



**THE PORT AUTHORITY OF NY & NJ**

**PURCHASING SERVICES DIVISION  
4 WORLD TRADE CENTER (4 WTC)  
150 GREENWICH STREET, 21ST FLOOR  
NEW YORK, NY 10007**

**INVITATION FOR BID/PUBLIC BID OPENING**

**BID INFORMATION**

**TITLE: DESIGN, FABRICATE, DELIVER AND INSTALL IN-GROUND LIFTS AT THE  
HARRISON CAR MAINTENANCE FACILITY**

**BID NO.: 42356**

**SUBMIT SEALED BIDS BEFORE THE DUE DATE AND TIME TO THE ABOVE ADDRESS  
WHERE THEY WILL BE PUBLICLY OPENED AND READ**

**BID DUE DATE: June 3, 2015**

**TIME: 11:00 AM**

**CONTRACT SPECIALIST  
CORY MERMER**

**PHONE NO.: (212) 435-5696  
EMAIL: [cmermer@panynj.gov](mailto:cmermer@panynj.gov)**

**BIDDER INFORMATION  
(TO BE COMPLETED BY THE BIDDER)  
(PLEASE PRINT)**

\_\_\_\_\_  
(NAME OF BIDDING ENTITY)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(CITY, STATE AND ZIP CODE)

\_\_\_\_\_  
(REPRESENTATIVE TO CONTACT-NAME & TITLE (TELEPHONE)

\_\_\_\_\_  
(FEDERAL TAX I.D. NO.) (FAX NO.)

\_\_\_ BUSINESS CORPORATION \_\_\_ PARTNERSHIP \_\_\_ INDIVIDUAL

\_\_\_ OTHER (SPECIFY): \_\_\_\_\_

## **INVITATION FOR BID**

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## **PART I - STANDARD INFORMATION FOR BIDDERS**

### **1. General Information: The Port Authority of New York and New Jersey**

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

In addition, the Port Authority operates the Port Authority Bus Terminal in Manhattan, the largest facility of its kind in the world, and the George Washington Bridge and Journal Square Transportation Center bus stations. A key link in interstate commuter travel, the Port Authority also operates the Port Authority Trans-Hudson Corporation (PATH), a rapid rail transit system linking Newark, and the Jersey City and Hoboken waterfronts, with midtown and downtown Manhattan. A number of other key properties are managed by the agency including but not limited to a large satellite communications facility (the Teleport) in Staten Island, and a resource recovery co-generation plant in Newark. The Port Authority’s headquarters are located at 4 World Trade Center, New York, NY.

### **2. Federal Transit Administration Requirements**

This Contract is part of a program funded by the Federal Transit Administration (FTA) and the successful Bidder will be required to comply with and complete the attached certificates with the “Federal Transit Administration Requirements” annexed hereto as Attachment A.

### **3. Form and Submission of Bid**

The Bidder shall review carefully every provision of this document, provide all the information required, and sign and return one entire copy to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained herein must be completed and signed by the Bidder. The Pricing Sheet(s) contained herein must also be completed. The bid shall be sealed in the enclosed self-addressed envelope conspicuously marked with the Bidder’s name, address, and Vendor Number, if available. In addition, the outside of the package must clearly state the Bid Title, the Bid Number and the Bid Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting this bid, the Bidder offers to

assume the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Bids must be received by the bid custodian on or before the due date and time specified on the cover page, at which time they will be publicly opened and read. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery. If your bid is to be hand-delivered by messenger or you are planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Bids that are not received by the bid custodian by the scheduled bid opening date and time will be considered late.

#### **4. Vendor Profile**

To ensure maximum opportunities, it is important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Bidders may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://panynjprocure.com/VenLogon.asp>. Bidders that register, as a Port Authority Vendor by accessing the on-line registration system will be sent an acknowledgement with their assigned Vendor Number.

#### **5. Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this Bid, the Bidder shall complete, sign and include with its Bid the addenda form(s). In the event any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though the Addenda had been acknowledged.

If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any Addenda that might have been issued in connection with this solicitation.

#### **6. Firm Offer**

The Bidder offers to provide the Port Authority Trans-Hudson Corporation ("PATH") the services and to perform all Work in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the Pricing Sheets provided herein. As used herein, the term "Port Authority" shall mean the Port Authority of New York and New Jersey acting on behalf of PATH.

**EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS WILL RESULT IN REJECTION OF THE BID.**

## **7. Acceptance or Rejection of Bids**

The acceptance of a bid will be by a written notice signed by an authorized representative on behalf of the Authority. No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all bids or to accept any bid, which in its judgment will best serve the public interest and to waive defects in any bid. No rights accrue to any Bidder unless and until its bid is accepted.

## **8. Bidder's Questions**

Any questions by prospective Bidders concerning the Work to be performed or the terms and conditions of the Contract may be addressed to the Contracts Specialist listed on the Cover Sheet of this document. The Contracts Specialist is only authorized to direct the attention of prospective Bidders to the portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written addenda issued under the name of the Manager, Purchasing Services Division of the Port Authority and will be posted on the Port Authority website. Addenda shall be considered part of the Contract.

## **9. Additional Information To and From Bidders**

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the time frame specified by the Port Authority.

If the Bidder is a corporation, a partnership, or a joint venture, a statement of the names and residences of its officers, partners, or authorized representatives, as applicable, should be submitted on the "Name and Residence of Principals Sheet", directly following the Signature Sheet in Part IV.

## **10. Union Jurisdiction**

All prospective Bidders are advised to ascertain whether any union now represented or not represented at the Facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the paragraph entitled "Harmony" in the Standard Contract Terms and Conditions.

## **11. Assessment of Bid Requirements**

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the services and materials to be supplied and all other things required to be done by the Contractor.

## **12. Bidder's Prerequisites**

Only Bidders who can comply with the prerequisites specified in Part II hereof at the time of the submission of its bid should submit bids, as only bids submitted by such Bidders will be considered. By furnishing this document to the Bidder, the Port Authority has not made a

determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to perform the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

### **13. Qualification Information**

The Port Authority may give written notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder's qualifications and ability to fulfill the Contractor's obligations hereunder. The requested information shall be submitted no later than three (3) days after said notice unless otherwise indicated. Matters upon which the Port Authority may inquire may include, but not be limited to, the following:

a. The Bidder may be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder's financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be required by the Port Authority from time to time including, but not limited to, the following:

1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.  
  
(ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.  
  
(iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the present financial condition of the Bidder.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the bid opening, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or their designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

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

other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.

- b. Information relating to the Bidder's Prerequisites, if any, as set forth in this document.
- c. A statement describing the legal and financial form of the entity submitting the bid, including ownership, financial structure and a point of contact. Such entity must legally exist and be qualified to do business within the state required under this bid as of the date that bids are submitted. As applicable, provide copies of the Articles of Incorporation, By laws and Amendments, partnership agreement, joint venture agreement and/or other appropriate organizational documents for the Bidder, its officers, financial guarantors and, if any such entities are joint ventures or partnerships, for all those of ventures or partners. Describe the rationale for the selection of the structure of the entity. Describe contractual, financial, legal commitments and agreements and functional relationships among financial guarantors and officers with relation to the Work required by this bid, to the extent that they are not disclosed in the organizational documents.
- d. A statement setting forth the names of those personnel to be in overall charge of the service and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.
- e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."
- f. In the event that the Bidder's performance on a current or past Port Authority or PATH contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.
- g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority and PATH that it in fact can perform the services as called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority and/or PATH in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's bid. Nothing stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the bid.

#### **14. Facility Inspection**

Details regarding the Facility inspection for all parties interested in submitting a bid are stipulated in Part II hereof. All Bidders must present company identification and photo identification for access to the Facility.

### **15. Available Documents - General**

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders either at the Facility Inspection, or during regular business hours. Arrangements to review these documents at a time other than the Facility Inspection may be made by contacting the person listed in Part II as the contact for the Facility Inspection.

These documents were not prepared for the purpose of providing information for Bidders upon this Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. PATH makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the inferences or conclusions to be drawn there from.

### **16. Pre-award Meeting**

The apparent lowest responsive and responsible Bidder may be called for a pre-award meeting prior to award of the Contract.

### **17. Disadvantaged Business Enterprises (DBE's)**

This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in Part III of this Solicitation.

For more information on the Port Authority certification process, please refer to the following website: <http://www.panynj.gov/business-opportunities/sd-become-certified.html>.

### **18. Certification of Recycled Materials**

Bidders are requested to submit, with their bid, a written certification entitled "Certified Environmentally Preferable Products / Practices" attached hereto as "Attachment I-A", attesting that the products or items offered by the Bidder contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only.

#### **Recycling Definitions:**

For purposes of this solicitation, the following definitions shall apply:

- a. "Recovered Material" shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- b. "Post-consumer Material" shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".
- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with a greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

**19. City Payroll Tax**

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

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

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

**20. Additional Bidder Information**

Prospective Bidders are advised that additional vendor information, including but not limited to, forms, documents and other information, including protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>

**21. ATTACHMENT I-A - Certified Environmentally Preferable Products/Practices**

Bidder Name: \_\_\_\_\_ Date: \_\_\_\_\_

In line with the Port Authority's efforts to promote products and practices which reduce our impact on the environment and human health, Bidders are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Bidders are requested to complete this form and submit it with their response, if appropriate. Bidders are requested to submit appropriate documentation to support the items for which the Bidder indicates a "Yes" and present this documentation, in the proper sequence of this Attachment.

1. Packaging

Has the Bidder implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- Use of corrugated materials that exceed the required minimum EPA recommended post-consumer recycled content
- Use of other packaging materials that contain recycled content and are recyclable in most local programs
- Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

**If yes, a description of the practices being followed should be include with the submission.**

2. Business Practices / Operations / Manufacturing

Does the Bidder engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates "Yes")

- Recycles materials in the warehouse or other operations
- Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- Use of energy efficient office equipment or signage or the incorporation of green building design elements
- Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- Other sustainable initiative

**If yes, a description of the practices being followed should be included with the submission.**

3. Training and Education

Does the Bidder conduct/offer a program to train or inform customers and employees of the environmental benefits of the products to be offered under this contract, and/or does the Bidder conduct environmental training of its own staff?

- Yes       No      If yes, Bidder shall attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications

Has the Bidder or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates "Yes")

- ISO 14000 or adopted some other equivalent environmental management system
- Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

**If yes, Bidders should attach copies of the certificates obtained.**

I hereby certify under penalty of law, the above statements are true and correct.

\_\_\_\_\_ Name \_\_\_\_\_ Date

**PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS,  
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## **PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS**

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

### **1. Service(s) Required**

Fabricate, deliver and install in-ground lifts at the Authority's PATH Harrison Car Maintenance Facility, Harrison, New Jersey. These services shall include the removal and disposal of existing in-ground lifts and the design, fabrication delivery, factory and field testing and on-site training of new in-ground lifts as more fully described in the Specifications, located in Part V of this Contract.

### **2. Delivery Location(s)**

Harrison Yard, Foot of Cape May Street, Harrison, New Jersey. Final delivery location to be coordinated with Port Authority, as more fully described in the Contract Specific Terms and Conditions, located in Part III of this Contract.

### **3. Delivery Date:**

The date of delivery shall be coordinated with Port Authority as more fully defined in Part III – "Contract Specific Terms and Conditions", hereof.

FOB Destination.

### **4. Contract Type:**

Fixed Price Lump Sum

### **5. Duration of Contract:**

The Contract Duration shall be eighteen (18) months from date of award and in accordance with the approved Progress Schedule and Milestone Progress Payment Schedule in Part III of this Contract.

## 6. Available Documents

The Harrison Car Maintenance Facility Drawings, listed as Exhibits 1-5 below, may be downloaded at the link below

### [BID #42356 – Available Documents](#)

The Authority will make available for the Contractor's use the documents listed below. Other documents listed should be obtained through the entities identified as part of the referenced item.

With regard to the documents, the Authority makes no representations or guarantees as to, and shall not be responsible for, their accuracy, completeness, pertinence, or conclusions drawn therefrom.

All documents in the possession of the Authority will be available to the Contractor at the Authority's PATH offices at One PATH Plaza, 6<sup>th</sup> Floor, Jersey City, NJ 07306, at (201) 216-6830 during regular business hours.

