings to the service providers requesting reimbursement plus interest. Our extensive experience has combined to produce millions of dollars in refunds and savings for our clients.

In some instances we have on file tariff leafs dating back 12 years for all small, mid-size and large industrial and commercial rate classes. We have developed our library to include old tariff leafs to ensure the availability of applicable laws for the entire audit period defined by the state statute of limitations.

3. Any other services T&B will provide to either ensure successful completion of this project and/or to enhance the efficiency of this project:

T&B is committed to ensuring a timely and successful completion of every audit undertaken. All of our audits are monitored by an audit coordinator and tracked in our database. This helps to ensure that all audits are progressing smoothly. T&B also has a team dedicated to following up on requests for billing history, as well as claims submitted on your behalf, ensuring that requests for information and claims are responded to promptly.

- We will examine your utility and automotive fuel bills searching for concealed accounting errors.
- We will evaluate existing contracts with energy suppliers for unfavorable terms or terms that are inconsistent with current market practices.
- We will make sure multiple meters are being read and billed correctly, and identify potential mechanical or installation-induced errors that may result in inaccurate readings.
- We will check sub-meter usage and make sure rate correct decreases are being applied.
- We will look for demand reading errors and meter multiplier reading errors.
- We will look for meter malfunction errors.
- We will try to find inappropriate tariffs, surcharges, delivery charges and other user fees such as taxes that may not be calculated correctly or are being erroneously imposed in the first place.
- We will evaluate your company's eligibility for rate decreases through your current providers to include such options as combining or splitting of meters, and bundling of meters or accounts.
- We will see if there are supplemental incentive programs (i.e. curtailment) that your company may be eligible for.
- We will identify alternative utility services or providers which may result in cost savings; including the use of deregulated and open market providers.

4. T&B's quality control/assurance program:

At the onset of the audit, you will be provided with a primary contact for information about the audit. That representative will be available at any time to answer questions related to the progress of the audit. In addition, you will be sent copies of any

**Port Authority of New York & New Jersey
Procurement Services Division
Utility Audit**

correspondence we send to the utility and telecommunication companies, providing you with information on what issues we are addressing.

III. Additional Information

Troy & Banks is equipped to perform the scope of work required by the PANYNJ.

For the Utility and Automotive Fuel Audit, Troy & Banks will:

- a. audit/analyze utility and automotive bills for all types of utilities
- b. perform a comprehensive analysis of billing information
- c. review contracts
- d. examine multiple billings for the same location and utility or fuel type
- e. recalculate a sample of representative bills
- f. determine that accounts are being billed under the correct rate
- g. recalculate bills, if applicable, to determine if charges would be lower
- h. identify future cost reduction items including, but not limited to:
 - (1) review of alternative rates and riders and/or suppliers
 - (2) power factor penalty correction
 - (3) combining or splitting of meters for billing purposes
 - (4) contract negotiation to eliminate punitive rate clauses
 - (5) identification of cost reducing options and negotiation with suppliers for deregulated heating fuel or other utilities, and automotive fuels.
- i. produce an information database for accounts over \$1,000.00 per month

In operation since 1991, Troy & Banks is a utility, telecommunications, and cable franchise fee consulting firm, specializing in auditing municipal and commercial customer accounts for billing errors and overcharges. Troy & Banks also presents and prosecutes claims for refunds, credits and rate changes to utility companies.

Troy & Banks is a prime vendor with no subcontractors, incorporated in the State of New York and a member of the Better Business Bureau, whose principle business activities also include the review, analysis and securing of refunds/credits for electric, gas, water, telecommunications, cable franchise fee, and workers compensation.

A privately held corporation, Troy & Banks is incorporated in the State of New York. Our corporate office is located in Buffalo, New York with branch offices in six additional states. Founded in 1991, our clients have taken us into all 50 states.

Our office locations are as follows:

Corporate/Remittance Address:

BUFFALO - NEW YORK
2216 Kensington Avenue
Kensington at Saratoga
Buffalo, NY 14226
(800) 499-8599 / (716) 839-4402
Telefax (716) 839-4452

WORLD WIDE WEB

www.troybanks.com
save@troybanks.com

Branch Offices:

CALIFORNIA

398 East Carob Avenue
Fresno, CA 93654

CONNECTICUT

P.O. Box 237
Manchester, CT 06045

FLORIDA

11048 Main Sail Drive
Ft. Lauderdale, FL 33026

GEORGIA

P.O. Box 923474
Norcross, GA 30010

NEW YORK

62 Mallock Road
Rochester, NY 14428

NEW YORK

4764 Summerhurst Drive
Liverpool, NY 13088

NEW YORK

2121 Hillside Ave. #93
Long Island, NY 11040

NORTH CAROLINA

2411 Blackwolf Run Lane
Raleigh, NC 27604

TENNESSEE

904 Lake Haven Road
Knoxville, TN 37922

Since 1991, Troy & Banks, Inc. has partnered with over 7,000 clients. We have successfully represented over 500 cities, towns and villages, 1,000 public school districts, 50 colleges, 100 hospitals, 50 library systems and more than 100 state agencies.

In addition, Troy & Banks is pleased to inform you that we have recently added to our client list the Chicago Housing Authority, Shaw Industries, New York Stock Exchange, American Stock Exchange, Westwood One Radio, United States Postal Service (nation-wide), State of New York, State of Missouri, State of South Carolina (DOT), County of Albany, City of Buffalo, NY, City of Albany, NY, City of Norfolk, VA, and the Norfolk and Chesapeake School Districts, to name a few.

An intricate part of Troy & Banks' success is the implementation of a "team approach" of specialists. Our staff has accumulated over 300 years of combined professional, "in the field", auditing and consulting experience. What distinguishes our firm from others is our comprehensive staff which includes former utility and telecommunication company executives, managers and field personnel. Our regulatory consultants worked extensively at the New York State Public Service Commission (PSC) in both the utility and telecommunications divisions.

The Troy & Banks "team" has successfully produced the following work product for our clients:

- * Negotiated over \$20 million in utility and telecommunication refunds
- * Reduced our clients expenses in excess of \$250 million
- * Designed and negotiated over 75 specialized contracts
- * Secured over two million dollars in payments for our clients through electric curtailment programs

Our consultants have:

- * Served with various State Public Service Commissions
- * Served as municipal account managers
- * Testified in Public Service Commission rate case proceedings
- * Executed over 1,000 electrical engineer site surveys
- * Represented major industrial consumers with respect to natural gas transportation contracts, cogeneration development, electric and natural gas litigation, hydroelectric power allocations and international trade law enforcement
- * Represented clients in a number of electric rate cases on a variety of avoided cost and rate matters
- * Represented major corporations and associations with respect to telecommunication tariffs, contracts, and FCC regulatory matters

Organizational Chart-Attached:

Troy & Banks has clearly assembled a first class consulting team with a proven track record of success. Our firm will bring the knowledge, professionalism and expertise of our team to effectively and successfully handle all work required under this project.

The following represent some of the individuals who would be directly involved in the utility audit process.

