

October 22, 2019

SUBJECT: REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS (IQCs) FOR THE PERFORMANCE OF EXPERT PROFESSIONAL VALUE ENGINEERING SERVICES FOR FEDERALLY FUNDED MAJOR CAPITAL PROJECTS ON AN “AS-NEEDED” BASIS DURING 2020 THROUGH 2024 RFP #59196-ADDENDUM # 1

Dear Sir or Madam,

Attached is the sample Port Authority Standard Agreement that was inadvertently left out of the RFP.

If you have any questions, please contact Ms. Megan Connors, Principal Contract Specialist, at meconnors@panynj.gov

Sincerely,

Joann Spirito
Manager, Construction/ Federal Procurement & Compliance
Procurement Department

P.A. Agreement #
DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention:

SUBJECT: REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS (IQCs) FOR THE PERFORMANCE OF EXPERT PROFESSIONAL VALUE ENGINEERING SERVICES FOR FEDERALLY FUNDED MAJOR CAPITAL PROJECTS ON AN “AS-NEEDED” BASIS DURING 2020 THROUGH 2024 RFP # 59196

Dear Contact:

1. The Port Authority of New York and New Jersey ("Authority" or "Port Authority"), hereby offers to retain <FIRM NAME> ("the Consultant" or "you") to provide Expert Professional Value Engineering Services on an "As Needed" Basis for Federally Funded Major Capital Projects during 2020 through 2024 ("Services" or "the Project") as more fully set forth in "Attachment A – Scope of Work," which is attached hereto and made a part hereof, as may be modified, amended or supplemented by written task order(s) ("Task Order(s)").

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

For the purpose of administering this Agreement, the Chief of Major Capital Projects has designated **** <TITLE>, or other such individual as hereafter designated, to act as his/her duly authorized representative. The Project Manager for this project is <NAME>, at tel. (***) ***-****, or email address: *****@panynj.gov.

2. This Agreement shall be signed by you, and the Chief Procurement Officer.

As used herein:

“Agreement” or “Master Agreement” means the writings setting forth in the Scope of Work, terms and conditions for the procurement of Services, as defined hereunder, and shall include but not be limited to the Request for Proposals (“RFP”) and any other attachments, endorsements, schedules, exhibits, drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

“Change Order” means a written modification to an Agreement impacting the requirements set forth in the Agreement.

“Chief Procurement Officer” means the Chief Procurement Officer of the Authority, or his/her duly authorized representatives acting within the scope of the particular authority vested in him/her.

“Chief Engineer” means the Authority’s Chief Engineer, or his successor in duties for the purpose of this Agreement, or one of his authorized representatives for the purpose of this Agreement.

“Chief of Major Capital Projects” means the Authority’s Chief of Major Capital Projects, or his successor in duties for the purpose of this Agreement, or one of his authorized representatives for the purposes of this Agreement.

“Manager” means the Program Manager, Project Integration Manager, Project Manager or his designee or his successor in duties for the purpose of this Agreement, or their duly authorized representative for the purpose of this Agreement.

“Port Authority of New York and New Jersey” or “Port Authority” or “Authority” means the Port Authority of New York and New Jersey and its subsidiaries, including PATH.

3. The term of this Agreement shall commence on XXXXX,XX, 2020* (“Effective Date”) and shall continue for a period of four (4) years. The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Authority’s representative, with Procurement’s concurrence.

4. Time is of the essence. Your services shall be performed as expeditiously as possible and at the time or times required by the Authority’s representative.

5. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief of Major Capital Projects, in which case the requirements of said notification shall apply.

This Agreement is subject to the insurance requirements set forth in Attachment F, Insurance Requirements.

This Agreement may be funded in whole or in part by one (1) or more Federal grantors such as, the Federal Transit Administration (FTA), the Federal Emergency Management Agency (FEMA), the Federal Highway Administration (FHWA) and other Federal grantors, as applicable.

As a result, Consultant (and its subconsultant(s), if any, regardless of tier) agree to comply with the applicable contract provisions set forth in Exhibit IA, IB and IC of this Agreement, as may be revised, or other contract provisions that may be applicable as identified in a Task Order.