Exhibit 1 - PATH HCMF Lift Replacement Stage I Report dated March 2013

Exhibit 2 - General Arrangement Drawings

- a. Drawing No. 6P390238-1021-C - Contract PAT 120.007 – PA-4 Cars
- b. Drawing No. 13017-03518f – PA-5 dated 2005-10-07

Exhibit 3 - PATH – Main Repair Facility and Yard at Harrison and Kearny – Contract Number PAT – 150.149 dated October 15, 1987

- a. S-42 Shop Superstructure Transverse Sections
- b. S-43 Shop Superstructure Longitudinal Sections

Exhibit 4 - PATH – Main Repair Facility and Yard at Harrison and Kearny – Contract Number PAT 150.150 dated September 10, 1987

- a. S-10 Shop Foundations – Main Building – Foundation Plan Area 10
- b. S-13 Shop Foundations – Main Building – Foundation Plan Area 13
- c. S-15 Shop Foundations – Main Bldg. – Cross Section at Ground Level. Sheet 2
- d. S-19 Shop Foundations – Pile Cap Plans and Sections Sheet 1
- e. S-20 Shop Foundations – Pile Cap Sections and Details Sheet 2

Exhibit 5 - PATH – Main Repair Facility and Yard at Harrison and Kearny – Contract Number PAT – 150.153 dated June 7, 1988

- a. S-1 Shop Buildings – General Notes and Symbols
- b. S-2 Shop Buildings – Main Repair Shop Ground Floor Plan Area 1 & 2
- c. S-10 Shop Buildings – Main Repair Shop – Ground Floor Plan Area 10
- d. S-13 Shop Buildings – Main Repair Shop – Ground Floor Plan Area 13

- e. S-15 Shop Buildings – Main Repair Shop – Cross Section – B
- f. S-16 Shop Buildings – Main Repair Shop Sections & Details Sheet 1
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- ff. F-20 Shop Buildings – Fire Standpipe and Sprinkler Flow Diagram

## 7. Facility Inspection

**DATE AND TIME:** Thursday May 14, 2015 from 10:30 am to 12:30 pm

**PLACE:** Harrison Car Maintenance Facility, Harrison, NJ.

Please contact Cory Mermer at 212-435-5696 to confirm attendance and/or receive travel directions.

## 8. Specific Bidder's Prerequisites

The Bidder, including any subconsultants architects, engineers, and subcontractors shall have all required New Jersey certifications and/or licenses to perform the work in accordance with applicable codes, rules and regulations. Professional Engineers and Registered Architects shall be licensed by the State of New Jersey.

The prospective Bidder or each participant in a joint venture shall demonstrate to the Authority, that it has the minimum qualifications stated below. The prospective Bidder must also demonstrate that it has completed similar contracts in a skillful, satisfactory manner, and on schedule.

To be considered for an award, the Bidder must demonstrate to the satisfaction of the Authority that it meets the minimum requirements as stated below. Company brochures alone shall not be submitted for the purpose of demonstrating experience and technical expertise. Submittals must be tailored to the specific requirements of this Invitation to Bid. If the Bidder cannot demonstrate that it meets all of the below mentioned qualifications, then the Bidder may, with others, form a joint venture and request that the joint venture be pre-qualified as set forth in paragraph B.5 below.

1. All Bidders shall have the following qualifications:

- a) At least five (5) years of continuous experience in the fabrication, delivery and installation of heavy rail transportation in-ground lift equipment at railroad facilities immediately prior to the date of submission of its bid. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a total of at least five (5) year(s) of experience immediately prior to the date of the submission of its bid in the fabrication, logistics and installation of heavy rail transportation in-ground lift equipment and were actually engaged in providing such equipment to commercial or industrial accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described equipment during that time period.
- b) At least five (5) years of experience in the installation of mini-piles, including the successful completion of one (1) project requiring the installation of mini-piles of size(s) equivalent to those required for this project.

2. The Contractor's Engineer(s) providing design services shall have the following qualifications:

- a) At least ten (10) years of professional experience in structural and geotechnical design of transportation structures, design of modification of existing foundation structures, design of structural supports, and design of drilled mini-piles.
- b) At least ten (10) years of professional experience in mechanical design, commissioning, and final acceptance testing of heavy machinery serving transportation structures.

3. The Contractor's Project Manager and Superintendent each shall have the following qualification:
  - a. A minimum of ten (10) years of experience on contracts comparable in size to that outlined in Paragraph 1.

In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Bid as follows: The prerequisite in Subparagraph 2.a) and 2.b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder shall appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants shall be listed followed by the words "acting jointly and severally". All joint venture Bidders must provide documentation of their legal status.

Bidders shall provide proof that the above prerequisites are met and such proof shall be submitted with its bid. Award will be made to the lowest-cost, technically qualified, responsive and responsible Bidder.

## **9. Contractor Staff Background Screening**

The Bidder shall submit a completed Background Qualifications Questionnaire (BQQ), required for all contractors, subcontractors, consultants, and vendors providing services under this Contract. Said forms should also be submitted for all Subcontractors and suppliers identified at the time of bid submission and whose Subcontracts will meet the dollar thresholds requiring the certifications. This document and instructions for submitting the completed BQQ to the Port Authority's Office of Inspector General can be obtained at the Port Authority's website through the following link:

[http://www.panynj.gov/wtcprogress/pdf/PANYNJ\\_OIG\\_WTC\\_BQQP.zip](http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BQQP.zip)

The Contractor awarded this Contract may be required to have its staff, and any subcontractor's staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor (and subcontractor) may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening, except as otherwise

required by federal law and/or regulation. 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.

## 10. FTA Bid Submission Requirements:

The following items are additional bid submittal requirements and are contained within the Federal Transit Administration (FTA) Requirements and/or Solicitation Document and shall accompany your bid submission:

1. Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352
2. Standard Form LLL - Disclosure of Lobbying Activities
3. Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion - Lower Tier Covered Transactions
4. Buy America – Certification Requirement For Procurement of Steel, Iron, or Manufactured Products (Non- Rolling Stock)
5. Certificate of Cost and Pricing Data contained in Part IV Pricing Sheet(s)
6. Appendix A1 DBE Goals Statement in accordance with Part III clause entitled “DBE Program”
7. Appendix A2 DBE Participation Plan and Affirmation Statement
8. Appendix A3 Information on Solicited Firms

## 11. Contract Submission Requirements

Each Bidder shall submit a **Bid Bond**, in accordance with the form of bond included herein [Part IV], duly executed by the Bidder as principal and by one or more surety companies duly authorized to carry on the business of suretyship in the state(s) in which the Project Site is located, whose names appear on the current list of the Treasury Department of the United States as acceptable as sureties upon federal contracts; or, in lieu of a Bid Bond, a certified check, payable to the order of The Port Authority of New York and New Jersey, in the same amount appearing in the Bid Bond form, which check shall be placed in an envelope marked "Bid Security" and enclosed with the Bid.

Each Bidder shall provide **Financial Statements** for the entity submitting the Bid, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year. Where such certified financial statements are not available, then submit either reviewed or compiled statements from an independent accountant setting forth the information described in Paragraph 1, above.

Where neither certified financial statements nor financial statements from an independent accountant are available, then submit financial statements containing the information described in Paragraph 1, above, prepared directly by the Bidder. However, such financial statements must be accompanied by a signed copy of the Bidder's most recent Federal

income tax return and a statement in writing, signed by a duly authorized representative of the Bidder, that such statements accurately reflect the current financial condition of the Bidder.

Where statements submitted pursuant to either Paragraph 1 or 2, above, show the position of the Bidder as of a date more than forty-five (45) days prior to the date on which Bids are opened, the Bidder shall also submit a statement in writing signed by a duly authorized representative of the Bidder, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

Submit a statement of work which the Bidder has on hand, including any work on which a bid has been submitted, containing a description of the work, the dollar value, the location by city and state, the current percentage of completion and the expected date for completion.

Fill in below the name and address of the Bidder's chief banking representative handling the Bidder's account.

Banking Institution:  
Address:

Bank Representative:  
Telephone Number:

Fill in below the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes); the Bidder's Dun and Bradstreet number, if any; the name of any other credit service to which the Bidder has furnished information and the number, if any, assigned by such service to the Bidder's account.

\_\_\_\_\_  
Federal Employer Identification No.

\_\_\_\_\_  
Dun and Bradstreet No.

\_\_\_\_\_  
Other Credit Service

\_\_\_\_\_  
Account No

The following shall be submitted for approval within **fifteen (15) working days** after Contract Award:

1. Non-Disclosure and Confidentiality Agreement - Contractor shall submit a signed copy of the Port Authority “Non-Disclosure and Confidentiality Agreement” for the Contractor and its employees, agents and subcontractors and for all subcontractor’s employees who will be performing under this Contract. While an example of a “Non-Disclosure and Confidentiality Agreement” is attached to this Contract, the Port Authority may, in its sole discretion, require different, updated or amended agreement(s) to be signed prior to award.
2. Certificate of Insurance [Part III]
3. Analysis of Bid -Within fifteen (15) working days of acceptance of Bids, Contractor shall prepare and submit a detailed analysis of bid on forms furnished by the Port Authority with all of the spaces filled in without exception, and containing such information as the Authority may require for each of the items enumerated in such form (“**Analysis of Bid**”). The Contractor will be required to furnish a more detailed Analysis of Bid at a later date as instructed by the Authority.
4. Payment and Performance Bonds [Part III]
5. Summary of Design Criteria (SDC)
6. Progress Schedule

**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS,  
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## PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

### 1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (“Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, Item(s), materials, spare parts, equipment and all other things necessary to perform the Work required by this Contract as specified in Part II, and fully set forth in the Specifications, at the location(s) listed in Part II, and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the provisions of the Contract Documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

### 2. Order of Precedence

Anything to the contrary herein notwithstanding, all Contract Specific Terms and Conditions shall be deemed to control in the event of a conflict with the Standard Terms and Conditions contained in this Contract.

### 3. Specific Definitions

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

- a. Government, United States Government, Federal or words of like import shall mean the United States of America.
- b. UMTA or FTA - shall mean the United States Department of Transportation, Federal Transit Administration (formerly known as the Urban Mass Transportation Administration).
- c. FTA and Government shall be used interchangeably.
- d. DOT - shall mean the United States Department of Transportation.
- e. DCAA - shall mean the Defense Contract Audit Agency.
- f. The Port Authority or Authority - shall mean The Port Authority of New York and New Jersey acting on behalf of PATH.
- g. PATH – shall mean The Port Authority Trans-Hudson Corporation, a subsidiary of the

Port Authority.

h. Harrison Yard – shall mean the PATH yard maintenance facilities located in Harrison, New Jersey.

i. Engineer - means the Chief Engineer of the Authority acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them.

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

k. Item(s) – shall mean the goods, merchandise, supplies, equipment, services or articles specified.

l. Manufacturer– shall mean the person or entity who will actually fabricate, supply, deliver, factory and field test, and who shall conduct on-site training of the specific Item(s) to be furnished as described herein.

m. Contract Documents – shall mean all parts of this solicitation, inclusive of Specific Terms and Condition, Signature and Pricing Sheet, Specifications, Standard Contract Terms and Conditions, Federal Transit Administration Requirements, and all applicable Attachments and Exhibits contained herein.

#### **4. Delivery Requirements**

Delivery shall be Free On Board (F.O.B) Destination; the Contractor shall bear all cost of freight and insurance for delivery to the Port Authority. Delivery locations shall be coordinated with **PATH Car Equipment Division Superintendent, Harrison Car Maintenance Facility, Foot of Cape May Street, Harrison, NJ 07029 at telephone number 973-350-3913**. All deliveries shall be made between the hours of 8:00 a.m. and 2:00 p.m. unless otherwise noted in the Specifications. The Contractor shall follow the instructions for the proper method of making deliveries. Failure to do so may result in delayed payments.

A. All deliveries must be accompanied by an original packing slip, which shall always contain:

1. The Port Authority Purchase Order and/Contract Number.
2. A description of each Item.
3. The quantity shipped of each Item.
4. The Contractor's packing slip/invoice number.

B. Shipping cartons shall not contain loose and/or unmarked Item(s).

## 5. Progress Schedule

Within **twenty-one (21)** calendar days after receipt of Contract award, the Contractor shall submit a Summary of Design Criteria (SDC) and prepare a detailed progress schedule, based on the schedule below and the additional Items listed in Part V of this Contract, under “Section 11. Schedule and Submissions for Final (Stage III) Design”, for the approval of the Engineer. The progress schedule shall show the date for the commencement and completion of the different portions of the Contract. After the approval of the schedule, no changes shall be made therein without the written approval of the Engineer. Approval of any progress schedule shall not relieve the Contractor of his obligation to complete the Contract by the time required in the Contract, even though the schedule approved may be inconsistent with such completion, nor shall it constitute a representation by the Authority that the Contractor will be able to proceed or complete in accordance with the schedule.

Within **forty-two (42)** calendar days after receipt of the approval of the SDC and detailed progress schedule, the Contractor shall submit the 50% Design Submission of the replacement of the lifts in sufficient detail to allow an evaluation of the proposed design. This shall also include typical drawings showing modifications to address obstructions and interferences with existing pile caps, columns and tie beams that may exist depending on the configuration of the selected lift.

Within **seventy (70)** calendar days after receipt of the Contract award , the Contractor shall submit the 75% Design Submission of the replacement of the in-ground lifts.

Within **ninety-eight (98)** calendar days after the Contract award, the Contractor shall submit the 100% Final Design for the replacement of the in-ground lifts for approval.

Within **one hundred and twenty-eight (128)** calendar days after receipt of the Contract award or within 30 days after approval of Final Design, whichever is fewer, the Contractor shall submit signed mylars and an updated Progress Schedule including a detailed staging plan that includes durations for all work to be done, including but not limited to fabrication, delivery, testing, installation, commissioning, training and all related work as follows:

- Preparation of shop drawings for review and approval (within 30 days)
- Fabrication, factory testing and delivery of all lifts
- Mobilization
- Site preparation including demolition and removal of existing lifts
- Modifications of existing pits and structures including pile caps, columns and tie beams, as required to accommodate the installation of in-ground lifts
- Installation of in-ground lifts in pits
- Field testing and commissioning of in-ground lifts
- Removal and replacement of existing Motor Control Center (MCC)
- Training and preparation of Operations and Maintenance Manuals
- Shop Drawing submittals

Within **two hundred and ten (210)** calendar days after receipt of Contract award, fabrication and factory test of in-ground lifts for the HCMF shall be completed. The Authority shall be provided **fourteen (14)** calendar days advance notice of factory test.