THOMAS T. RANALLO, President

- Founder - Troy & Banks, Inc.
- 15 years of management experience in the utility and telecom-auditing fields
- Successfully negotiated over \$50 million in over billing refunds
- Successfully managed multiple site, multi-faceted audits for the following large clients: AMTRAK, New York Stock Exchange, Bausch & Lomb, City of Albany, City of Buffalo, U.S. Postal Service - Northeast Region, M&T Bank, Niagara Frontier Transportation Authority, HSBC Bank, Buffalo and Rochester City School Districts, and Off-Track Betting Corporation - Capital & Western Region
- Has had professional consulting training from the Center for Communications Management Information including courses in the following:
 - 1998 – *“Telecommunication Audit Secrets”* – Covering rules and regulations, options with competing providers and auditing essentials
 - 1999 – *“Advanced Auditing Sessions”* - Covering frame relay technology, FCC’s de-tariffing order, traffic analysis essentials and precision auditing exercises
 - 2002 – *“Advanced Auditing Sessions”* - Covering frame relay technology, FCC’s de-tariffing order, traffic analysis essentials and precision auditing exercises
 - 2002 – *“Frame Relay Service and Billing”* - Covering frame relay technology
- Institute on Public Utility Law

- 2006 – This continuing educational conference included sessions on Network Reliability and Security, status of Telecom Competition Three, Wind Energy, Fixed-Price Commodity Option, and Utility Land Use Issues

KEITH WIESE, Pre-Audit and Audit Coordinator

- Organize audit data
- Order utility and telecommunication histories and customer service records
- Coordinate the distribution of audit information to the appropriate auditors
- Perform follow-up work for the auditors
- Verify applicable credits and refunds

Energy Team:

FRANK R. McCONKY, Senior Energy Audit Manager

- 30 years experience as lead negotiator with the New York State Department of Public Service for utility and telecommunication cases.
- Represented the Rates and Valuation Section (NYSDPS) as Principal Valuation for Power in negotiations and settlements proceedings regarding the development of competitive pricing mechanisms and conditions necessary to transition the electric market to retail competition.
- Assisted Counsel in the evaluation of cost and service implications of proposed legislations affecting public utilities.
- Performed central office engineering and budgeting for New York Telephone.

EDGAR FOSTVEIT, Regulatory Consultant

- 26 years with the New York State Public Service Commission, first as an investigator, and later as a hearing officer (15years).
- Ruled on gas and electric complaints submitted to the Commission by consumers, and he is also experienced in tariff and Public Service Law.
- Served as a consultant for the Pennsylvania Public Utility Commission and Vermont Public Service Commission, and has provided frequent testimony in three states as either a staff member or consultant, in cases involving utilities

JUSTIN D. RAYBECK, Energy Analyst

- Eight years experience in the deregulated utilities industry
- Energy Consultant - analyzes rate and billing histories for New York State investor-owned utilities and municipal utility providers, as well as out-of-state providers
- Researches and identifies over-billings, preparing necessary supporting evidence for over-billing claims
- Prepares discrepancy claim letters, documenting the over-billing, as well as developing status reports

- Knowledge of tariffs for various utilities assures clients that they are being placed on the most appropriate and money-saving rate
- Managed audits for clients such as:
 - United States Postal Service
 - Pfizer
 - City of Syracuse
 - Ohio Department of Transportation
 - City of Buffalo
 - Nassau County
 - New York State Police Department
 - New York Stock Exchange
 - New York State Thruway Authority

RICHARD J. KOBOR, Technical Consultant

- 33 years with Niagara Mohawk Power Corp.
- Manager of Industrial and Municipal accounts; experienced with regulatory review practices, gas and electric rate consultation and development for Municipal billings
- Member of Illuminating Engineering Society

THOMAS ROSS, Senior Energy Consultant

- Former Niagara Mohawk Power Corporation employee of 28 years.
- Approximately 18 of those years was spent with large commercial and industrial account management.

KEITH TYSON, Curtailment and Metering Specialist

- Client representative for major accounts such as General Electric, City of Buffalo, Erie County, Hanson Aggregates, Buffalo Public Schools, Western and Capital District Off-Track Betting Corporations, New York Racing Association, Inc., General Mills, and OxyChem; many municipalities, school districts, and manufacturers.
- Research analyst responsible for investigating accounts and working with senior auditors on claim development and resolution.
- Coordinator of Public Service Commission cases representing approximately 80 municipalities and numerous religious organizations. These resolved cases have returned over \$6 million in refunds and has provided thousands of dollars in future cost savings to these entities.
- Directs T&B's electrical Demand Response programs in New York (SCR) and nationally.

KURT K. SPAETH, Engineering Specialist

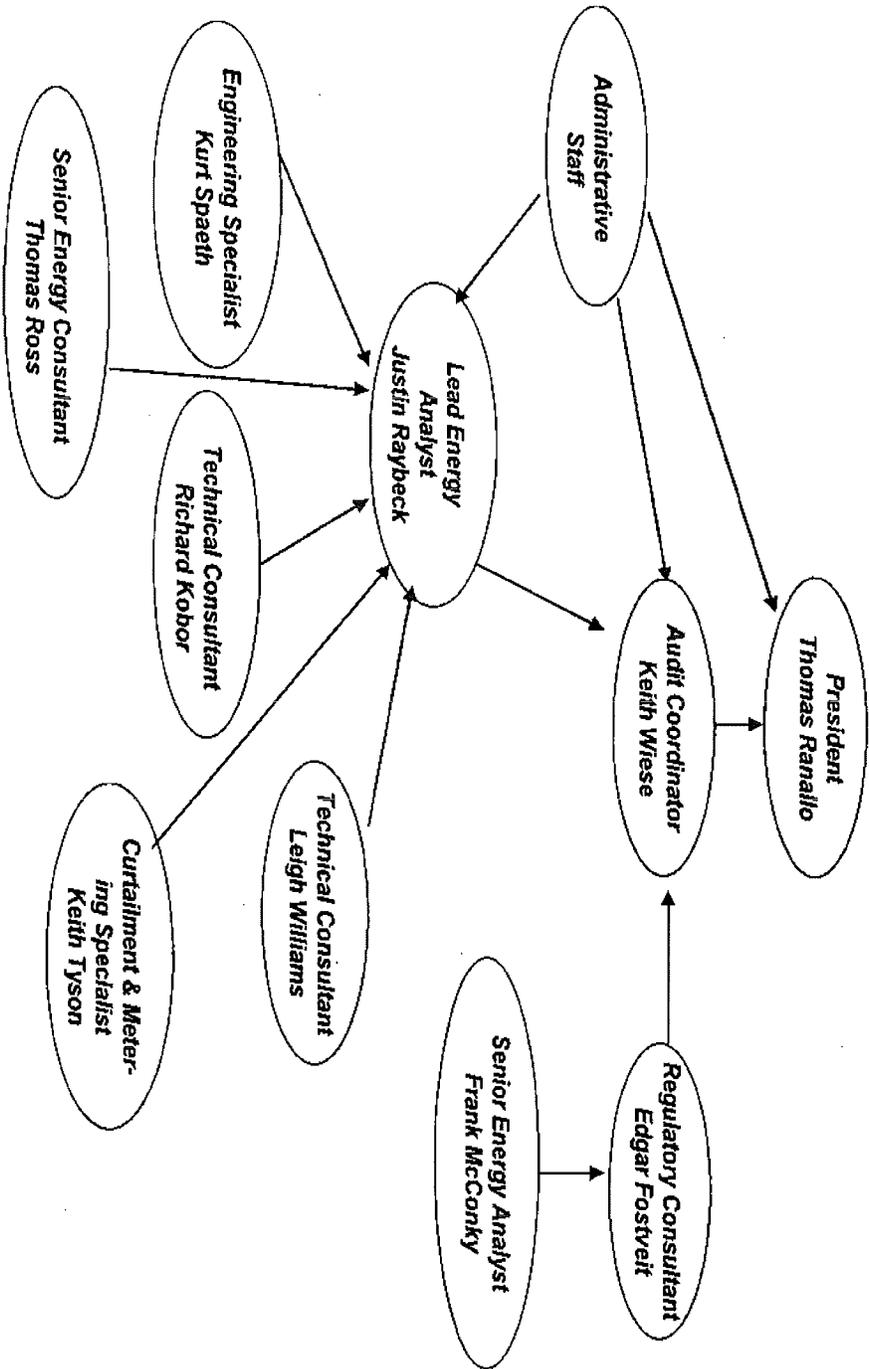
- Energy Engineer specializing in rate analysis, utility rate negotiations, self-generation feasibility studies, commodity consulting, energy efficient technology integration, demand-side management studies, advanced metering technology implementation
- Experienced in grant writing and has obtained over \$2 million in funding for customers to be used towards energy improvement, demand side and interval metering projects