6. The Consultant shall meet and consult with Authority staff as requested by the Chief of Major Capital Projects in connection with the services to be performed herein. Any Contract Drawings

and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief of Major Capital Projects. The Chief of Major Capital Projects may disapprove, if in his sole and absolute opinion said items are not in accordance with the requirements of this Agreement and sound engineering principles or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated construction is intended. If any of the said items, or any portion thereof, are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief of Major Capital Projects, but the Consultant will not be compensated under any provision of this Agreement for performance of such revisions. No approval, disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility, if any, under this Agreement to furnish, in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes thereto, if any, which are best suited for the contemplated construction, done in accordance with sound engineering principles and signed and sealed by a licensed Professional Engineer.

7. When services to be performed by the Consultant include the preparation of contract documents, or the performance of post-award services, the Consultant shall submit its specific Quality Control/Assurance Program to the Authority's Project Manager prior to the performance of said services. Upon completion of specific services requested hereunder, the Consultant shall submit a letter to the Authority's Project Manager certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

8. When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or as directed by the Chief of Major Capital Projects prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CADD Standards. All submissions of CADD drawings shall be submitted to the Authority on compact discs, uploaded to the project website, or as otherwise required in DWG and DWF format in accordance with the Port Authority CADD Standards.

9. Any documents provided to the Authority via an external website shall be and remain free of any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data processed thereby; or (b) prevent the Authority or any of its authorized users from accessing or using the services provided under this Agreement, including but not limited to any virus, bug, Trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device. The Authority reserves the right to use and load security and system software to evaluate the level of security and vulnerabilities in all systems which control, collect, dispense, contain, manage, administer, or monitor operations related to this Agreement. Upon Agreement expiration or termination, the Consultant shall provide to the Project Manager, within 30 days of Agreement termination or expiration, written confirmation that all electronic instances of Authority data, including, but not limited to production data, test data, backups, disaster recovery data, shall have

been purged, permanently removed or destroyed in a manner consistent with Consultant company policy related to such data.

10. Upon issuance of a Task Order, you shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder, in accordance with Section 11 below, including reimbursable expenses, reaches the Not to Exceed amount of each Task Order, unless you are specifically authorized in writing to so continue by the Chief of Major Capital Projects. If no such authorization is issued, the Task Order and/or this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the minimum compensation in each Task Order.

11. COMPENSATION

As full compensation for all of your services and obligations in connection with Task Orders awarded, the Authority will compensate the Consultant as set forth in each Task Order, subject to the limits on compensation and provisions set forth herein and in each individual Task Order. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

- A. Consultant's Fixed Fee. For Consultant's satisfactory performance of its Services under each Task Order and all of its obligations in connection with this Agreement, the Port Authority will pay, subject to pro-rata portion thereof due to any suspension or termination of this Agreement as permitted herein, the Consultant a fixed fee ("Consultant's Fixed Fee" or "Fee"), a negotiated not-to-exceed amount representing Consultant's profit for the Task Order. Unless otherwise agreed to by the Authority, in the form of a written Change Order, compensation for additional services that are within the general scope of a Task Order(s) awarded under this Agreement shall not result in an increase in the Consultant's Fixed Fee. Payment of the Consultant's Fixed Fee / profit shall be made as outlined in each Task Order. Additionally, the Consultant's Fixed Fee shall not apply to partners, principals or temporary employees of Consultant who are engaged in the performance of services to be provided herein.
- B. Direct Personnel Costs. Consultant will be reimbursed for the actual hourly rates of Consultant's full-time employees ("Personnel") for Services performed in each Task Order awarded under this Agreement. The Task Order Pricing and Compensation Proposal shall include a schedule of the actual hourly labor rates and titles of all Consultant's Personnel assigned to the Task Order that have been approved by the Port Authority, including an organizational chart showing the names and titles of all staff working on the Task Order.
 - A. The Port Authority reserves the right to audit and verify the hourly rate and time billed for the Services of each such employee. It is understood that each employee shall bill time to the Task Order only for work actually performed on the Task Order and shall not bill time to the Task Order for holidays, vacation days, sick leave, personal days, maternity, medical or family leave, or for any other item included in the Overhead Rate, as set forth below.