Within **three hundred and sixty (360)** calendar days after receipt of Contract award, completion of equipment delivery, training, start-up and commissioning assistance to the Port Authority for the in-ground lifts shall be completed.

Within five **hundred and forty-six (546)** calendar days after receipt of Contract award, the Contractor shall complete removal and replacement of all in-ground lifts.

The Engineer shall have the right at any time when, in his judgment, the work is not proceeding in accordance with the approved progress schedule or is not proceeding at sufficient rate to ensure completion by the time required in the Contract (even though proceeding in accordance with approved progress schedule), to order the Contractor to increase the number of personnel employed, to use additional plant or equipment, and to take such other steps as may be necessary or required to ensure the completion of the various operations within the time allotted therefor in the approved schedule or by the aforesaid completion time without additional compensation to the Contractor.

## **6. Time is of the Essence**

The Contractor's obligation for the performance within the time provided for this Contract is of the essence of this Contract. The Contractor guarantees that he can and will complete such fabrication, supply, delivery, factory and field testing, installation, commissioning and on-site training within the time herein stipulated.

The delivery times shall be extended (subject, however, to the provisions of this numbered clause) only if, in the opinion of the Engineer acting personally or through his representatives, the Contractor is necessarily delayed in the delivery solely by fault of The Port Authority. Further, the Contractor shall be entitled to an extension of time to the extent that delay in its performance results from floods, earthquakes, storms, lightning, fire, epidemic, strike, riot, civil disturbance or any other cause which is beyond the reasonable control of the Contractor as determined by the Engineer pursuant to the Changes Clause in Section 21 below.

Any reference herein to the Contractor shall be deemed to include suppliers and others performing on behalf of the Contractor, whether or not in privity of contract with the Contractor and employees and others will be considered as agents of the Contractor.

## **7. Bill of Sale**

The Contractor warrants that all Item(s) are free of liens and other encumbrances. The Contractor shall promptly furnish to the Port Authority such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to the Item(s), free of liens and other encumbrances, upon delivery of such merchandise to the Port Authority.

## **8. Title to Materials**

All manufactured equipment, drawings, specifications, spare parts, and training programs/ materials, provided to the Port Authority shall be and become the property of the Authority upon successful completion of commissioning and acceptance testing by PATH. All equipment stored by the Contractor shall be individually marked and identified in a conspicuous manner "Property of the Port Authority of New York and New Jersey – BID #42356". Contractor shall arrange for the Engineer to have access to the storage site for inspection of equipment stored as requested. The Contractor shall bear risk of loss for any equipment stored until its delivery and acceptance by the Authority at the Project site. As a prerequisite to making any payments under this clause, the Contractor shall furnish whatever documents evidencing transfer of title of equipment to the

Authority that the Engineer requires, including bills of sale and affidavits of title in forms acceptable to the Engineer. The making of milestone payments shall not be deemed to be a final acceptance of equipment, nor shall it relieve Contractor of responsibility for such equipment.

## **9. PERFORMANCE AND PAYMENT BOND**

### **Performance Bond**

- a) If the Port Authority elected in its sole discretion at the time of accepting Contractor's Bid that Contractor shall furnish a bond for the faithful performance of all obligations imposed upon Contractor by the Contract and/or for the payment of all lawful claims of Subcontractors, Materialmen and workers arising out of the performance of the Contract, then Contractor shall furnish such bond. Such bond shall be in the form bound herewith entitled "Performance Bond," shall be in a penal sum equal to one hundred per cent (100%) of the Lump Sum, and shall be signed by one or more sureties<sup>1</sup> satisfactory to the Port Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of the Contract as though herein set forth in full.
- b) Contractor shall deliver the performance bond described above to the Port Authority within seven (7) days after receipt by Contractor of the acceptance of its Bid, and the sureties thereon shall be as proposed by Contractor; provided, that if the Port Authority has theretofore given notice to Contractor that its proposed sureties or any of them are not satisfactory, then the bond shall be executed by other sureties satisfactory to the Port Authority.
- c) The Port Authority shall give notice to Contractor within ten (10) days after receipt of the performance bond as to whether or not such bond is satisfactory. In the event of a default by Contractor in its obligation to furnish a satisfactory bond within seven (7) days after Contractor received an acceptance of its Bid, such default shall entitle the Port Authority in its discretion to terminate the Contract at any time within forty-five (45) days after the acceptance of the Bid, without any liability on the part of the Port Authority. Inasmuch as damages for the costs of delay to the Port Authority resulting from a termination by it upon the failure of Contractor to furnish a satisfactory bond will include Items whose accurate amount will be difficult or impossible to compute, such damages for the costs of delay shall be liquidated in the following amount:
  1. The sum of fifteen thousand dollars (\$15,000) per day for each day that the performance of the Work is not commenced by reason of the failure of Contractor to furnish the required bond, commencing on the day after receipt by Contractor of the acceptance of its Bid and continuing until the day on which the Work commences by the Contractor finally chosen to perform the Work.

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<sup>1</sup> Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the Project Site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Port Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned Treasury Department list of sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

The parties agree that such liquidated amount is a reasonable estimate of damages that the Port Authority would incur as a result of a delay in commencing the Work, represents reasonable compensation to the Port Authority for such damages, and such liquidated damages are not penalty imposed on the Contractor.

Notwithstanding anything else to the contrary, the parties agree that the liquidated damages contemplated under this clause shall be the Port Authority's exclusive remedy for the costs of delay arising from Contractor's failure to furnish a satisfactory bond as set forth in this numbered clause.

If the Port Authority is unable to recover any portion of the liquidated damages provided for in this numbered clause because any portion is found to be unenforceable or the clause is found to be invalid, then, notwithstanding (b) above, the Engineer may recover all of the Port Authority's actual damages, including consequential damages.

- d) Contractor also shall reimburse the Port Authority for the following:

The excess, if any, of the lump sum compensation of the Contractor finally accepted to perform the Work provided for in the Contract, over the Lump Sum in the Bid of the terminated Contractor; and

The expense of such new advertisement of the Contract, if any, as may be deemed necessary by the Port Authority.

In the recovery of the damages specified in this numbered clause, the Port Authority may proceed against the sum represented by the certified check deposited with it or against the bid bond and take such other action as the Port Authority may deem best in the public interest.

- e) If Contractor furnishes a performance bond in accordance with the requirements of the Port Authority under this numbered clause, the Port Authority shall reimburse Contractor for the net amount actually paid by Contractor to the surety or sureties as the premium on such performance bond. Contractor shall deliver to the Engineer receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen (15) days after receipt of such evidence satisfactory to the Engineer, the Port Authority shall pay to Contractor by check such amount as provided for in this numbered clause for the performance bond.
- f) If at any time the Port Authority shall be or becomes dissatisfied with any surety or sureties or with any bond furnished in accordance with the requirements of the Port Authority, or if for any other reason such bond shall cease to be adequate security to the Port Authority, Contractor shall, within five (5) days after notice from the Port Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Port Authority to constitute adequate security.

## **Payment Bond**

- g) If the Port Authority elected in its sole discretion at the time of accepting Contractor's Bid that Contractor shall furnish a bond for payment of all lawful claims of

Subcontractors, Materialmen and workers arising out of the performance of the Contract, then Contractor shall furnish such bond. Such bond shall be in the form bound herewith entitled "Payment Bond," shall be in a penal sum equal to one hundred percent (100%) of the Lump Sum, and such bond shall be signed by one or more sureties<sup>2</sup> satisfactory to the Port Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of the Contract as though herein set forth in full.

- h) Contractor shall deliver the payment bond described above to the Port Authority within seven (7) days after receipt by Contractor of the acceptance of its Bid, and the sureties thereon shall be as proposed by Contractor; provided, that if the Port Authority has theretofore given notice to Contractor that its proposed sureties or any of them are not satisfactory, then the bond shall be executed by other sureties satisfactory to the Port Authority.
- i) The Port Authority shall give notice to Contractor within ten (10) days after receipt of the payment bond as to whether or not such bond is satisfactory. In the event of a default by Contractor in its obligation to furnish a satisfactory bond within seven (7) days after Contractor received an acceptance of its Bid, such default shall entitle the Port Authority in its discretion to terminate the Contract at any time within forty-five (45) days after the acceptance of the Bid, without any liability on the part of the Port Authority. Inasmuch as the damages for the costs of delay to the Port Authority resulting from a termination by it upon the failure of Contractor to furnish a satisfactory bond will include Items whose accurate amount will be difficult or impossible to compute, such damages for the costs of delay shall be liquidated in the sum of the following amounts:
  - 1. The sum of fifteen thousand dollars (\$15,000) per day for each day that the performance of the Work is not commenced by reason of the failure of Contractor to furnish the required bond, commencing on the day after receipt by Contractor of the acceptance of its Bid and continuing until the day on which the Work commences by the Contractor finally chosen to perform the Work.

The parties agree that such liquidated amount is a reasonable estimate of damages that the Port Authority would incur as a result of a delay in commencing the Work, represents reasonable compensation to the Port Authority for such damages, and such liquidated damages are not penalty imposed on the Contractor.

Notwithstanding anything else to the contrary, the parties agree that the liquidated damages contemplated under this clause shall be the Port Authority's exclusive remedy for the costs of delay arising from Contractor's failure to furnish a satisfactory bond as set forth in this numbered clause.

If the Port Authority is unable to recover any portion of the liquidated damages provided for in this clause because any portion is found to be unenforceable or the clause is found

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<sup>2</sup> Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the Project Site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Port Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

to be invalid, then, notwithstanding (b) above, the Engineer may recover all of the Port Authority's actual damages, including consequential damages.

j) Contractor also shall reimburse the Port Authority for the following:

1. The excess, if any, of the lump sum compensation of the Contractor finally accepted to perform the Work provided for in the Contract, over the Lump Sum in the Bid of the terminated Contractor; and

2. The expense of such new advertisement of the Contract, if any, as may be deemed necessary by the Port Authority; and

In the recovery of the damages specified in this numbered clause, the Port Authority may proceed against the sum represented by the certified check deposited with it or against the bid bond and take such other action as the Port Authority may deem best in the public interest.

k) If Contractor furnishing a payment bond in accordance with the requirements of the Port Authority under this numbered clause, the Port Authority shall reimburse Contractor for the net amount actually paid by him to the surety or sureties as the premium on such payment bond. Contractor shall deliver to the Engineer receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen (15) days after receipt of such evidence satisfactory to the Engineer, the Port Authority shall pay to Contractor by check the amount provided in this numbered clause for the payment bond.

l) If at any time the Port Authority shall be or becomes dissatisfied with any surety or sureties or with any bond furnished in accordance with the requirements of the Port Authority, or if for any other reason such bond shall cease to be adequate security to the Port Authority, then Contractor shall, within five (5) days after notice from the Port Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Port Authority to constitute adequate security.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>3</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The condition of the above obligation is that

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

WHEREAS, the Port Authority has required this bond for the faithful performance of all obligations imposed by said Contract;

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

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

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

<sup>3</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.  
If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of \_\_\_\_\_".  
If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of \_\_\_\_\_".  
If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of \_\_\_\_\_".

assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

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

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

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

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

(Seal)

\_\_\_\_\_  
Principal

By <sup>4</sup> \_\_\_\_\_

\_\_\_\_\_  
Surety

By <sup>5</sup> \_\_\_\_\_

APPROVED AS TO ACCEPTABILITY  
OF SURETIES:

\_\_\_\_\_  
Credit Manager

\_\_\_\_\_ 20

<sup>4</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>5</sup> Add signatures of additional sureties, if any.

**ACKNOWLEDGMENT OF PRINCIPAL, A CORPORATION**

State of \_\_\_\_\_

SS:

\_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

(Seal)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

\_\_\_\_\_  
County of \_\_\_\_\_

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

(Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

\_\_\_\_\_  
County of \_\_\_\_\_

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

(Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF SURETY COMPANY**

Contract No. \_\_\_\_\_

### PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>6</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Port Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Bid #42356, and

WHEREAS, the Port Authority has required this bond for the payment of all lawful claims of Subcontractors, Materialmen and workmen arising out of the performance of said Contract;

NOW, if all lawful claims of Subcontractors, Materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

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

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the

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<sup>6</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

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

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

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

construction, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

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

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

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

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

(Seal)

\_\_\_\_\_  
Principal  
By <sup>7</sup> \_\_\_\_\_  
\_\_\_\_\_  
Surety  
By <sup>8</sup> \_\_\_\_\_

APPROVED AS TO ACCEPTABILITY  
OF SURETIES:

\_\_\_\_\_  
Credit Manager

<sup>7</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>8</sup> Add signatures of additional sureties, if any.