- Metering consultant for one of New York State's largest curtailment providers; familiar with design and install of a variety of metering solutions and technologies
- Member of the Association of Energy Engineers

LEIGH WILLIAMS, Technical Consultant

- Previously employed by Rochester Gas & Electric (RG&E) as a District Manager (C-FL) with duties including engineering, metering, electric line operations, line maintenance, storehouse, property records and contractor workforce
- Supervised a total of 42 company employees, 20 contract employees and a multi-million dollar district budget for gas and electric service to approximately 28,000 utility customers
- Designed and negotiated over 40 specialized (SC10) contracts between qualified customers and RG&E, acted as the representative for RG&E on various municipal power projects
- Provided rate, metering and energy analyses, street lighting evaluation, filed audits and recommendations to commercial, industrial and municipal customers

Troy & Banks, Inc. Organizational Chart Utilities



At Troy & Banks, our greatest resources are our experienced staff, our specialized Audit Master Software™ for the analysis of invoices, and our extensive national tariff library. As part of our business philosophy or general methods used in doing business, Troy & Banks employs a number of strategies to insure maximum cost recovery as follows:

To maximize cost recovery Troy & Banks is committed to ORGANIZATION:

Because disorganization at a utility and customer level is the prime reason that over-billing exists, organization of data is the key to auditing success. Our ability to handle massive amounts of data, which require investigation and organization, is a strong suit of our company. Streetlight billing is perhaps the best example of inventory-driven billing items that are susceptible to billing errors. Streetlight facilities are generally billed for underground cable, foundations, pole lengths and type, lamps, luminaries, and energy. In addition, company-owned, customer-owned, standard and ornamental facilities impact billing.

Troy & Banks has extensive auditing experience with streetlight billing. We have carried out successful audits in various utility territories including Detroit Edison, Pennsylvania Power and Light, Consumers Energy and all seven investor-owned utilities in New York State. One streetlight audit for a single city, such as the City of Detroit, with over 6,000 lights within the city boundaries, requires a significant ability to organize data. 6,000 lights actually represent over 40,000 billed inventory items. These 40,000 inventory items change monthly based on field adjustments, upgrades, and conversions. To date Troy & Banks has recovered over \$4 million in revenues for over 500 municipalities.

CASE SAMPLE: PUBLIC SERVICE COMMISSION STREETLIGHT PROCEEDING FOR 80 NEW YORK STATE MUNICIPALITIES (CASE 99-E-0387, 00-E-0934, 00-E-0935) - Troy & Banks represented 80 municipalities in a case against Niagara Mohawk Power Corp. The combined annual streetlight billing for the municipalities is in excess of \$20,000,000. An \$800,000 settlement proposal covering 15 of the municipal customers including the Town of Amherst, Grand Island, Lackawanna, Lewiston, Niagara Falls and Royalton, have already been negotiated, with the largest share of the \$800,000 going to the Town of Amherst. The settlement comes in response to questions raised about municipal streetlight billing methodology.

To maximize cost recovery Troy & Banks is committed to RESEARCH:

Troy & Banks is committed to the research process required for auditing success. In fact, Troy & Banks often initiates independent research efforts for the purpose of applying information to existing and future audits. Members of our administrative team are exclusively dedicated to the process of research. We have ongoing research projects in the areas of sales, GRT, franchise, federal excise, and state excise taxes. We continually research existing PUC hearings and dockets. We are currently

researching all curtailment opportunities existing in various states across the US. Our research translates into refunds and savings.

Our consultants have secured over two million dollars in payments for our clients through electric curtailment programs in various states.

CASE SAMPLE: GENERAL ELECTRIC - GE has a current and ongoing contract with Troy & Banks which resulted in the presentation of alternative curtailment options through existing electric curtailment programs. Troy & Banks introduced GE to the Emergency Demand Response Program as well as the Day Ahead Demand Response Program. The programs which offered better payouts, no penalties for non-performance, and choice of when to shed generated load, resulted in \$200,000 in refunds for two plant locations. GE expanded participation by adding three additional plants. In addition, Troy & Banks has introduced GE to various funding sources, initiating application processes to purchase equipment at a savings of 50% to 93% of cost.

To maximize cost recovery Troy & Banks is committed to PERSISTANCE:

Our auditors don't take "no" for an answer. When utilities and telecommunication companies deny our claims for over billing, we don't roll over – we fight for what is right.

CASE SAMPLE: Public Service Commission Proceeding for Religious Customers - Troy & Banks Inc., successfully argued at the Public Service Commission the utility billing methods used to bill religious organizations throughout the state. As many as 200 religious groups and organizations have been overcharged for electric power, including the Catholic Diocese of Albany and Buffalo and New York City Catholic Charities, Word of Faith Church of East Utica Street, the Salvation Army, along with many other religious organizations. Most of the groups were being billed under the company's more expensive commercial rates. Utility regulators have since ordered utility companies to offer its lowest, or residential, rate of facilities used for religious purposes. Troy & Banks, Inc. negotiated with the utility company for over two years to secure refunds on behalf of the City Mission Society of Buffalo. The homeless shelter, a religious organization established to provide housing and religious services, was treated as a commercial entity but should have been treated as a religious organization.

To maximize cost recovery Troy & Banks is committed to being CONSERVATIVE AND THOROUGH:

Some consultants submit many claims hoping that 20% are resolved favorably. We prefer to eliminate as much risk as possible, preferring to validate our work prior to

submission of claims and rate change requests. Utility companies, PUC's and taxing entities are more responsive to auditing firms that approach audits carefully, avoiding submittal of frivolous claims.