- B. When requesting salary or billing rate adjustments for one or more of its Personnel, the Consultant shall submit the employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly rate or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased costs to the Consultant of providing the Services under this Agreement which has given rise to the request for increased salary or billing rate. For adjustments submitted after the Effective Date of this Agreement, it is the intention of the Port Authority to grant an increase in pay if Consultant demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit increases normally administered by the Port Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Port Authority employees possessing comparable skills and experience. If, during any calendar year, the Port Authority limits are not available to Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall, therefore, in all cases, be finally determined by the Chief of Major Capital Projects or his designee, in his/her sole and absolute discretion.
- C. Overhead Rate. The Overhead Rate for each Task Order shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall include the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and collective bargaining, and corporate expenses as otherwise allowed in compliance with 48 CFR Part 31.
- A. An Overhead Rate is applicable for a one-year accounting period ("Provisional Overhead Rate"). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this Section 11.C and the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by a contract modification.
- B. The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such Personnel provided, however, that for purposes of this Section 11.C only, the term "Personnel" shall exclude any non-exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the Agreement documents, and are paid wages for such work. For the avoidance of doubt, the term "Personnel" for purposes of this Section 11.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendent services on any Task Order.
- C. The Overhead Rate shall not apply to partners, principals or temporary employees of

Consultant.

D. The Consultant's actual Overhead Rate(s) during the term of this Agreement shall be subject to an audit by the Port Authority. The Authority reserves the right to retroactively adjust the Consultant's compensation in the event that a final audit of overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.

E. The Overhead Rate shall not include any element that is attributable to the Consultant's Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.

D. Costs of Subconsultants. Consultant shall be reimbursed for the costs of any subconsultant, which shall include only an amount equivalent to the aggregate amount actually paid to said subconsultant by the Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

E. Reimbursable Expenses. The Consultant may also be compensated at an amount equal to the out-of-pocket expense for each Task Order, approved in writing and in advance by the Chief of Major Capital Projects, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

1) Notwithstanding the preceding paragraph the Authority will pay an amount approved in advance by the Chief of Major Capital Projects and computed as follows for the reproduction of submittal drawings, specifications and reports:

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

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

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

3) When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement

- Rate (as determined by the United States General Services Administration (“GSA”) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.
- 4) When the Consultant is directed to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Chief of Major Capital Projects. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the GSA for that locality.
 - 5) You shall obtain the Chief of Major Capital Projects written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and shall provide said receipts with the appropriate billing.
 - 6) As used herein:

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

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

F. All costs under this agreement will be allowed to the extent permitted under 48 CFR Part 31.

12. CHANGES

The Authority reserves the right to make changes to the Scope of Work or schedule. The Consultant shall diligently perform all such service without delay even if the Consultant does not agree with any schedule or cost decision of Authority related to changed services. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The claim will be considered by the Authority and if accepted, in whole or part, the Authority will issue a Change Order. The provisions of the Agreement relating to the services and its performance shall apply without exception to any changed or additional services required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. With Procurement's concurrence, the Authority's Representative must authorize in writing the changed or additional services and/or any change to the Amount obligated under the Agreement before it is performed and before the Consultant can be reimbursed for such services.

The Consultant shall immediately notify the Authority, in writing, of any change in the Scope of Work either requested by Authority or desired by the Consultant. Such notice shall be in the form of a change request and shall include the estimated hours by element of work and the applicable hourly rates, overhead, other direct charges, subconsultant charges in the same detail as cost elements for the Consultant, and Fixed Fee, if any, all in accordance with the Section 11 - Compensation, as may be modified, amended or supplemented by Task Order(s), as well as any proposed schedule adjustments arising from the proposed change to the Scope of Work, if any. The parties shall negotiate in good faith the proposed changes to the Scope of Work identified in the Consultant's change request. The amounts that the parties agree upon shall be incorporated into the Agreement by issuance of a Change Order.

The Authority reserves the right to delete services in whole or in part. Any deletion of services must be authorized in writing by the Authority's Representative. If service(s) is/are deleted, the Fixed Fee, as set forth in the Section 11A, shall be reduced accordingly.