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

State of \_\_\_\_\_

SS:

\_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and \_\_\_\_\_ which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

(Seal)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, and known to me to be one of the members of the firm of

\_\_\_\_\_ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

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

(Seal)

\_\_\_\_\_

(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

## 10. Invoices

An invoice with a unique invoice number and the backup delivery receipts with Contract number shall be submitted to the Port Authority before payment can be made. The invoice shall state:

- a) The starting and ending dates of the delivery; and
  - b) The payment milestone that the Contractor is billing for.
- All invoices shall be mailed to the address depicted on the Contract.

## 11. Payment

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Item(s) and service(s) provided by the Contractor hereunder, a compensation calculated from the respective prices inserted by the Contractor in the Pricing Sheet(s), forming a part of this Contract. The manner of submission of all bills for payment to the Contractor for Service(s) and Item(s) provided under this Contract shall be subject to the approval of the Port Authority in all respects, including, but not limited to, format, breakdown of Items presented and verifying records. All computation made by the Contractor and all billing and billing procedures shall be done in conformance with the clause entitled "Invoices" and the following procedures:

- a) Payment shall be made in accordance with the milestone payment schedule set forth below, minus any deductions and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in area, quantity or frequencies, if applicable.

Within thirty (30) days after completion of each milestone and receipt of invoice, the Port Authority will pay the Contractor according to the Milestone Payment Schedule set forth below (the Contractor shall not proceed to the next milestone before the prior milestone has been satisfactory completed, i.e. commissioned and accepted):

- b) No certificate, payment, acceptance of any Item(s) or any other act or omission of any representative of the Port Authority shall operate to release the Contractor from any obligation under or upon this Contract, or to estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.
- c) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent payments payable to the Contractor hereunder.

### Milestone Payment Schedule

Percent Payment	Payment Milestones
10% of the Total Price	Approved project schedule, summary of design review

10% of the Total Price	Completion of the final design review.
40% of the Total Price	Delivery and acceptance of the equipment by the Port Authority at the specified site. For purposes of this milestone only, acceptance shall be deemed to occur when the bill of lading is signed at the site.
35% of the Total Price	Successful completion of commissioning/acceptance testing by PATH.
5% of the Total Price	Delivery and approval of final drawings submittals after completion of training, commissioning tests, and completion of all other Contract obligations.

“Final Payment”, as the term is used throughout this Contract, shall mean the final payment made for the supply, delivery and acceptance of all Item(s) required under this Contract. The Contractor’s acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all Item(s) furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment, however, final or otherwise shall operate to release the Contractor from any obligations in connection with this Contract.

### **12. Default - Delays**

If the Contractor fails to perform in accordance with the terms of this Contract, the Authority may obtain the goods or services from another Vendor and charge the Contractor the difference in price and a reletting cost, if any, plus any other damages that the Port Authority may deem appropriate.

### **13. Liquidated Damages**

Inasmuch as damages to PATH resulting from the Contractor’s failure to deliver the equipment, materials and other Items required herein or to perform the services required herein in a timely manner are difficult or impossible of exact determination, the parties hereto agree that such damages shall be liquidated as follows:

- a) If the Contractor fails to deliver the equipment, materials or Item(s) or to perform the service(s) within the time specified in this Contract, the Contractor shall pay to PATH liquidated damages of \$500 per calendar day for each day by which delivery of each piece of equipment or other

deliverable required hereunder or the performance of any service required hereunder exceeds the date established for its delivery or performance.

The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor.

#### **14. Equipment Warranty**

Notwithstanding the Specifications forming a part of this Contract, any inspection or approval of the Item(s) by the Port Authority or the existence of any patent or trade name, the Contractor nevertheless unconditionally warrants that the Item(s) specified herein shall be of the best quality and shall be fully fit for the purpose for which it is to be used. The Contractor unconditionally warrants all equipment furnished against defects or failures of any kind, including defects or failures in design, workmanship and materials, failure to operate satisfactorily for any reason, excepting such defects or failures which the Contractor demonstrates to the satisfaction of the Engineer have arisen solely from accident, abuse or fault of the Port Authority occurring after acceptance by the Port Authority and not due to fault on the Contractor's part for the warranty period(s) described below. In the event of defects or failures in said equipment, then upon receipt of notice thereof from the Engineer, the Contractor shall correct such defects or failures by immediately reconstructing, repairing or making such alterations or replacement of said Item(s) as may be necessary or desirable in the sole opinion of the Engineer to comply with the above warranty at no cost to PATH.

The foregoing warranty shall not, however, be a limitation on any rights which the Authority would have, either expressed or implied, in connection with this Contract in the absence of such warranty, the said warranty being given only for the greater assurance of the Port Authority. In addition, the Contractor shall provide the following specific warranties to the Port Authority:

- Contractor shall correct any application software or hardware errors or omissions within forty-eight (48) hours of notification by PATH during the warranty period;
- All equipment shall be warranted for two (2) years from date of in-service installation or three (3) years from date of delivery to PATH; whichever is longer.
- Contractor agrees that it will make available to PATH replacement equipment, parts and service of equipment either under the warranty set forth, above, or through purchase for (5) years from the date of installation. If the Contractor discontinues manufacturing or support of any product supplied, Contractor shall provide PATH with the latest drawings, parts lists and Contractor contacts and PATH shall have the right to have the product or services manufactured or provided by any other source at PATH's discretion without any additional fees.

## 15. CONTRACTOR'S QUALITY PROGRAM REQUIREMENTS

The Contractor shall adhere to all QA/QC Program Requirements in accordance with Exhibit AA located at the end of Part III.

## 16. Insurance Procured by the Contractor

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, coverage for work within 50 feet of railroad, explosion, collapse and underground property damage (XCU) and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

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

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

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

***"The insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of***

*the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”*

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

Each policy above shall contain a provision that the policy may not be canceled, terminated, or modified without thirty (30) days’ prior written notice to the Port Authority of NY and NJ, Att: Facility Contract Administrator, at the Harrison Car Maintenance Facility, Harrison, NJ and to the General Manager, Risk Management.

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

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

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

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

The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract. **CITS# 4782N**

#### **17. Materials and Workmanship**

All Item(s) and Service(s) shall be manufactured and provided in accordance with the best current practice in the industry and free from defect. All Item(s) and Service(s) shall at all time and places be subject to the inspection of the Engineer. Should any Item(s) or Service(s) fail to meet the Engineer's approval, they shall be forthwith made good, replaced or corrected, as the case may be, by the Contractor, at its own expense. All Item(s) shall be new Item(s).

#### **18. Inspection and Acceptance**

Inspection and acceptance will be conducted at the destination, unless otherwise provided and agreed upon by the Port Authority and the Contractor. Any risk of loss will be the Contractor's responsibility until such delivery, inspection and acceptance is made, unless loss results from negligence of the Port Authority.

#### **19. Errors and Omissions**

If the Contractor discovers any errors or omissions in the Specifications or in the Work undertaken and executed by him, he shall immediately notify the Engineer and the Engineer shall promptly verify the same. If, with the knowledge of such error or omission and prior to the correction thereof, the Contractor proceeds with any work affected thereby, he shall do so at his own risk, and the work so done shall not be considered as work done under and in performance of this Contract.

#### **20. Approval by the Engineer**

The approval by the Engineer of any Item(s) shall be construed merely to mean that at that time the Engineer knows of no good reason for objecting thereto and no such approval shall release the Contractor from its full responsibility for the satisfactory construction and operation of the Item(s). The decision of the Engineer shall be conclusive, final and binding on the parties as to all questions arising out of, under, or in connection with this Contract (including questions of breach of Contract).

## **21. Changes**

Acceptance of Contractor's bid will be by Contract signed by the Port Authority. The Port Authority may at any time, by a written order, make changes within the general scope of this Contract in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this section must be asserted within 30 days from the date of receipt by the Contractor of a notification of change: provided, however, that nothing in this section, "Changes," shall excuse the Contractor from proceeding with the Contract as changed. Except as otherwise provided herein no payment for Changes shall be made, unless the Changes have been authorized in writing by the Authority.

## **22. Variations in Quantity**

The quantities set forth in the Price Schedule are estimates; actual total quantities purchased may be greater or lower. The Port Authority reserves the right to increase or decrease the quantity of Items called for under this Contract at the Unit Prices specified. The Port Authority may exercise the option to vary the quantity by written notice to the Contractor. Delivery of the additional quantity of Items shall continue at the same rate as the like Items called for under the Contract, unless the parties otherwise agree. All Items to be added shall be set forth in a Change Order.

## **23. Termination for Convenience**

The Port Authority may, when it is in the Authority's best interest, terminate this Contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid for Items received and accepted, including shipping costs, if applicable, up to the time of termination.

## **24. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)**

This Contract is subject to the United States Department of Transportation (USDOT) regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations.

The following goal for DBE participation has been set for this Contract:

15% for firms owned and controlled by socially and economically disadvantaged individuals<sup>9</sup> and certified as DBE's by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) websites:

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<sup>9</sup> Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian

New York UCP – <http://www.nysucp.net/>

New Jersey UCP – <http://www.njucp.net/>

By bidding on this Contract, the bidder assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix A1) with his Proposal. If the bidder determines it cannot make this assurance, it may nevertheless submit a bid but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The bidder shall submit, with his Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm he intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

The bidder shall submit with his Proposal the completed Information on Solicited Firms form (Appendix A3), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

Bidders who are utilizing trucking firms to meet their DBE goal are directed to complete the "Pre-Award DBE Trucking Commitment Form" (Appendix A4) and submit the form with their Proposals for each DBE used on this Contract.

Bidders who are utilizing materials suppliers to meet their DBE goal are directed to complete the "DBE Regular Dealer Verification Form" (Appendix A5) and submit the form with their Proposals for each DBE used on this Contract.

A bidder who fails to meet the DBE goal for this Contract, and fails to demonstrate to the Authority that the bidder has made good faith efforts to meet same, shall not be eligible to be awarded the Contract. DBE good faith efforts shall include, but are not limited to:

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Americans. A bidder may meet the DBE goal by using any combination of disadvantaged businesses.

- A. Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under this solicitation;
- B. Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
- C. Written notification to DBEs that their interest in the Contract is solicited;
- D. Efforts made to select portions of the Work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;
- E. Efforts to negotiate with DBEs for specific subcontracts including, at a minimum, submission of a written explanation that includes:
  - 1. *The names, addresses, and telephone numbers of DBEs that were contacted;*
  - 2. *A description of the information provided to DBEs regarding the Contract Drawings and Specifications for portions of the Work to be performed; and*
  - 3. *A statement of why additional agreements with DBEs were not reached.*
- F. Submission of written information concerning each DBE the bidder contacted but rejected as unqualified, and the reasons for the bidder's rejection;
- G. Efforts made to assist the DBEs contacted that need assistance in obtaining bonding or insurance required by the bidder or Authority.

### **DBE Conditions of Participation**

DBE participation for a subcontractor will be counted toward meeting the DBE Contract goal, subject to all of the following conditions:

- A. **Commercially Useful Function.** A DBE 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 Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE 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 DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation (USDOT) funding agency (FAA, FTA or FHWA).

- B. **Work Force.** The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.
- C. **Supervision.** All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work.
- D. **Equipment.** DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors or their affiliates, the DBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

### **Counting DBE Participation**

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.

The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's 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 DBE goal.

- A. **Subcontractors.** 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

- B. Manufacturers/Fabricators. 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.
- C. Material Suppliers. 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.
- D. Brokers/Manufacturer's Representatives. 100 percent 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 a DBE broker/manufacturer's representative will be counted toward the DBE 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.
- E. Services. 100 percent of fees or commissions charged by a DBE 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 DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- F. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.
  - 1. DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of the work using trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.
  - 2. DBE Leased Trucks. The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.
  - 3. Non-DBE Trucks. The DBE may lease trucks from non-DBE firms and owner-operators. The value of these trucking services will be

counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.

- G. Joint Venture. Joint ventures between DBEs and non-DBEs will be counted toward the DBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces. The joint venture agreement is subject to approval by the Authority's Office of Business Diversity and Civil Rights (OBDCR). A copy of the joint venture agreement shall be furnished to the Authority by the firm to be awarded the Contract before execution of the Contract.

**25. Attachment A – Federal Transit Administration Required Contract Provisions - (Attached)**

This Contract is part of a program funded by the Federal Transit Administration (FTA) and the successful Bidder will be required to comply with the “Federal Transit Administration Requirements” annexed hereto as Attachment A.

**FEDERAL TRANSIT ADMINISTRATION  
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### 1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

As used herein, the term “Agreement” shall mean “Contract”. This Agreement is anticipated to be partially funded by United States Department of Transportation’s Federal Transit Administration (FTA).

As used herein, “Contractor” and “Subcontractor” shall have the same meanings as “Consultant” and “Subconsultant”, respectively.

Anything to the contrary herein notwithstanding, all mandated terms by the FTA shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA terms and conditions.

Each and every provision required by the FTA to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

### 2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FTA issues a written determination otherwise. All standards or limits within the this docuemnt are minimum requirements, unless modified by the FTA or subagency thereof.