In some instances we have on file tariff leaves dating back 12 years for all small, mid-size and large industrial and commercial rate classes. We have developed our library to include old tariff leaves to ensure applicable laws for the entire audit period defined by the state statute of limitations.

Example #1 - City of Buffalo - Troy & Banks has an extensive history of servicing municipalities. We have worked with over 500 municipal entities in over 20 different states.

For example, Troy & Banks represented 80 municipalities in a streetlight settlement case against Niagara Mohawk Power Corp., Rochester Gas & Electric, and New York State Electric & Gas. The combined annual streetlight billing for the municipalities is in excess of \$20,000,000. To date Troy & Banks has secured settlements of \$3,000,000 on behalf of the Cities, Towns and Villages represented with over \$2,000,000 of additional refunds currently subject to negotiation.

The settlement comes in response to questions raised about municipal streetlight billing methodology. Issues involved utilities record keeping methods, incompleteness of its inventory records, itemized billing and method of offsetting over-billing and under-billing items.

Troy & Banks Inc. first contracted with the City of Buffalo in 1998. The City has once again renewed a contract with Troy & Banks requesting a review of all the utility accounts dating back to the completion of our last audit. The first audit included a review of their \$30 million annual utility budget and resulted in settlements in excess of \$1.6 million. Troy & Banks Inc. negotiated refunds for multiple locations including \$11,009 for the Roosevelt Ice Rink, \$191,249 for the Water Filtration Plant, and \$966,000 for various over-billed streetlight districts.

Example #2 – New York State School District PSC Case - Our firm successfully represented eight school districts in a Public Service Commission proceeding for School Districts resulting in over \$1,000,000 in refunded revenues negotiated for districts affected by flawed meter reading practices. School districts receiving settlements included Berne-Knox-Westerloo CSD Case E873451, South Colonie CSD Case E873599, Galway CSD Case E873600, Greenwich CSD Case E875164, APW Middle School Case E875244, and Guilderland CSD Case E875574.

Troy & Banks Inc. argued that the placement of accounts on the bi-monthly meter reading schedule without considering the seasonal character of the customer's usage pattern and unfair billing practice, allowed the utility to collect more than what was allowable by tariff. Our success with the above referenced cases resulted in changes to

the statewide bi-monthly billing systems of customers in all utility service territories, resulting in millions of dollars saved by various government entities all over the State of New York.

Example #3 – State of Georgia School Audit - Georgia Power offers both mandatory rate assignments and voluntary rate options according to account profiles. In fact, Georgia Power currently provides over a dozen rate schedules, some of which are mandatory and some voluntary.

It is the customer's responsibility to understand voluntary rates and charges. The customer is required to manage costs through rate analysis to determine the best available rates when choice exists.

For example, Georgia Power offers three rate options for customers with demand reads of 10 to 100 KW's, a general service rate, a small general power rate, and a time-of-use energy only rate. The small general power rate is best for a customer with fluctuating demand reads and load factors fewer than 30%. The general service rate is best for customers with consistent seasonal consumption and lower kWh consumption. The time-of-use energy only rate is designed specifically for customers whose load factors are from 30% to 50%, experience demand reads from 40 to 70 KW's, and is seasonal in nature.

Troy & Banks research of the rates and knowledge of the above resulted in rate changes for 112 utility accounts for the 30 school districts represented. The annual expense for each utility account was reduced over 15%.

Example #4 Virginia Commonwealth University Audit - Troy & Banks audit included:

- A review of 150 utility accounts
- Pre-audit annual expenses: \$3,000,000
- VCU's primary usability provider: Dominion Virginia Power, DVP

The audit of the utility accounts resulted in the identification of 11 accounts improperly rated. Total annual savings on the 11 accounts identified was \$128,070 and total refunds of \$66,385. Troy & Bank's audit of utility and telecommunications accounts resulted in total negotiated refunds and savings in excess of \$500,000.

Example #5 – Amtrak (National Railroad Transportation Company) Audit – Troy & Banks successfully audited federal agencies such as AMTRAK. AMTRAK is almost wholly owned by the U.S. Department of Transportation, operating in 45 states across the U.S. The Office of the Inspector General-Audit contracted with Troy & Banks to complete an audit of over 500 facilities serviced by over 150 utility providers. Their total utility and telecommunications expenditures exceed \$40 million annually. Audit of the utility and telecommunications accounts resulted in over \$1.5 million in refunds and future savings.

Example #6 – Deregulation – Troy & Banks is an expert at securing the lowest possible rates for our clients' energy commodity needs. We currently work with numerous ESCO's (energy supply companies) throughout the state, as well as nationally. These companies bid on our clients' accounts by proposing the most beneficial products and rates they offer for each individual client. We currently manage both electric and gas accounts for the New York Stock Exchange, Community Bank, Bryant and Stratton College, Brockport Central Schools, New York State Department of Health, New York State Department of Taxation and Finance, and the Town of Cheektowaga, just to name a few.

IV. References

Name of firm/organization: Onondaga-Cortland-Madison BOCES
Address: 6820 Thompson Rd., PO Box 4754, Syracuse, NY 13221
Point of Contact: Ms. Deborah Ayers, Assistant Superintendent for Admin.
Telephone: (315) 433-2414 Fax: (315) 437-4816
E-mail: dayers@ocmboces.org

Name of firm/organization: New York State Police
Address: Building 22, 1220 Washington Ave., Albany, NY 12226-2252
Point of Contact: Mr. Stephen Vagianellis, Ass't. Dir. Financial Admn.
Telephone: (518) 457-6767 Fax: _____
E-mail: SVagiane@troopers.state.ny.us

Name of firm/organization: Chicago Housing Authority
Address: 60 Van Buren Street, Chicago, IL 60605
Point of Contact: Mr. Albert Thornton, Vice President of Finance
Telephone: (312) 913-7556 Fax: (312)
E-mail: athornton@thecha.org

Name of firm/organization: Virginia Hospital and Healthcare Association
Address: 4200 Innslake Drive, Glen Allen, VA 23060-6712
Point of Contact: Mr. David Jenkins, Director of Member Services
Telephone: (804) 945-1227 Fax: _____
E-mail: djenkins@vhha.com

Name of firm/organization: M & T Bank
Address: 428 Evans Street - Williamsville, NY 14221
Point of Contact: Mr. Paul Collins
Telephone: (716) 633-2454 Fax: (716) 633-2458
E-mail: pcollins@mandtbank.com

Name of firm/organization: New Era Cap Co., Inc.
Address: 8061 Erie Road, Derby, NY 14047
Point of Contact: Mr. James Hycner
Telephone: (716) 549-0445 x1157 Fax: (716)
E-mail: Jim.Hycner@neweracap.com

V. Cost Proposal

This Agreement is entered into as of April 15, 2010 between Troy & Banks, Inc. and Port Authority of New York and New Jersey with an address at 7th Floor, One Madison Avenue, New York, NY 10010.