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

14. On or about the fifteenth day of each month, the Consultant shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Engineer. Upon receipt of the foregoing, the Chief of Major Capital Projects will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority will, within fifteen days after receipt of such certification by the Chief of Major Capital Projects, advance to you by check the sum certified minus all prior payments to you for your account.

15. The Authority will have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of three years after completion of services to be performed under this Agreement.

16. DISPUTE RESOLUTION

To resolve all disputes and to prevent litigation, the parties to this Agreement authorize the Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to, or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Consultant's proposal and claims of a type that are barred by the provisions of this Agreement). The Chief Engineer's decision with respect to any question or dispute under this Section shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Chief Engineer may find desirable.

The effect of Chief Engineer's decision with respect to any question or dispute under this Section shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Chief Engineer participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.

All such questions or disputes under this Section shall be submitted in writing by Consultant or the Port Authority to Chief Engineer for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. The Port Authority may join any other entity to the dispute that has a valid dispute resolution agreement with the Port Authority. In any action against the Port Authority relating to any such question or dispute, Consultant must allege in its complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to Chief Engineer.

17. SUBCONTRACTING

Contractor may subcontract only with the prior written consent of the Chief of Major Capital Projects, which consent may be withheld by the Port Authority in its sole and absolute discretion. Every subcontract must provide that it is subject to all of the covenants, terms, provisions and conditions of this Agreement and must provide that in the event of termination or cancellation of this Agreement for any reason whatsoever, prior to the expiration of such subcontract, the subcontract will automatically terminate on the same date this Agreement is terminated or canceled. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Agreement.

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

19. TERMINATION

- a. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address as set forth herein. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed.

- b. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Port Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon five (5) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date 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 Consultant from the Port Authority shall be prorated when applicable on a daily basis. If termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement, the amounts computed as above set forth for services completed to the satisfaction of the Chief of Major Capital Projects, through the date of termination, minus all prior payments to you. 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.
20. Under no circumstances shall you or your subconsultants communicate in any way with any consultant, contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder without prior written approval and instructions of the Chief of Major Capital Projects, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief of Major Capital Projects.
21. Any services performed for the benefit of the Authority at any time by you or on your behalf, even services in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.
22. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief of Major Capital Projects shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect, or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact, or to prevent the recovery of any damages sustained by the Authority.
23. Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons, whether such claims presently exist or arise

in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, by a subconsultant, or by an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

24. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant, the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

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

26. You shall promptly and fully inform the Chief of Major Capital Projects in writing of any patents, patent disputes, or intellectual property disputes, whether existing or potential, of which

you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

27. This Agreement is based upon your special qualifications for the services herein contemplated, and any assignment, subcontracting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may subcontract services to subconsultants with the express consent in writing of the Chief of Major Capital Projects. All persons to whom you subcontract services, however, shall be deemed to be your agents and no subcontracting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

For each proposed subcontractor with a proposed contract value of \$100,000 or more, the Contractor shall ensure that the Background Qualification Questionnaire ("BQQ"), or Certificate of No Change ("CNC"), as appropriate, are completed, which documents are available at

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

For Task Orders identified as subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations: the requirements for the DBE Program are located in Attachment D: Disadvantaged Business Enterprise (DBE) Program of this RFP. The following goal for DBE participation has been set for this Agreement:

25 % for firms owned and controlled by socially and economically disadvantaged individuals and certified as DBE's, as approved by the Authority.

28A. MINORITY BUSINESS ENTERPRISES (MBEs) AND WOMEN-OWNED BUSINESS ENTERPRISES (WBEs) (Applicable to Task Orders where MBE/WBE goals are indicated to be applicable)

The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

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

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

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

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

The Authority has set a goal of twenty percent (20%) participation for qualified and Authority certified MBEs and ten percent (10%) for qualified and Authority certified WBEs on technical service projects.

MBE/WBE participation goals may be subject to change during the duration of this Agreement and any options or extensions thereof. Any new participation goals determined by the Authority shall be applicable to and considered a part of this Agreement. The current participation goals will be posted on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html> as PA Form 4250, "MBE/WBE Participation-Professional Services Call-In". You must consult PA 4250 prior to proposing on any Task Orders issued under this Agreement.

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

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

A. Dividing the services and materials to be procured into smaller portions, where feasible.

B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.