### 3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 4. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed

## FTA REQUIREMENTS

under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
  - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

## 5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the

## FTA REQUIREMENTS

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FTA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Contracts Specialist listed in the solicitation document.
- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FTA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

### **6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**

- A. Definitions as used in this Clause:

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- 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
- 2.) "Covered Federal action" means any of the following Federal actions:
  - a. The awarding of any Federal contract;
  - b. The making of any Federal grant;
  - c. The making of any Federal loan;
  - d. The entering into of any cooperative agreement; and
  - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
- 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
- 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
  - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
  - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
  - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is

## FTA REQUIREMENTS

operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.

- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
  - 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
  - 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
  - 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
  - 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.
- B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:

## FTA REQUIREMENTS

- a. Agency and legislative liaison by own employees.
  - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
  - (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
  - (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
    - (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
    - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
  - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
    - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
    - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
    - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
  - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
  - (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification

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of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

- (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting

## FTA REQUIREMENTS

requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

### C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

## FTA REQUIREMENTS

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
  - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

### D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

### E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

### F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

## 7. ACCESS TO RECORDS AND REPORTS

## FTA REQUIREMENTS

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to and the right to examine and inspect any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or authorized representatives thereto including any Project Management Oversight (PMO) Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

### 8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national

## FTA REQUIREMENTS

origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

## 9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FTA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## 10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

## FTA REQUIREMENTS

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

### A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 2.)
  - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

## FTA REQUIREMENTS

- (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (ii) The classification is utilized in the area by the construction industry;
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(i) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## FTA REQUIREMENTS

- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

### B. Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the

## FTA REQUIREMENTS

United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### C. Payrolls and Basic Records

- 1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 2.)
  - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
  - b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the

## FTA REQUIREMENTS

- full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
  - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in

## FTA REQUIREMENTS

percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

### E. Compliance with Copeland Act Requirements

## FTA REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

### F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

### G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

### H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

### I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

### J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000**

## FTA REQUIREMENTS

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

C. Withholding for unpaid wages and liquidated damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

## 12. VETERANS EMPLOYMENT

Contractors working on a capital project funded using such assistance agrees to give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee. The Contractor shall ensure that its hiring practices reflect the requirements of this section and shall, upon request, provide to the Authority personnel data which reflects compliance with the terms contained herein.

## 13. SEISMIC SAFETY (IF APPLICABLE)

## FTA REQUIREMENTS

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Port Authority's project manager. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

### **14. ENERGY CONSERVATION**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq and the National Environmental Policy Act, 42 U.S.C. §4321 et seq. Accordingly, the Contractor agrees that the construction of any new building, or any addition, alteration or renovation of any existing building which materially increases the heating or cooling requirements for the building will comply with mandatory standards and policies relating to energy efficiency which are contained in 42 USC §6321 et seq., Article 11 of the New York State Energy Law and in Parts 7810 to 7815 of Title 9, Subtitle BB of the New York Codes, Rules and Regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

### **15. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

### **16. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

### **17. FLY AMERICA**

## FTA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **18. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **19. PREFERENCE FOR RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$10,000 for items designated by the Environmental Protection Agency (EPA) and issued pursuant to this Contract.

### **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the

## FTA REQUIREMENTS

penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 21. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

To the extent that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

### 22. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

### 23. BUY AMERICA

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

**BUY AMERICA CERTIFICATION (NON- ROLLING STOCK)**

A bidder or offeror must submit to the FTA recipient the Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS (NON- ROLLING STOCK)**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**FTA REQUIREMENTS**

**CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352**

The undersigned

\_\_\_\_\_ (name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 201\_\_\_\_\_

By: \_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Official Name and Title of Authorized Official



## FTA REQUIREMENTS

### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
  2. Identify the status of the covered Federal action.
  3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
  4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
  5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
  6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
  7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
  8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
  9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
  10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
  11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.
-

## **FTA REQUIREMENTS**

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**FTA REQUIREMENTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

\_\_\_\_\_, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
**BY SIGNATURE OF AUTHORIZED OFFICIAL**

\_\_\_\_\_  
**NAME AND TITLE OF AUTHORIZED OFFICIAL**

## FTA REQUIREMENTS

### INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

### END OF FTA CONTRACT PROVISIONS

# EXHIBIT AA

QA/QC Program Requirements  
Harrison Car Maintenance Facility (HCMF)

April 17, 2015

## CONTRACTOR'S QUALITY PROGRAM REQUIREMENTS

### A. General

The Contractor shall submit a description of its Quality Assurance/Quality Control (QA/QC) Plan addressing the QA/QC organization; how the Plan extends to its subcontractors and others in the supply chain; resources and procedures that the Contractor will use for evaluating construction activities, products and related activities, which shall conform to the Authority's PATH Quality Assurance Plan.

### B. Scope

This section defines the responsibilities of the Contractor in the management of quality in the construction of the Project to achieve an end product conforming to the level of quality required by the Contract Documents.

### C. Contractor's Quality Program.

The Contractor shall establish, implement and maintain an effective Contractor Quality Control Program (CQCP) to manage, control and document the work and to ensure that the work complies with the requirements of the Contract Documents. The quality assurance/quality control program shall describe all of the means, methods, plans, procedures, processes and organization proposed by the Contractor to ensure that the level of quality specified in the Contract Documents for all materials, equipment, and workmanship incorporated in the temporary or permanent construction is appropriately satisfied, whether constructed, fabricated or manufactured onsite or offsite by the Contractor or by his subcontractors, suppliers and vendors. The quality assurance/quality control program shall also address the training and certification of personnel tasked with the implementation and maintenance of the program in the techniques necessary to ensure quality, including but not limited to testing and inspection.

### D. Submittal of Quality Program

- 1.) Within 15 days after the acceptance of the Contractor's Proposal, the Contractor shall furnish for the approval of the Authority (the Manager-PATH Quality Assurance (MPQA), the QA/QC Program. The QA/QC Program shall be signed by a principal of the firm and his designated Quality Control Manager ("QCM"). If the Contractor fails to submit an acceptable QA/QC Program within the prescribed time, the Manager PATH QA may not allow the work to continue unless an acceptable interim plan which addresses all of the requirements of the QA/QC Program is provided. The interim plan will be acceptable for only 30 days.
- 2.) Failure to comply with either of these submittal requirements within the prescribed times may result in Authority issuance of an order to the Contractor to stop all work on this Project.

**E. Changes to The Contractor Quality Control Program**

The Contractor shall notify the Manager, PATH QA in writing of any proposed change to the CQP. All proposed changes are subject to the approval of the Manager, PATH QA. The Contractor shall review the approved CQP on a quarterly basis for continued adequacy to meet the requirements of the Contract Documents and shall incorporate changes to overcome the deficiencies in the program that affect quality. Use shall be made of feedback data generated by the Contractor, subcontractors, suppliers and the Manager, WTCC QA.

**F. Elements of Contractor's Quality Program**

The CQP shall include the following elements:

ELEMENT	PARAGRAPH SPECIFICATIONS
Management Organization, Staffing and Responsibilities	G.
Documented Quality Management System	H.
Submittal Management, Document Control and Document Changes	I.
Receiving, Handling, Storage and Control of Materials and Equipment	J.
Subcontractor and Supplier Control -- Purchasing	K.
Inspection and Testing Plan	L.
Control of Construction Processes	M.
Control of Measuring and Testing Equipment	N.
Control of Nonconforming Conditions	O.
Documentation by Quality Records	P.
Contractor Internal Audit	Q.
Training	R.
Statistical Analysis	S.
Design Process Control	T.

**G. Management Organization, Staffing and Responsibilities.**

The CQP shall describe the Contractor's project organization (including major subcontractors and suppliers) and shall include an organization chart showing names, titles and lines of authority, and the interrelationship of those involved in managing and directing the Project. The qualifications, duties, responsibilities and functions of the Contractor's Quality Team shall be provided.

The Contractor shall be fully responsible for effectively managing all aspects of the CQP and shall present the management strategy for approval at a pre-award qualification hearing, as part of the validation of qualifications for this Project. This strategy shall identify organization, staffing and responsibilities as a minimum. The person designated to be responsible for overall Quality Management may be the Project Manager or the Corporate Quality Officer.

Both the Project Manager and the Corporate Quality Officer shall participate in developing the CQP for this project and shall sign it prior to submittal.

Adequate staff and resources shall be provided to perform all quality control activities to ensure contract compliance, whether the work is performed by the Contractor's own forces or by subcontractors. The personnel comprising this staff shall be fully qualified by experience and technical training to perform their assigned responsibilities. The Engineer may direct the Contractor to provide additional staff and resources to the Project Manager or Corporate Quality Officer if, in the sole opinion of the Engineer, there are significant deficiencies in implementing the CQP requirements.

The size and composition of the Contractor's quality organization may vary as the project progresses; however, at all times it must be compatible with the level of effort and capability required by the Contract Documents.

The Project Manager or Corporate Quality Officer shall maintain a legible, hand-written daily diary or activity log indicating all major activities related to the management of quality on this Project that were personally performed by him, and each entry in the diary or log shall be signed and dated by him.

The Project Manager or Corporate Quality Officer shall prepare and submit a 6-week-look-ahead schedule forecasting her/his quality activities associated with the Contract's progression.

The Project Manager or Corporate Quality Officer's office shall be based near the work-site. The Project Manager or Corporate Quality Officer shall report to the work-site on a daily basis.

## **H. Documented Quality Management System**

The Contractor shall establish and maintain a documented quality management system to ensure project quality objectives are satisfied. The quality management system requirements shall extend to the any suppliers and contractors, as appropriate.

Written procedures and instructions shall be developed for activities affecting quality in design, purchasing, manufacturing and construction, as applicable to the work performed. Procedures and instructions shall also be developed for control of inspection, testing, nondestructive examination, control of nonconformances, corrective action, maintenance of quality records, quality audits and training.

The procedures shall contain a statement of purpose and scope and shall reference Codes, standards and specifications. In developing the procedures, consideration shall be given to identifying and acquiring any inspection equipment, skills or special processes needed to ensure quality performance. Inspection and testing techniques shall be kept up-to-date. The procedures and instructions shall contain formats for the quality records needed to ensure that the procedures and instructions are followed and that documentation requirements are understood.

## **I. Submittal Management, a Document Control and Document Changes**

The CQP shall provide for establishing and maintaining a submittal management system which

schedules, manages and tracks all submittals required by the Contract Documents, including those of subcontractors and suppliers. The submittal schedule shall indicate all submittals due far enough in advance of the scheduled dates for installation to allow for the time required for reviews, for securing necessary approvals, for possible revisions and re-submittals and for placing orders and securing delivery. The submittal schedule shall be updated as required and submitted. Before the planned start of work on a system, a listing of all submittals planned for the system and its subsystems shall be submitted. Submittals for a portion of a system will not be accepted for review until the complete list of submittals for the system has been submitted. The Contractor shall review submittals prepared by its subcontractors and suppliers for compliance with the Contract Documents and shall make any necessary changes or corrections before submitting it to the Engineer.

Shop drawings shall be prepared by the Contractor, subcontractors or suppliers and shall be reviewed by the Contractor to verify all materials and field measurements are checked and coordinated to ensure that the information contained on the shop drawings, product data and samples conforms to the requirements of the Contract Documents as required. No portion of the work requiring these shop drawings shall be commenced until this review and coordination has been performed by the Contractor. These shop drawings and any other documentation which demonstrates the Contractor's compliance with the Contract Documents shall be kept at the Contractor's office and shall be made available for inspection and audit of the Engineer. Where the Engineer requires certain shop drawings and other documents required by the specifications be made available to him but which do not require his approval they will be listed in the specification and noted that they are for information only.

The CQP shall also provide for establishing and maintaining a document control system for control of project documents and data such as drawings, specifications, calculations, calibration records, inspection procedures, test procedures, test results, special work instructions, operational procedures and QA Program and related procedures. The document control system shall ensure that the work is performed to the latest approved drawings and specifications and that these documents are made available at each work location, prior to the start of the work, to all users who require them.

Obsolete documents shall be promptly eliminated from each work location. Any superseded documents retained for the record shall be clearly identified as such.

All changes to documents shall be processed in writing and records maintained of changes as they are made. The Project Drawing List shall identify the revision number and the revised date for each drawing that is revised.

#### **J. Receiving, Handling, Storage And Control Of Materials And Equipment**

The CQP shall contain provisions for verification that material and equipment meet specified quality and contractual requirements and that they are properly received and handled to ensure that their quality is not degraded. The Contractor shall establish and maintain documented procedures that ensure that all materials and equipment are positively identifiable and traceable to a specified origin point.

Purchased items entering the construction site/warehouse shall be inspected/tested, including their supporting documentation, for verification that subcontractors and suppliers have met the appropriate quality requirements of the Contract Documents. Purchased items shall bear a suitable control device as evidence of subject inspection/test. An identifier containing the inspection/test date, name of inspector, and inspection/test status (Pass/Fail) shall be attached to each inspected/tested item.

Nonconforming purchased items shall immediately be tagged, removed and segregated to a controlled area.

Certificates of compliance and/or conformance shall be submitted for materials and equipment.

The Contractor shall develop and follow written requirements to ensure that the desired quality of an item is not compromised or degraded as a consequence of inappropriate handling, lifting and rigging methods.

The Contractor shall develop and follow written requirements for the cleaning, preservation and storage of materials and equipment. Proper records shall be maintained of all required maintenance activities during storage.