In consideration of the mutual agreements hereafter set forth, Troy & Banks, Inc. ("T&B") and the Port Authority of New York and New Jersey ("Port Authority") agree as follows:

1. The Port Authority engages T&B to conduct an audit of certain Port Authority utility (e.g., electric, water, sewer, and heating fuels such as natural gas, propane, oil, steam, and cogeneration facilities) and automotive fuels (e.g., diesel, gasoline, and alternative fuels) service accounts for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. T&B agrees to conduct such audit under the terms and conditions, and for the time period, set forth in the executed Client Agreement. The "Client Agreement" shall mean the "Contract" as defined in the Port Authority's letter of proposal acceptance, which is comprised of the Port Authority letter of proposal acceptance, the non-disclosure agreement, the Standard Contract Terms and Conditions of the Port Authority, and this T&B proposal with all attachments.
2. Overcharges Resulting in Refunds, Credits, or Rebates – For any refunds, credits or rebates obtained by T&B for prior overcharges, billing errors or costs in excess of those permitted by applicable contracts, tariffs, statutes, rules or regulations, as approved in advance by the Port Authority Manager(s) (as defined in Part II), T&B shall be paid a one-time 20% contingency fee for refunds and credits identified and facilitated by T&B and actually received by the Port Authority during the term of the Client Agreement, to be distributed to T&B within eight weeks after receipt by the Port Authority.
3. Savings Recommendations – T&B shall be paid a one-time 20% contingency fee for 12 consecutive months of actual savings for each recommendation identified by T&B, approved and implemented by the Port Authority during the term of the Client Agreement as a result of T&B's recommendation, to be distributed to T&B within eight weeks after receipt of said savings by the Port Authority; provided that the total maximum amount of all contingency fee(s) payable to T&B for savings recommendations described in this paragraph in connection with this Client Agreement, shall not exceed \$250,000, unless otherwise approved in writing by the Port Authority. Recommendations for which T&B will receive the 20% contingency fee, shall be pre-approved by the Port Authority, and are limited to those which the Port Authority had not previously considered and/or had not been in the process of implementing and/or had not previously been offered or recommended by T&B, and will apply only to the specific facility or facilities, utility/fuel automotive type, account number(s) and meter(s) to which the

recommendation applies. T&B shall identify each recommendation discreetly to the satisfaction of the Port Authority, shall recommend the method of implementation, and shall calculate and submit the suggested one-time contingency fee along with each associated recommendation for approval by the Port Authority. T&B and the Port Authority shall agree upon the method of measuring savings for each recommendation. To the extent that the Port Authority has approved payment of a contingency fee to T&B for savings recommendations as defined herein, T&B shall not receive a contingency fee more than once for each such savings recommendation. Any contingency fee payable to T&B by the Port Authority as a result of savings recommendations shall be disbursed to T&B within eight weeks of actual receipt of such associated savings by the Port Authority. If the Port Authority ceases to receive refunds, credits, or reductions in future billings (ie. during the consecutive twelve month time period for which the contingency fee is applicable) through T&B efforts resulting in recommendations by T&B approved and implemented by the Port Authority, T&B will cease to receive a contingency fee.

4. T&B has made and makes no guarantee or assurance of any credit or refund amount or cost saving results.
5. If the Port Authority does not receive refunds, credits, or reductions in future billings through T&B efforts resulting in recommendations by T&B , approved and implemented by the Port Authority, there will be no fee for T&B services.
6. If for any reason the Port Authority, must return any refund or credit, which would otherwise have been subject to T&B's contingency fee as set forth in paragraphs 2 and 3 above, then no such contingency fee for such refund or credit, shall be due to T&B; and any contingency fee already paid to T&B by the Port Authority for such credit or refund shall be refunded by T&B to the Port Authority, promptly upon Port Authority's request, or at the Port Authority's option, the Port Authority may offset the payment of future invoices and amounts payable to T&B by the amount of such refund or credit (for which a contingency fee was already paid to T&B but which refund or credit the Port Authority was not permitted to keep, later had to return to a utility vendor, or otherwise). T&B shall promptly notify the Port Authority if it obtains knowledge of the fact that T&B received a contingency fee from the Port Authority for a refund or credit initially received by the Port Authority (whether due to a T&B savings recommendation or otherwise), which the Port Authority subsequently had to return to the utility/automotive fuel vendor.
7. The Port Authority's Manager(s) (as defined in Part II) has the sole discretion to resolve disputes in connection with this Cost Proposal, whether relating to the amount of fees owed to T&B, if any, or otherwise.

Port Authority of New York & New Jersey
Procurement Services Division
Utility Audit

Port Authority of New York & New Jersey
Procurement Department

By: LARRY WAXMAN
Name: [Signature]
Title: MANAGER
Telephone: 212-435-3951
Fax: 212-435-3959
Date: 4/2/10

Troy & Banks, Inc.

By: [Signature]
Name: Thomas T. Ranallo, President
Name: Thomas T. Ranallo
Telephone: 716 839 4402
Fax: 716 839 4452
Date: 4/15/10

SAMPLE LETTER OF AUTHORIZATION

To be printed onto company letterhead

Date:

<Utility or Automotive Fuel Vendor> (the "Company")

Dear Representative:

The Port Authority of New York and New Jersey (Port Authority) has engaged Troy & Banks, Inc. ("Troy & Banks") to perform an audit of billings and charges for services on Port Authority account(s).

In order to facilitate this audit, please respond to Troy & Banks, Inc. in all matters pertaining to billings and charges for services delivered or otherwise billed to Port Authority accounts. This includes providing to Troy and Banks, upon request, all billing information, billing records, and order activity with reference to Port Authority service(s) and equipment for Port Authority accounts. This authorization shall continue until [insert date no later than expiration date of Contract], unless earlier canceled in writing by a representative of the Port Authority. If you have any questions about whether this letter authorizes your Company to release certain information to Troy & Banks, or if you have any other questions, please contact Nancy Johnson of the Port Authority, at 212-435-8045 or Christine Weydig of the Port Authority at 212-435-5460.

Please note that this letter does not authorize Troy & Banks to request any services on behalf of the Port Authority for any Port Authority facilities, or otherwise.

A Troy & Banks authorized representative, as listed in Exhibit I (attached), will present this request when contacting your offices.

Very truly yours,

Print Name:

Title:

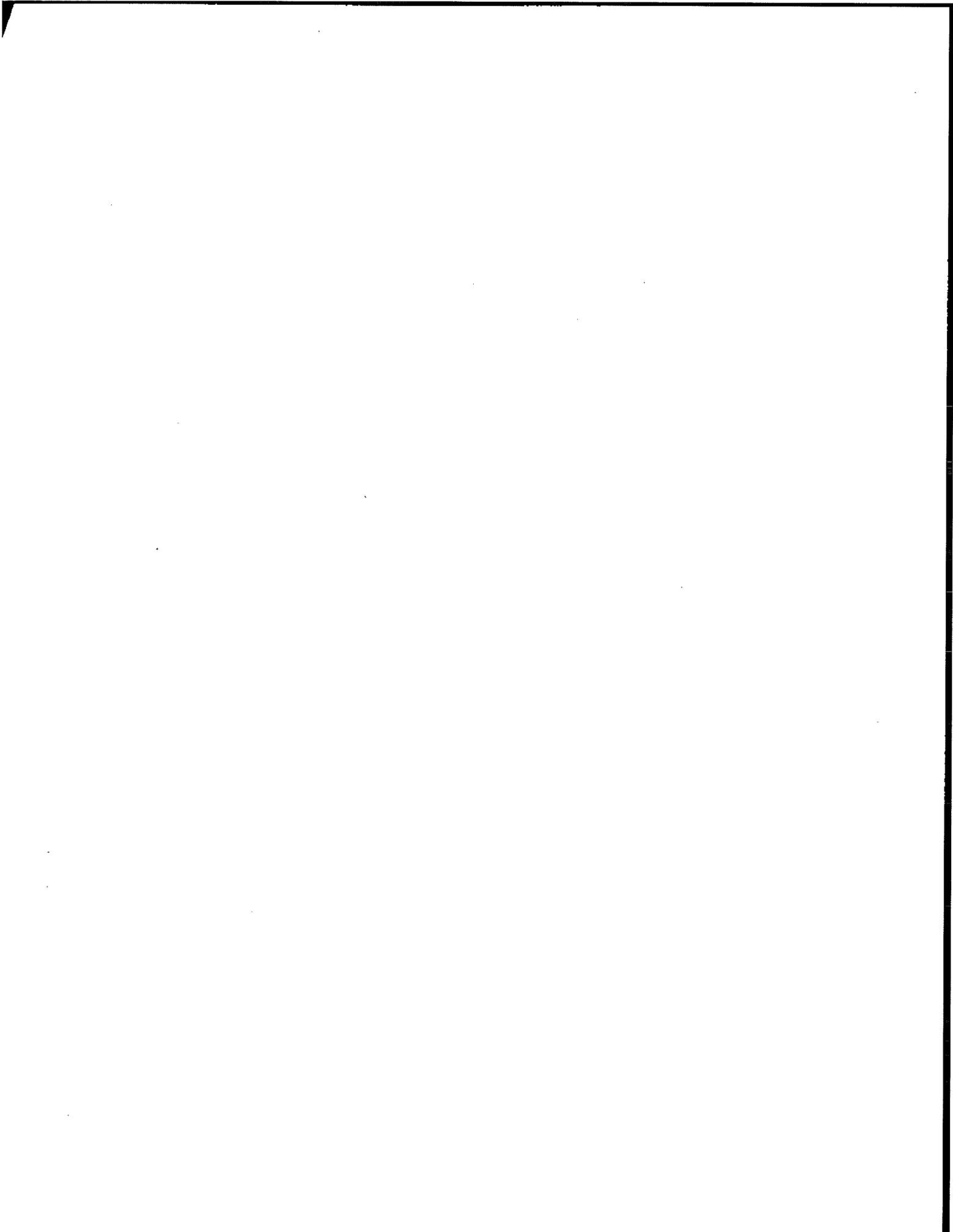
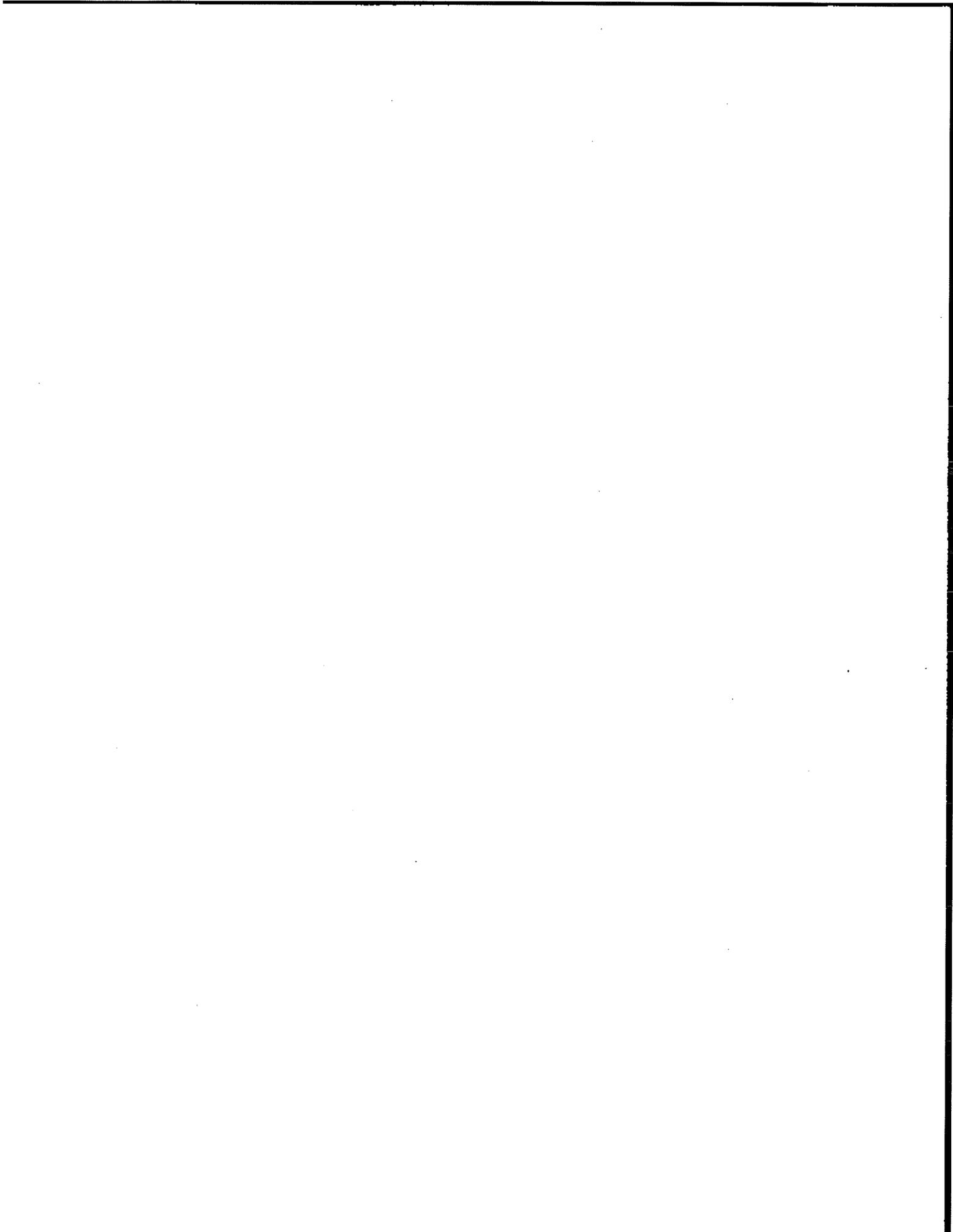


EXHIBIT I
Troy & Banks Authorized Representative(s)



" EXHIBIT A "

Fed. I.D. #

AGREEMENT

THIS AGREEMENT made the 7 day of Sept, 2007, by and between the **COUNTY OF ROCKLAND**, on behalf of its Department of General Services-Division of Purchasing, a municipal corporation having its principal office at 11 New Hempstead Road, New City, New York 10956 hereinafter referred to as "**COUNTY**", and **TROY AND BANKS INC.**, a domestic corporation, organized and operating under the laws of the State of New York, doing business in the State of New York, having its principal office at 4536 Main Street, Suite 102, Buffalo, New York 14226-3828, hereinafter referred to as "**CONSULTANT**," in the manner following:

WITNESSETH:

WHEREAS, the COUNTY and its Department of General Services-Division of Purchasing are desirous of entering into an agreement with CONSULTANT for alternative fuel and vehicle study as per RFP-RC-07-003, and

WHEREAS, the Rockland County Charter, Article III, Section 3.02(u) authorizes the County Executive to execute this Agreement, and

WHEREAS, the Rockland County Legislature by Resolution No. 601 of 2006 provided the funds for the purposes set forth in this agreement, and

WHEREAS, CONSULTANT has the skills, experience, expertise and independence necessary to provide the COUNTY with the services contracted for.