C. Soliciting services and materials from Authority certified MBE/WBE firms. To access the Authority's Directory of MBE/WBE certified firms, go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html>.

D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.

E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be

required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant shall include their MBE/WBE Participation Plans (Form PA 3760C) with their task order proposals, to be reviewed and approved by the Authority's OBDCR.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.

- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.

- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor/subconsultant or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

MBE/WBE Conditions of Participation

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work

involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Consultant, other subcontractors/subconsultants on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

Counting MBE/WBE Participation

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor/consultant shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

29. NON-DISCRIMINATION REQUIREMENTS

The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. Consultant hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subconsultants and/or vendors under this Agreement. Consultant shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Consultant agrees that these "Non-Discrimination Requirements" are a binding part of this Agreement. Without limiting the generality of any other term or provision of this Agreement, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Agreement in accordance with Section 19 of this Agreement.

C. Consultant agrees to cooperate fully with the Authority's investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these "Non-Discrimination Requirements."

30. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region.

Therefore, the Authority reserves the right to deny access to certain documents, sensitive security sites and facilities (including rental spaces) to any person who declines to abide by Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

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

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

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

- Consultant/subconsultant identity checks and background screening

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

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

In accordance with the Authority's Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority or PATH facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing work at aviation facilities.). 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 may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

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

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

Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

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

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October 15, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

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

31. CONFIDENTIAL INFORMATION/NON-PUBLICATION

A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's and/or the Port Authority Trans Hudson (PATH) Corporation's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software,

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018, as may be further amended)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

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

The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder:

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

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

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

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

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed by the Authority, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event the Consultant shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way the jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

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

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

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

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's

obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

32. The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the "Code"). The Code is hereby made a part of this Agreement. The Code can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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

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

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

A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in Section "34G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies

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

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

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

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

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

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

36. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must

comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

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

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

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

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

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

38. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by the Section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about how to report information to the Office of Inspector General).

Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

39. CONFLICT OF INTEREST

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

appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements that result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any questions of conflict of interest shall be final.

40. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the work under this Agreement, the Consultant and any subconsultants/subcontractors shall cooperate fully with the Integrity Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

41. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors/subconsultants or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

42. DEFINITIONS

As used in Sections 33 through 41 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

Officer - Any individual who serves as Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer of the Consultant by whatever titles known.

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Consultant, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

43. The entire Agreement between the parties is contained herein (including all Attachments and Exhibits, as set forth in Section 46 below) and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or by his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

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

45. 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.

46. List of Attachment/Exhibits

The following list of exhibits and attachments are annexed hereto and incorporated herein:

Attachment A: Scope of Work

Attachment A1: Authority's Limited English Proficiency (LEP) Plan 2015

Attachment D: Disadvantaged Business Enterprise (DBE) Program

Attachment D1: Minority Business Enterprises (MBE) and Women -Owned Business Enterprises (WBE) Program

Attachment E: Staffing Plan

Attachment F: Insurance Requirements

Exhibit IA: Federal Transit Administration (FTA) Contract Provisions

Exhibit IB: Federal Emergency Management Agency Requirements (FEMA) Contract Provisions

Exhibit IC: Federal Highway Administration (FHWA) Provisions

47. Notices. All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered or (ii) transmitted by certified mail, postage prepaid, return receipt requested. Notices shall be addressed and delivered as follows:

With a copy to: The Port Authority of New York and New Jersey
Attention: Chief of Major Capital Projects
4 World Trade Center, 23rd Floor
150 Greenwich Street
New York, New York 10007

and

With a copy to: The Port Authority of New York and New Jersey
Attention: Chief Engineer
4 World Trade Center
150 Greenwich Street, 19th Floor
New York, New York 10007

and

With a copy to: The Port Authority of New York and New Jersey
Attention: General Counsel
4 World Trade Center, 23rd Floor
150 Greenwich Street
New York, New York 10007

To Consultant: ***Insert Consultant Name***
Attention:
Title:
Address:

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

FIRM NAME

DATE

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officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

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

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Chief Procurement Officer
Procurement Department

Date _____

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

ACCEPTED:

FIRM NAME

By: _____

Title: _____

Date: _____