Purchased material and equipment shall be clearly marked so that it can easily be identified without excessive handling or opening of crates and boxes.

The materials storage area(s) shall be arranged for ease of retrieval and to prevent damage, deterioration and loss. In general, materials received first shall be used first.

Positive material identification (PMI) shall be implemented so that each item has a unique identifier (PMI serial number) to distinguish apparently identical items made in separate fabrication processes and to confirm that the material of construction is indeed the grade of material specified. PMI numbers must appear on all inspection and construction records.

#### **K. Subcontractor And Supplier Control –Purchasing**

The QC program shall ensure that items and services are procured from subcontractors and suppliers capable of meeting all requirements of the Contract Documents. The Contractor shall review his agreements with subcontractors and suppliers to ensure inclusion of all applicable quality requirements. Contractor shall ensure that all subcontractors and suppliers comply with the Contractor's Quality Control Program or their own program. If the subcontractors and suppliers elect to submit their own quality control programs, they must be approved as meeting the requirements of this section by the Prime Contractor's Quality Personnel. The Contractor shall review the subcontractor's/suppliers' agreements to ensure the inclusion of applicable quality requirements.

Source inspection shall be performed at the subcontractors'/suppliers' plants. Those quality characteristics which cannot or will not be verified during subsequent processing shall be subject to source inspection. Source inspection may not be necessary when the quality of the item can be fully and adequately verified by review of inspection and test reports, inspection on receipt or other means.

The Contractor shall perform external audits of his suppliers and subcontractors to assess compliance with the requirements of the approved QA/QC Program and Contract Documents. Factors such as work schedule, volume, complexity, relative importance, past experience, dollar amount, etc, shall be taken into account for the selection of the suppliers and subcontractors for such audits and for determining the scope, frequency and schedule of these audits. The scope, frequency and schedule of these audits shall be as approved by the Manager, PATH QA. The Contractor shall submit an audit schedule to the Manager, PATH QA within 15 days after award. The Contractor shall make appropriate changes to the audit schedule when warranted due to changed conditions or when directed by the Manager, PATH QA. The Contractor shall submit the revised schedule to the Manager, PATH QA within 30 days of the change. The Manager, PATH QA must be notified in writing six weekdays in advance of the date, time and location of each audit. The Manager, PATH QA may witness any or all such audits. The audit results shall be documented and used to correct deficiencies and prevent their recurrence. Copies of the audits shall be made available to the Manager, PATH QA, as required.

#### **L. Inspection and Testing Plan**

The Contractor's CQP shall include an inspection and testing plan, subject to approval by the Authority, to verify that items conform to the requirements of the Contract Documents. The Contractor's plan shall contain a list of tests which the Contractor is to perform. The list shall give the test name and specification paragraph containing the test requirements and shall identify if the Contractor, subcontractor or supplier is responsible for each type of test. During the life of the Contract, the Contractor shall update the plan to reflect changes in inspection and testing procedures. The Contractor's inspection and testing procedures shall be subject to approval by the Engineer prior to any such inspection or test and shall include test requirements, acceptance criteria and test conditions. Procedures shall, as a minimum:

- 1.) identify the characteristics to be inspected, examined, and tested at each activity point;
- 2.) specify inspection and test procedures and acceptance criteria to be used;
  - a. include inspection checklists;
  - b. identify hold points as described below.

The detailed inspection or test procedures shall, as applicable, include items such as who is responsible for what, how, when, and where for all steps to be performed; what materials, equipment, and documentation are to be used; and how it is controlled. The procedures must be included in the CQP.

The Contractor shall use competent inspection personnel and shall not depend exclusively upon inspections performed by persons performing or directly supervising the work being inspected. Inspection personnel shall not report directly to the immediate foreman or supervisor responsible for constructing or installing the work being inspected. Inspection personnel shall be given the necessary authority and independence to perform their roles effectively.

Personnel performing inspections and tests shall possess a demonstrated competence in the specific area of interest and have an adequate understanding of the requirements. Written guidelines shall be established to ensure that suitable education, experience and technical qualifications are maintained for such personnel.

The Contractor shall establish for the approval of the Authority a listing of hold points as part of the inspection and testing plan. Hold points are pre-determined inspection points for work in progress, which may become inaccessible as the work progresses, where the Contractor shall "hold" until the Authority verifies that the inspection and testing has been performed. In-process inspection activities shall be planned and performed to ensure the quality of the finished work. Any non-conforming conditions shall be tagged, documented and physically segregated to prevent inadvertent use and corrected before continuing.

The Contractor shall demonstrate the acceptability of the construction activities and quality of finished work with objective evidence through suitable inspections and testing records. Inspection and testing records shall be prepared, reviewed, safely stored and maintained by the Contractor. The Contractor shall distinguish between inspected and uninspected items by using suitable control devices. Inspection and test status identification of structures, systems or components shall be maintained and controlled from initial receipt through installation to operation of the constructed work.

#### **M. Control Of Construction Processes**

- 1.) The Contractor shall ensure that the work complies with the final design and specifications. Controls shall be adequate to cover all construction operations, including both onsite and offsite

fabrication, shall be integrated with the provisions of the clause entitled "Progress Schedule" and Contractor shall provide written records indicating that the results obtained for the various phases described below are documented and maintained. The controls shall include at least three phases of control for all definable features of work as follows:

**PREPARATORY PHASE** -This phase occurs prior to beginning any work on any definable feature of work. A definable feature of work is a task which is separate and distinct from other tasks and has separate control requirements.

The Preparatory Phase shall include the following:

- a. review of the Contract requirements;
- b. check to ensure that all materials and/or equipment have been tested, submitted and approved;

2.) A check to ensure that provisions have been made to provide required control inspection and testing; examination of the work areas to ascertain that all preliminary work has been completed; a physical examination of materials, equipment and sample work to ensure that they conform to approved shop drawings or submitted data and that all materials and/or equipment are on hand.

**INITIAL PHASE** – This phase must be accomplished at the beginning of a definable feature of work and shall include the following:

- a. check of preliminary work (first item inspection) to
  - verify full compliance
  - establish acceptable levels of workmanship
  - resolve all discrepancies

#### **IN-PROCESS PHASE**

- b. Daily check shall be performed to ensure continuing compliances with Contract requirements and shall include the following:
  - Control testing until the completion of the particular feature of work;
  - Suitable maintenance of equipment used in construction to ensure continuing process capability.
- c. The Contractor shall ensure that the work is performed in accordance with all applicable codes and standards and with specifications and other special contractual requirements using qualified personnel and/or equipment. The procedure shall identify equipment to be used as well as any special requirements to be observed.

#### **N. Control of Measuring And Testing Equipment**

- 1.) The CQP shall describe the methods for ensuring that equipment used for measuring and testing is in calibration or condition to provide accurate test or inspection results. At intervals established to ensure continued validity, measuring devices shall be verified or calibrated against certified standards that are traceable to national standards or naturally occurring physical constants.
- 2.) The Contractor shall use methods to ensure proper handling, storage, care and control of measuring and testing equipment in order to maintain the required accuracy of such equipment. Materials and testing equipment that are consistently found to be out-of-calibration or have been subjected to

possible damage shall be identified as nonconforming and be removed from service, repaired or replaced. The CQP shall also contain a contingency plan in the event inaccurate measurement may have occurred, as evidenced by measuring and testing equipment found to be out of calibration at specified intervals.

- 3.) The Contractor shall also ensure that all measuring and testing equipment selected for measurements, tests or calibration is of the proper range and type and is controlled, adjusted and maintained at specified intervals identified in the CQP or prior to use to ensure conformance to the established requirements or predetermined accuracy. The equipment shall bear some indication attesting to the current calibration status and shall show date (or other basis) on which inspection or recalibration is next required and by whom last calibrated.
- 4.) The Contractor's measuring and testing equipment shall be made available for use by the Authority. The Contractor shall make personnel available for operation of the equipment if requested by the Authority.

#### **O. Preventive Action and Control Of Nonconforming Conditions**

- 1.) The CQP shall contain provisions for implementing preventive and corrective actions and for identifying, recording, controlling and correcting nonconforming Items, including provisions for the re-inspection and retesting of repaired and reworked Items to the original requirements. Any 'Use-As-Is' determinations shall require approval by the Engineer represents the Authority. Contractor shall promptly identify, tag and segregate nonconforming Items to prevent inadvertent use.
- 2.) The Contractor shall investigate the cause of any nonconformance and shall take appropriate corrective actions to prevent recurrence of the nonconformance. The identification, determination, justification for planned actions and actions taken shall be documented on a nonconformance report. At a minimum, dispositions for nonconformances shall include 'Rework', 'Repair', 'Use-As-Is', 'Scrap' or 'Reject'. 'Reworked' and 'repaired' Items shall be re-inspected using a documented procedure to ensure the Item meets requirements. All 'Repair' and 'Use-As-Is' dispositions shall be reviewed and approved by the Engineer prior to any corrective action. Personnel performing evaluations to determine conformance shall have demonstrated competence in the specific area of interest, have an adequate understanding of the requirements and have access to pertinent background information.
- 3.) A procedure to describe the process for corrective actions to address issues identified during audits or other activities shall be included in the CQP. The procedure must include the analysis of any process/actions to help identify the cause of the condition, identify the corrective actions needed and specific actions needed to prevent recurrence. Actions to ensure that corrective actions are taken and are effective must also be described.

#### **P. Documentation of Quality Records**

- 1.) The CQP shall contain provisions for identification of types of quality records to be maintained, including their retrievability and retention periods, and shall include a sample or blank copy of all quality records and checklists to be utilized on this Project. The Contractor shall maintain quality records as evidence that all of its activities and those of its subcontractors and suppliers comply with the requirements of the CQP. Additionally, the Contractor shall maintain records as evidence that:

- The item meets the requirements of the Contract Documents;
- Personnel, procedures and equipment for special construction processes are qualified;
- Selection and surveillance of subcontractors and suppliers are performed;
- Corrective action and action taken to prevent recurrence is being taken for nonconforming conditions.

2.) Additional Types of Records to be Maintained:

a. Contractor Internal and External Audit records which:

- Provide a schedule of Contractor and subcontractor/supplier audits
- Document quality programs, plans and procedures audited
- Identify items and services for which audit was performed
- Reveal results obtained
- Demonstrate analyses of audits data for use in corrective action

b. Inspection and Test records which:

- Include completed inspection checklists signed by the QCM
- Include nonconformance reports and logs
- Identify inspector or data recorder
- Identify date of inspection or test
- Reference drawing number and specification reference
- Define applicable requirements
- Identify specific inspections or tests performed and results

c. Daily reports

Under the provisions of the Contract, the Contractor shall prepare reports on a daily basis for the Work Site. This report shall also include a brief description of any inspections of the work performed. If an inspection or test was performed a copy of the inspection or test record must accompany the report. The report with the attachment must be forwarded to the Engineer's office by the end of the next business day. The report must be filed for each site, including for days during which no work was performed. The report must be signed and dated by the QCM or the Contractor's designated representative.

d. Inspection and test records shall be maintained for both conforming and nonconforming work. Unless otherwise required by the Authority the Contractor shall retain all quality records for a minimum period of three years after substantial completion and shall make them available to the Authority upon request.

**Q. Contractor Internal Audit.**

The Contractor shall perform internal audits of his own Quality Management System to assess compliance with the requirements of the approved QC Program and the Contract Documents. The scope of such audits shall be commensurate with factors such as the work schedule, volume, complexity, relative importance of work activities, etc. The audits shall be performed on a quarterly basis and shall begin within 6 months of the acceptance of the Proposal. An audit schedule shall be submitted to the Authority within 45 days after the acceptance of the Proposal. The Contractor shall

change the schedule when warranted due to changed conditions or when directed by the Authority. The Contractor shall submit the revised schedule to the Authority's Manager, PATH QA within 30 days of the change. The Authority's Manager, PATH QA must be notified in writing 10 days in advance of the date, time and location of each audit. The Authority's Manager, PATH QA may witness any or all such audits. The audit results shall be documented and used to correct deficiencies and prevent their recurrence.

#### **R. Training**

- 1.) The Contractor shall provide all required training to PATH staff. Such training shall occur within 30 days after acceptance of the Proposal.
- 2.) The Contractor shall notify the Authority at least one week in advance of the date, time and location of the above training. The Authority shall have the option of attending the training. Records shall be kept of the above training documenting the date, time, duration, location, attendees, trainer's name and qualifications, and the items discussed. Copies of these records shall be forwarded to the Authority not later than one week after such training occurs.
- 3.) This requirement for training is in addition to other training requirements contained in this Contract.

#### **S. Statistical Analysis**

- 1.) The Contractor shall identify, where appropriate, the need for statistical techniques to verify the acceptability of construction process capabilities and work characteristics. These include, but are not limited to: control charts, sampling plans and trend analyses of nonconformances.
- 2.) The Contractor may employ, subject to approval of the Authority, sampling inspection in accordance with applicable nationally recognized standards or other statistically valid plans.