NOW, THEREFORE, the parties hereto, in consideration of the covenants, agreements, terms and conditions herein contained, do agree as follows:

1. **SERVICES:** CONSULTANT shall render and perform services for and to the COUNTY, and its Department of General Services-Division of Purchasing, as itemized on the attached Schedule A (RFP-RC-07-003). If there should be any conflict in services, Schedule A, shall prevail. CONSULTANT represents and warrants to COUNTY that it, and its employees, agents and servants possess all the skills, experience, expertise and independence to render these services to the COUNTY.
2. **TERM:** CONSULTANT services to be performed under this agreement shall commence July 1, 2007 and terminate June 30, 2008.
3. **PAYMENT:** The COUNTY agrees the total contract amount NOT to exceed ZERO AND 00/100THS (\$0.00) DOLLARS - COUNTY WILL PAY A PERCENTAGE OF PAYMENTS INCORRECTLY BILLED TO COUNTY AND RECOVERED BY CONSULTANT. CONSULTANT shall not be entitled to any payment or monies unless the services rendered and performed by CONSULTANT as set forth herein are acceptable to COUNTY and its Department of General Services-Division of Purchasing. All out-of-pocket

and other expenses incurred by CONSULTANT in connection with the performance of services under this agreement shall be borne solely by CONSULTANT.

4. FUNDING/RESERVATION OF RIGHTS: COUNTY monies provided to CONSULTANT, pursuant to this agreement, may be based upon and/or subject to funding statements, or actual funds provided to COUNTY, from New York State or the Federal Government, either directly or by reimbursement; in such case, COUNTY retains the right and discretion to adjust payments of COUNTY funds to CONSULTANT, based on the actual amounts COUNTY receives, or is to receive, from New York State or Federal Government.

5. INDEPENDENT CONTRACTOR: CONSULTANT is an independent contractor and covenants and agrees that it, its agents, servants and/or employees, will neither hold itself/themselves out as, nor claim to be an employee, servant or agent of COUNTY, and that it, its agents and employees will not make claim, demand or application to or for any right or privilege applicable to an officer or employee of COUNTY including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership or credit.

6. INSURANCE REQUIREMENTS: CONSULTANT shall, at its/his/her own cost and expense, procure and maintain, insurance to cover his/her/its work, services, employees, agents and servants under the terms of this agreement which shall include, but not be limited to:

- a. Commercial General Liability Insurance in a minimal amount of one million dollars, combined single limit (CSL), with two million dollars excess of one million dollars;
- b. Workers Compensation;
- c. Disability Insurance;
- d. Malpractice Insurance - (i.e., professional liability insurance) in an amount no less than ONE MILLION AND NO/100---(\$1,000,000.00) DOLLARS;
- If this box is checked, malpractice insurance **IS NOT REQUIRED.**
- e. All other insurance required by law.

When CONSULTANT signs and returns this agreement, CONSULTANT shall provide COUNTY (Insurance Department) with a policy endorsement showing the above-required insurance. The COUNTY OF ROCKLAND shall be named as an "additional insured" on commercial general liability insurance policies and policy endorsements, and the policies and policy endorsements shall provide that the insurance shall not be canceled or terminated without thirty (30) days prior written notice to the COUNTY OF ROCKLAND. Unless and until CONSULTANT obtains such insurance and provides a policy endorsement to the COUNTY, this agreement shall not be effective and no monies shall be paid or given to CONSULTANT.

The CONSULTANT acknowledges that the provisions of Section 57 of the Workers' Compensation Law and Section 220 of the Disability Benefits Law prohibits the COUNTY OF ROCKLAND from entering into any agreement unless proof of compliance with the Workers' Compensation Law and Disability Benefits Law has been obtained. Failure by the CONSULTANT to provide satisfactory proof of compliance with the Workers' Compensation

Law and the Disability Benefits Law shall preclude payment of any fees or compensation to the CONSULTANT.

7. **INJURY, PROPERTY DAMAGE:** CONSULTANT shall be responsible for all damages and/or injury to life and property due to, or resulting from, the activities or omissions of CONSULTANT, its agents or employees, in connection with its work, activities or services under this agreement. CONSULTANT represents and warrants that its agents and employees possess the experience, knowledge, skills and independence necessary for the work/services to be performed in connection with this agreement.

8. **INDEMNIFY AND HOLD HARMLESS:** CONSULTANT agrees to protect, indemnify and hold harmless the COUNTY and its respective officers, employees and agents from and against all claims, actions and suits and will defend the COUNTY and its respective officers, employees and agents, at its own cost and at no cost to COUNTY, in any suit, action or claim, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of, or resulting from, the activities or omissions of CONSULTANT. These indemnification provisions are for the protection of COUNTY and its respective officers, employees and agents only and shall not establish, of themselves, any liability to third parties. The provisions of this section shall survive the termination of this agreement.

9. **FINANCIAL STATEMENTS:** CONSULTANT shall maintain records of all its financial transactions, including expenses and disbursements, with COUNTY. Such records shall be kept in accordance with GAAP (Generally Accepted Accounting Practices), and each transaction shall be documented. Such records shall be made available to COUNTY for inspection or audit upon request. No payment or monies for services will be due or paid to CONSULTANT unless or until the financial records or statements, as required by this paragraph, have been filed with the Rockland County Department of Finance.

10. **AUDIT:** CONSULTANT shall submit to an audit of its books and records by the County Auditor, or by an auditor selected by the County Legislator, upon the request by the County Auditor, County Executive, Chairman of the Legislature, or by a vote of a majority of the Legislature. Failure to submit to such audit shall be deemed a material breach of this agreement.

11. **LIABILITY ONLY FOR MONIES BUDGETED:** This agreement shall be deemed executory to the extent of the monies appropriated in the COUNTY's current budget for the purposes of this agreement, and no liability shall be incurred by the COUNTY, or any department, beyond the monies budgeted and available for this purpose. The agreement is not a general obligation of the COUNTY. Neither the full faith or credit, nor the taxing power of the COUNTY is pledged to the payment of any amount due, or to become due, under this agreement. It is understood that neither this agreement, nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the agreement. This agreement shall not be effective unless the monies to be paid hereunder by the County are appropriated in the County Budget.

12. **NO ASSIGNMENT:** CONSULTANT shall not assign, sublet or transfer or otherwise dispose of his/her/it's interest in this agreement without the prior written consent of the COUNTY.

13. LAWS OF THE STATE OF NEW YORK: This agreement shall be governed by the Laws of the State of New York.

14. LABOR LAW AND EXECUTIVE LAW: CONSULTANT shall comply with all of the provisions of the Labor Law of the State of New York including, but not limited to, prevailing wage provisions and with Article 15 of the Executive Law of the State of New York relating to unlawful discriminatory practices, insofar as, the provisions are applicable to the work and/or services to be performed under this agreement.

15. LOCAL LAWS AND RESOLUTIONS: CONSULTANT shall comply with all local laws and resolutions of the Legislature of Rockland County including, but not limited to, filing of Disclosure Statements and Affirmative Action Plans.

16. APPROVAL OF FEDERAL, STATE AND LOCAL AGENCY: Notwithstanding any other provisions of this agreement, COUNTY shall not be liable for any payment or compensation to CONSULTANT until the services rendered by CONSULTANT, under this agreement, meet the approval and standards of any other Federal, State or local agency, authority, commission or body, which has jurisdiction over the services to be rendered under this agreement which provides funding in whole or in part for the services provided under this agreement.

17. COMPLY WITH AMERICANS WITH DISABILITIES ACT OF 1990: CONSULTANT agrees to comply with the provisions of the Americans With Disabilities Act of 1990 (ADA) prohibiting discrimination on the basis of disability with regard to employment policies and procedures, structural and program accessibility, transportation and telecommunications.

18. DISALLOWANCE: Should New York State, the Federal Government, COUNTY or any other governmental agency disallow any CONSULTANT expenditure, the CONSULTANT shall hold harmless and indemnify the COUNTY for any such disallowance and shall defend, reimburse the COUNTY, or other applicable governmental agency, for the full amount of any disallowance. Further, if the COUNTY must make reimbursement to New York State or the Federal Government as a result of the disallowance, the COUNTY shall have the right to withhold any future payments to the CONSULTANT in order to recoup the amount of disallowance, as well as, retaining all other remedies provided by law.

19. CONFIDENTIALITY: For the purposes of this article:

- A. The term "Confidential Information" as used herein means all material and information, whether written or oral, received by CONSULTANT from or through the COUNTY or any other person connected with the COUNTY, or developed, produced, or obtained by CONSULTANT in connection with the performance of Services under this Agreement. Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any

investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations and/or comments relating thereto.

- B. The term "CONSULTANT" as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of CONSULTANT.

CONSULTANT shall keep all Confidential Information in a secure location within CONSULTANT's offices. The COUNTY shall have the right, but not the obligation, to enter CONSULTANT's offices in order to arrangements of CONSULTANT for keeping Confidential Information secure. No inspection or failure to inspect by the COUNTY shall relieve CONSULTANT of the responsibility for the performance of its obligations hereunder.

CONSULTANT shall hold Confidential Information in trust and confidence, shall not disclose Confidential Information or any portion thereof, to anyone other than the COUNTY without the prior written consent of the COUNTY and shall not use Confidential Information or any portion thereof, for any purpose whatsoever except in connection with the performance of the Services under this Agreement.

CONSULTANT shall notify the COUNTY immediately upon receipt by CONSULTANT of any request by anyone other than the COUNTY for, or any inquiry related to, Confidential Information. CONSULTANT is not prohibited from disclosing portions of Confidential Information if, and to the extent that, (i) such portions have become generally available to the public other than by an act or omission of CONSULTANT, or (ii) disclosure of such portions is required by subpoena, warrant or Court order; PROVIDED, however, that in the event anyone other than the COUNTY requests all or a portion of Confidential Information, CONSULTANT shall oppose such request and cooperate with the COUNTY in obtaining a protective order or other appropriate remedy unless and until the COUNTY in writing waives compliance with the provisions of this paragraph 19 or determines that disclosure is legally required. In the event that such Protective Order or other remedy is not obtained, or the COUNTY waives compliance with this paragraph 19 or determines disclosure is legally required, CONSULTANT shall disclose only such portions of Confidential Information that, in the opinion of the COUNTY, CONSULTANT is legally required to disclose, and CONSULTANT shall use its best effort as to obtain from the party to whom Confidential Information is disclosed written assurance that confidential treatment will be given to such portions of Confidential Information as are disclosed, to the extent permitted by law.

CONSULTANT shall obtain from each subcontractor of CONSULTANT a Confidentiality Agreement running to the benefit of the COUNTY, substantively identical to this paragraph 19, prior to the performance of any of the Services in connection with this Agreement by each subcontractor, and at any time if requested by the COUNTY, from the officers, directors, agents or employees of CONSULTANT or any such subcontractor.

CONSULTANT's obligations and those of CONSULTANT's employees, agents, subcontractors, successors and assigns, under this paragraph 19 shall survive completion of Services or the expiration or termination of this Agreement.

20. OWNERSHIP OF CONFIDENTIAL INFORMATION: Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information as defined in the preceding paragraph, including all copies thereof is the exclusive property of the COUNTY regardless of whether it is delivered to the COUNTY. CONSULTANT shall deliver Confidential Information and all copies thereof to the COUNTY upon request.

B. To the extent that copies of Confidential Information are authorized by the COUNTY to be retained by CONSULTANT, they shall be retained in a secure location in CONSULTANT's office for a period of six (6) years after completion of the Services or termination of this Agreement, whichever later occurs, and thereafter disposed of at the COUNTY's direction.

21. **TERMINATION/AMENDMENT:** This agreement may be terminated or amended, on at least thirty (30) days written notice, by the COUNTY.

22. **ENTIRE AGREEMENT/NO MODIFICATION:** This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations or agreements either oral or written. It may not be modified except by in writing signed by the parties.

SEE SCHEDULE A FOR ADDITIONAL CONTRACT CLAUSES ANNEXED HERETO AND MADE PART HEREOF.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

DEPARTMENT OF PURCHASING

Paul J. Brennan
For/ PAUL J. BRENNAN CPPO/ CPPB
DIRECTOR OF PURCHASING

Dated: 8/21/07

DEPARTMENT OF LAW

Approved for Signature of
County Executive

FINA DEL PRINCIPIO
FINA DEL PRINCIPIO
Principal Assistant County Attorney

Dated: 8/30/07
FDP:lh
2007-06549

TROY AND BANKS INC.

Thomas Ranallo
THOMAS RANALLO
PRESIDENT

Date: 8/21/07

COUNTY OF ROCKLAND

C. Scott Vanderhoef
C. SCOTT VANDERHOEF
County Executive

Dated: 9/7/07

STATE OF NEW YORK)
) ss:
COUNTY OF ROCKLAND)

BEVERLY A. FLOERSHEIM
Notary Public State Of New York
#4979193
Qualified In Rockland County
Commission Expires March 25, 2011

On the 7 day of September, in the year, 2007, before me, the undersigned, personally appeared, C. SCOTT VANDERHOEF, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

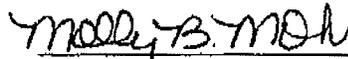
ATTESTATION:

As Clerk to the Legislature, I hereby attest that I know the seal of the Legislature of Rockland County and that the seal affixed to this instrument is such seal.


LAURENCE D. TOOLE
Clerk to the Legislature

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 21st day of August, in the year, 2007, before me, the undersigned, personally appeared, THOMAS RANALLO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MOLLY B. MOHR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO4813452
Qualified In Erie County
Commission Expires July 31, 2010