#### **T. Design Process Control.**

- 1.) Procedures shall be established, documented, implemented and maintained to control the preparation, review and approval of design work required by this Contract. Design work includes, but is not limited to, the preparation of Shop Drawings, Record Drawings ("As-Built" drawings), working drawings, design details and engineering analyses/calculations as well as software development.
- 2.) Persons performing design work shall be identified, their responsibilities defined and their qualifications stated and a description of the resources assigned for their use shall be given within the procedures.
- 3.) The procedures shall include methods to identify and document input requirements relating to the scope of design work so as to reflect applicable statutory, regulatory and Contract requirements as well as industrial codes or Authority standards, if any.
- 4.) The procedures shall state how design work outputs shall be documented, verified against the design input requirements and validated as part of the approval process.
- 5.) The procedures shall contain a formal program of in-process design work review(s) that shall identify: the stages of design at which work review(s) shall occur, the representatives of all concerned functions that shall participate in the review(s) and the documentation of the review(s) results.
- 6.) The procedures shall include methods to identify, document and review any and all changes, revisions or modifications to the original design work prior to re-submittal for approval.

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**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING SHEET(S)**

**1. SIGNATURE SHEET**

OFFER: The undersigned offers and agrees to furnish to the Port Authority of New York and New Jersey (Port Authority) acting on behalf the Port Authority Trans-Hudson Corporation (PATH) the services and/or materials in compliance with all terms, conditions, specifications and addenda, if applicable, of the Contract. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions. This offer shall be irrevocable for 120 days after the date on which the Port Authority opens this bid.

**ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS INDICATED ON THE COVER SHEET**

Bidding Entity \_\_\_\_\_  
Bidder's Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_  
Email \_\_\_\_\_ EIN# \_\_\_\_\_

SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Note: This offer shall be irrevocable for 90 days after the date on which the Port Authority opens this bid.

\_\_\_\_\_  
Signature of Person Signing Above

**ACKNOWLEDGEMENT:**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally came before me, \_\_\_\_\_, who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated and they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

\_\_\_\_\_  
Notary Public

NOTE: If a joint venture is allowed, duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions, Part III. Indicate below if a signed, explanatory statement in connection with this section is attached hereto.

**2. NAME AND RESIDENCE OF PRINCIPALS SHEET**

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

NAME

TITLE

ADDRESS OF RESIDENCE

(Do not give business address)

### 3. PRICING SHEET(S)

#### Entry of Prices

- a. The prices quoted shall be written in figures, in ink (preferably black ink) where required in the spaces provided on the Pricing Sheet(s) attached hereto and made a part hereof.
- b. All Bidders are asked to ensure that all charges quoted for similar operations in the Contract are consistent.
- c. Prices must be submitted for each Item required on the Pricing Sheet(s)
- d. All Bidders are asked to ensure that all figures are inserted as required, and that all computations made have been verified for accuracy. The Bidder is advised that the Port Authority may verify only that Bid or those Bids that it deems appropriate and may not check each and every Bid submitted for computational errors. In the event that errors in computation are made by the Bidder, the Port Authority reserves the right to correct any error and to recompute the Total Lump Sum Bid Price, as required, based upon the applicable Unit Price inserted by the Bidder, which amount shall govern in all cases.
- e. In the event that a Bidder quotes an amount in the Total Lump Sum Bid Price column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.
- f. The Total Lump Sum Bid Price is solely for the purpose of facilitating the comparisons of Bids. Compensation shall be in accordance with the section of this Contract entitled “Payment”.
- g. Bid Bond shall be completed in their entirety. Any bid that is not accompanied by a Bid Bond will be considered non-responsive.

**PRICING SHEET**

**SCHEDULE OF PRICES**

Price of Engineering, design, construction, materials, testing, installation assistance; installation, operation and maintenance manuals; training; warranty; shipping material and shipping costs to PATH; and all other associated costs, in accordance with the Technical Specification:

**Harrison Car Maintenance Facility In-Ground Lifts**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QTY.</b>	<b>UNIT PRICE</b>	<b>TOTALS</b>
1.	Lift Equipment	_____x	\$_____ =	\$_____
2.	Engineering/ Design Services		\$_____ =	\$_____
3.	Demolition		\$_____ =	\$_____
4.	Installation/ Construction		\$_____ =	\$_____
5.	Factory Test, Installation Assistance, and Training		\$_____ =	\$_____
6.	Field Test, Installation Assistance, Training Commissioning		\$_____ =	\$_____

---

**TOTAL LUMP SUM BID PRICE** = \$\_\_\_\_\_

(SUM OF 1 through 6 TOTALS)

**AWARD WILL BE MADE TO THE TECHNICALLY QUALIFIED, RESPONSIVE AND RESPONSIBLE BIDDER WHO SUBMITS THE LOWEST TOTAL LUMP SUM BID PRICE.**

Bidder shall certify in the form prescribed below that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current.

**CERTIFICATE OF CURRENT COST OR PRICING DATA:**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to The Port Authority of NY & NJ or to The Port Authority of NY & NJ's representative in support of:

Bid No. 42356 is accurate, complete, and current as of **June 3, 2015**.

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror (bidder) and The Port Authority of NY & NJ that are part of the bid.

Firm: \_\_\_\_\_

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

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

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

## BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned<sup>1</sup>  
as principal(s); and<sup>2</sup>

as surety are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Port Authority") in the penal sum of Five percent of the Lump Sum, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

The condition of the above obligation is such that whereas the above named principal(s) has submitted to the Port Authority a certain Bid, bound herewith and hereby made a part hereof, to perform the obligations of the Contractor under a contract in writing, known as Bid No. 42356 - DESIGN, FABRICATE, DELIVER AND INSTALL IN-GROUND LIFTS AT THE HARRISON CAR MAINTENANCE FACILITY, now therefore:

- A. If said Bid shall not be accepted, or
- B. If said Bid shall be accepted and the Port Authority does not require the principal(s) to furnish a Performance and Payment Bond, or
- C. If said Bid shall be accepted and the Port Authority requires the principal(s) to furnish a Performance and Payment Bond and either the principal(s) furnishes a Performance and Payment Bond satisfactory to the Port Authority in accordance with the requirements of said Bid or the Port Authority does not terminate the Contract as provided therein on account of the failure to furnish such a bond,

Then, this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The surety, for value received, hereby stipulates and agrees that the obligations of said surety and its bond shall be in no way impaired or affected by any extensions of the times within which the Port Authority may receive or accept such Bid or within which the principal(s) may furnish a Performance and Payment Bond or by any waiver by the Port Authority of any of the requirements of said Bid; and said surety does hereby waive notice of any such extensions or waivers.

---

<sup>1</sup> Insert Bidder's name. If a corporation, give the state of incorporation using the phrase "a corporation organized under the laws of the \_\_\_\_\_".  
If a partnership, give full names of partners, using also the phrase, "co-partners doing business under the firm name of \_\_\_\_\_".  
If an individual using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of \_\_\_\_\_".  
If a joint venture, give the information required above for each participant in the joint venture.

<sup>2</sup> Insert name of surety.

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

(Seal) \_\_\_\_\_  
Principal<sup>3</sup>  
By<sup>4</sup> \_\_\_\_\_

(Seal) \_\_\_\_\_  
Surety  
By<sup>5</sup> \_\_\_\_\_

<sup>3</sup> If Bidder is a joint venture, insert signature and information required as appropriate for one participant of the joint venture on this page and attach and complete an additional sheet in the same form as appears on this page for each other participant as required.

<sup>4</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>5</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

**ACKNOWLEDGMENT<sup>6</sup>**

**ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION**

State of

\_\_\_\_\_

SS:

County of

\_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at

\_\_\_\_\_, that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP**

State of

\_\_\_\_\_

SS:

County of

\_\_\_\_\_

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL**

State of

\_\_\_\_\_

SS:

County of

\_\_\_\_\_

<sup>6</sup> If Bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required.

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

(Notary Seal)

\_\_\_\_\_

(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

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# **SPECIFICATIONS TO DESIGN, FABRICATE, DELIVER, AND INSTALL IN-GROUND LIFTS AT THE HARRISON CAR MAINTENANCE FACILITY, HARRISON, NEW JERSEY**

## **1. BACKGROUND**

The Port Authority Trans-Hudson Corporation (PATH) is a wholly owned subsidiary of the Port Authority of New York and New Jersey (Authority). PATH is a heavy rail rapid transit system, operating 24 hours a day, seven days a week and serves as a critical link in the New York-New Jersey transportation network. The New York-New Jersey Metropolitan region ranks as the most mass transit-dependent region in the United States. PATH also serves as a catalyst for regional economic development due to the location of its thirteen stations and terminals within close proximity to the high-density urban commercial and residential cores of Newark, Jersey City, Hoboken and Manhattan.

The PATH Harrison Car Maintenance Facility (HCMF) is located at the end of Cape May Street in Harrison, New Jersey between PATH Harrison Station and the Passaic River. The 160,000 SF facility was constructed in 1990 and serves as the primary inspection, maintenance, and repair shop for PATH's entire railcar fleet. The facility also includes administrative offices and utility rooms. In 2007, a new addition for the Wheel Truing Facility was built adjacent to the northeast side of the main repair shop.

There are a total of thirteen (13) tracks within the main repair shop of the HCMF. Tracks 1 thru 4 are outside of the facility to the north. Track 5 passes through the Wheel Truing Facility north of the main repair shop. Tracks 6 thru 9 continue through the repair shop to the other rail yard zone in the west. Tracks 10 thru 16 extend into the repair shop. A storage track located between Tracks 14 and 15 and a release track located between Tracks 15 and 16 do not extend outside. Track 5 passes through the Wheel Truing Facility north of the main repair shop. Tracks 1 thru 4 are outside of the facility to the north.

Located in the eastern section of the main repair shop between Column Lines 16 and 19, there are a total of eight (8) sets of in-ground lifts installed in tracks 13, 14, 15 and 16. Each track contains two (2) sets of in-ground lifts. Between each set of lifts is a 10 ft. 2-1/4 in. diameter turntable. Ahead of the lifts to the east, adjacent to the shop entrance, are inspection pits approximately 58 ft. long by 4 ft. 2 in. deep. The in-ground lifts were installed as part of the original construction of the HCMF. Due to wear and tear over the years, these lifts are no longer functioning properly and need to be replaced.

In 2012, a Conceptual Design Study was conducted for the replacement of these in-ground lifts. This study briefly evaluated several lift systems and the report made recommendations for construction sequence to replace the in-ground lifts.

## **2. DESIGN SERVICES REQUIRED BY SPECIFICATIONS**

The services of the Contractor shall generally consist of performing the design and installation required to complete the replacement of In-Ground Lifts in PATH - HCMF in Harrison, New Jersey as authorized by the Authority.

For this design, fabrication, delivery, and installation contract – The model of the replacement in-ground lift system shall be selected by the Contractor in accordance with requirements specified in the Lift Equipment Performance Criteria included herein under TASK E. The selection of the proposed in-ground lift system shall be as approved by the Authority.

The Contractor's services shall include but shall not be limited to the following:

1. The Contractor shall be responsible for overall coordination of design engineering services conducted by all disciplines, including, but not limited to electrical, geotechnical, mechanical, plumbing and structural disciplines.
2. Prepare the Final Design package and perform all required engineering services conforming to the requirements of the Technical Criteria specified herein.
3. Coordinate with the Engineer and PATH in preparing all required design drawings, construction and shop drawings, performing installation oversight, and preparing the "As-Built" drawings upon the completion of the installation.
4. Except as noted otherwise, The Contractor shall be responsible for design engineering services of all required disciplines, including, but not limited to, electrical, geotechnical, mechanical, plumbing and structural disciplines. The design work shall be conducted such that the installation/construction staging/phasing plans developed shall conform to the facility operation requirements of the HCMF established by PATH for this project and shall be in accordance with Section 13 PATH Operations and Conditions. Staff of the Authority's Engineering Department will perform audit services on the Contractor's work in for conformance with the Performance Criteria specified in the contract.
5. The Contractor shall be responsible for the overall performance of all involved disciplines and preparation of all pertinent Final Design deliverables and milestone reviews.
6. The Contractor shall be responsible for the overall project's constructability analysis, preparation of construction staging/phasing schedule and drawings in coordination with all involved parties and in accordance with Section entitled "Hours of Work and Construction Staging".
7. Provide design drawings and support, as required and/or as requested by PATH for Permit application(s).
8. The Contractor shall execute the construction to dismantle and remove all existing in-ground lift systems, and to install all new replacement in-ground lift systems that are identified in this project in conformance with requirements of all applicable codes, standards, guidelines, design drawings, specifications, construction staging and phasing plans, recommendations and requirements established for this project.

9. For additional information see discipline specific Performance Criteria referenced in Task E and corresponding Attachments included in this section.

### **3. WORK REQUIRED BY THE SPECIFICATIONS**

Upon written authorization from the Authority to proceed with the performance of services hereunder, the Contractor shall submit a schedule (subject to the approval of the Authority) for performance of services consistent with the milestones contained in Section 11 “Schedule and Submission for Final Design”. Said schedule shall identify all required submissions and reviews and shall incorporate all review comments.

Those Tasks identified as Tasks A through G shall be considered part of the Contractor’s Teams’ tasks during the Final and Post Award design phases, as required.

### **4. TASK A MEETINGS**

1. Meetings will typically take place at Authority offices. The Authority's Engineering offices are currently located at 4 World Trade Center, New York, NY. The Authority (PATH) office is located at One PATH Plaza, Jersey City, NJ. Meetings may also take place at other locations within the Port District as required.
2. Schedule and attend meetings at the beginning of the Design phase with the Authority and all key personnel and others of the Contractor who will be working on the Contract, to ensure complete understanding of the Authority’s goals, schedules, and objectives.
3. Attend meetings throughout the Design phase as required. Meeting agendas will include design progress review, discussions, conferences and presentations requested or required to complete design work. Prepare agendas for all the meetings, and submit to the Authority two working days in advance of the meetings.
4. Submit draft minutes to the Authority of all meetings (both formal and informal) held during the Design phase within three business days of the meeting. Minutes will be accepted upon review, discussion and Authority approval at the subsequent meeting.
5. Attend Construction meetings as required to ensure the proper and successful execution of all construction phases.

### **5. TASK B REVIEW AVAILABLE DOCUMENTS**

Review all available documents identified in paragraph 6 of Part II to ensure a complete understanding of the Project’s Scope of work and objectives.

## **6. TASK C FIELD VERIFICATION AND SURVEY**

1. Verify existing field conditions at the HCMF against existing backgrounds shown in available drawings provided by the Authority. Take all appropriate field measurements.
2. Arrange to meet with Authority staff to review Authority data, site access procedures and approvals prior to inspection.
3. PATH will provide access and servicing equipment as appropriate at all probe and/or inspection locations requested by Contractor. Probe and/or inspection locations are to be specified by the Contractor and coordinated for approval prior to proceeding with site investigation.
4. Submit copies of completed field finding on inspection reporting forms (which shall be provided by the Contractor and subject to approval by the Authority) and meet with Authority staff discuss those findings.

## **7. TASK D SUMMARY OF DESIGN CRITERIA**

The Contractor shall prepare and submit a Summary of Design Criteria (SDC) to be reviewed and approved by the Authority. The SDC shall establish and list all Codes, Standards, Guidelines and Regulations, material types and grades used, loadings, design methods, special requirements and conditions, special equipment and procedures, etc. that the design of the lift shall conform to. The Contractor shall not proceed with the design work until such Summary of Design Criteria (SDC) is approved by the Authority. The Contractor shall prepare the SDC for all engineering disciplines involved in the project. Upon approval of the SDC, the Contractor may be directed to proceed with preparation of the Final Design Drawings.

The SDC shall also include criteria established and included in the subject-specific performance criteria under TASK E.2 PERFORMANCE CRITERIA. In addition to the available documents listed in Part II, Section 6, the Authority will make available for the Contractor's use existing information that is in the Authority's possession and that may or may not be necessary or helpful to perform the design.

The Design Criteria shall include but not be limited to the current edition of all applicable codes and requirements indicated below:

1. International Building Code (IBC) New Jersey Edition
2. The Uniform Construction Code of New Jersey (NJUCC)
3. The International Mechanical Code, New Jersey Edition
4. National Electrical Code
5. American Railroad Engineering and Maintenance-of-Way Association (AREMA) – Manual for Railway Engineering
6. Occupational Safety and Health Administration (OSHA) - Safety and Health Standards
7. American Society of Testing and Materials (ASTM)
8. American Society of Civil Engineers (ASCE) – Minimum Design Loads for

Buildings and other Structures (ASCE 7)

9. Port Authority Tenant Construction Review Manual

In addition, the following requirements shall also be incorporated in the SDC:

1. The location, size, layout and geometry of the replacement in-ground lift system shall be designed to accommodate both PA-4 and PA-5 railcars currently used in the PATH system. Drawings showing the general arrangement of these cars are included in the list of available drawings in Part II Section 6 “Available Documents”.
2. Unless otherwise directed by PATH, the sequence of construction shall be to concentrate the work to complete the replacement, testing and acceptance of in-ground lifts in two designated adjacent tracks (four sets of lifts) first, before starting construction work on the two designated remaining tracks. The design and detailing shown in design drawings shall conform to this sequence of construction and in accordance with section entitled “Hours of Work and Construction Staging”.
3. The size of the excavation pit, the area of existing concrete removal and the quantity of structural removal in each lift location shall be kept to the minimum required to execute the construction to replace the in-ground lifts. The construction work shall not affect the normal operation of the facility or that of the adjacent tracks that are not under construction. The size of excavation pits, the area of concrete removal in each lift location and the limits of work area in the facility shall be as approved by the Authority. The construction work, including removal work shall not adversely affect the integrity and function of all existing structural components and installations that are to remain. The design and detailing shown in engineering drawings shall conform to this pit size and removal restrictions.

**8. TASK E FINAL DESIGN DOCUMENTS**

When authorized by the Authority to proceed with the final design, the Contractor shall perform all tasks necessary for all disciplines and shall provide a complete set of design drawings and technical design specifications that are sufficient, accurate and complete such that the Final Design Package may be constructed as designed.

The final design shall conform to requirements specified in the approved SDC developed in Task D above, as modified, updated and approved by the Authority.

The Final Design Documents shall include but shall is not limited to the following items for each required discipline.

1. GENERAL REQUIREMENTS:

- a. Prepare and submit deliverables for key efforts, for Authority review, outlined

in Part III Section 5 Progress Schedule.

- b. Generally accepted design standards shall be used for all design work submitted to the Authority for review. The 50% and 100% submission will be audited for design compliance.
- c. Prepare and submit staging/phasing drawings indicating items necessary to maintain normal operation of the facility and in accordance with the attached Hours of Work and Construction Staging.
- d. Prepare final design documents (drawings/specifications) deliverables for 50%, 75%, 100% and final submissions. Documents include plans, sections, elevations, details, general notes, etc., Authority standard and non-standard (custom if applicable) specifications for construction.

## 2. PERFORMANCE CRITERIA:

The Contractor shall perform the final design of all discipline works required for this Contract. In addition, the design of Electrical, Geotechnical, Plumbing and Structural works, and that of the In-Ground Lift system shall also conform to the following subject-specific performance criteria:

- a. Electrical Engineering:  
See Attachment A – Electrical Engineering Performance Criteria
- b. Geotechnical Engineering:  
See Attachment B – Geotechnical Engineering Performance Criteria
- c. Plumbing Engineering:  
See Attachment C – Plumbing Engineering Performance Criteria
- d. Structural Engineering:  
See Attachment D – Structural Engineering Performance Criteria
- e. In-Ground Lift System:  
See Attachment E – In-Ground Lift Performance Criteria

## 9. **TASK F DESIGN DOCUMENT REQUIREMENTS**

Prior to the performance of this task the Contractor shall submit a specific Quality Control/Quality Assurance Program as indicated in Section AA – “Contractor Quality Program Requirements” as outlined in Part III, Exhibit AA to be performed in conjunction with the design and construction and installation phases and with the preparation of final design and specifications specified herein.

Upon the Authority’s review of the 100% design and specification documents

required hereunder, the Contractor shall submit a letter to the Authority attesting that the Contractor has performed the Quality Control/Quality Assurance Program as defined by the Contractor at the start of this task.

Upon completion of the final design and specification documents required hereunder at the Final Submission, the Contractor shall submit a letter, signed by the firm's principal, to the Authority certifying that the QA/QC plan was implemented and completed.

The final design and specification documents shall be prepared by the Contractor upon approval of the QA/QC plan by the Authority.

#### 1. DESIGN CALCULATIONS AND DIAGRAMS:

The Contractor shall submit complete analysis and design computations and design drawings covering all components required in the final design and specifications documents, including but not limited to modification of existing structural components, pile and pile caps, foundation, lift pits, track beams, grade beams, slab, in-ground lift load transfers and supports, electrical, plumbing and mechanical design calculations, etc.

- a. Calculation sketches shall clearly distinguish between new and existing conditions. Documents from which existing dimensions and existing members properties were obtained shall be referenced in the calculations.
- b. All engineering calculation sheets, including computer generated input and output sheets, shall be numbered (sheets shall also include total number of sheets in package), dated, indexed and bound. All calculation sheets shall be initialed by the designer and the checker. The index sheets shall define the total number of sheets submitted and shall bear the seal and signature of an experienced engineer holding a Professional Engineer's license in the State of New Jersey and who is familiar with and responsible for the design.
- c. If computations are submitted in computer print-out form, furnish description and proof of adequacy of the program including the following:
  - 1) Certification that the programs are widely used and known in the industry.
  - 2) The type of problems solved by the program.
  - 3) The nature and extent of the analysis.
  - 4) The assumptions made in the program.
  - 5) Instructions for interpreting the computer output format.
- d. All calculations are to be submitted with input and output data in report form in hard copy and electronic format.
- e. Indicate the design criteria used and the diagrams showing loading conditions and loading combinations.
- f. Provide the design constants and equations used, including all references.
- g. Submit indexed and clearly identified input and output sheets for the entire structure or for those portions of the structure, which will be sufficient to enable the Authority to evaluate the structure.
- h. Submit a clear diagram of all member forces (axial, shear, bending or other forces, as appropriate) for each loading condition controlling the design.

## 2. TECHNICAL DESIGN SPECIFICATIONS:

Technical design specifications shall be created by the Contractor to reflect the work as appropriate. These specifications shall be clearly related to the specific design being proposed and approved by the Engineer.

## 3. DESIGN DRAWINGS:

Prepare final design documents for work to be performed by the Contractor based on the approved SDC which shall include, but are not limited to, the appropriate work items contained in the foregoing tasks.

The design documents shall use the current version of "AutoCAD" computer program. The final design drawings shall be prepared in both Auto CAD DWG format and publish/printed/saved in DWG and Design Web (DWF) format. Refer to the current version of the Authority CAD Standards for specific procedures and details. Prepare "D" size drawings (22" x 34") using inch-pound dimensioning on Authority Standard Contract Sheets. Final design drawings and specifications will be subject to Authority review and approval; drawings not conforming to the generally accepted standards will be rejected.

The design drawings and technical design specifications shall be complete for all disciplines, and shall establish and show all design items in sufficient detail and appropriate scale such that all pertinent members and equipment layouts, material, size, dimensions, location, geometry, notes and details. Major equipment data and information (geometry and dimensions for clearances, loading and support details, installation procedures and precautions, space requirements, power and control requirements, etc.) shall be clearly and completely depicted. Details and information shown in these drawings shall be clear and accurately established to be readily utilized to develop shop and fabrication drawings for installation and for the ordering of catalog items, if needed.

- a. The Contractor's engineer responsible for the design shall sign and seal all design documents.
- b. All drawings shall be signed and sealed by a Professional Engineer licensed in the States of New Jersey. The original tracing shall be back-shaded with carbon paper in the area of the embossed seal so that the seal will print.

## 4. STAGING DRAWINGS:

The Contractor shall perform constructability analyses of construction within the operation environment and restrictions imposed by the facility. Evaluate and

provide recommendations pertaining to construction feasibility on integrating operational requirements, availability of specialized equipment and availability of areas for staging. The Contractor shall prepare construction phased diagram schedules that identify critical paths of the entire construction, sequence of construction and staging, and consideration of long lead materials and equipment. Provide the final construction phasing and staging plans for all the project components in a format and level of detail as approved by the Authority.

#### 5. DELIVERABLES:

At the completion of Final Design, the Contractor shall submit to the Authority all requested documents, reports, and related materials forming the Final Design Package. The Final Design submission shall include, but not be limited to, the following:

- a. The original signed and sealed drawings and one (1) copy of a reproducible set of standard size (22" x 34") engineering design drawings showing all information and details, along with 20 full size (22" x 34") copies.
- b. One (1) reproducible set of half size (11" x 17") drawings of those indicated in Item '6a' above, along with an additional 20 half-size copies.
- c. Electronic files on CD of those drawings indicated in Item '6a' above in both DWG and DWF format. Provide three (3) sets of CD's.
- d. Three (3) copies of Final Design computations, including electronic files, computer printouts and sketches in bounded form.
- e. Signed cost estimates in Port Authority format.
- f. Hard copies and electronic copies of Technical Design Specifications developed for the project as specified in Task F. 2b above.

### **10. TASK G SERVICES DURING THE CONSTRUCTION PHASE**

The Contractor shall not proceed with performance of this task without express written direction from the Authority to proceed.

If directed, the Contractor shall proceed to execute all Work required to complete the construction to replace all in-ground lifts specified and included in this Contract. The Contractor shall complete all construction work conforming to all details, information and requirements shown in the design drawings and specified in the specifications. In addition, the Contractor shall also conform to requirements of all current Codes, Standards, Regulations and requirements specified for this Contract.

If directed, the Contractor shall perform construction phase duties to ensure the

construction meets the objectives and intent of the final design, which shall include but are not limited to:

- a. Submit your specific Quality Control/Quality Assurance Program for the professional services to perform your final design engineering services specified hereunder.
- b. Prepare specifically for this Contract all Shop Drawings which may be required in addition to the Detailed Design Drawings or in addition to any other drawings which the Engineer may issue in supplementing the Contract Drawings.
- c. As the Contractor and Engineer-of-Record, review and validate the design and details of all structures installed during the construction where the safety may be affected by the structural integrity of such structures. Some of these structures may include, but are not limited to, protective scaffolding, storage sheds, fences and barricades, temporary supports, bracing and shoring system, temporary signage, lighting and utility supports, etc.
- d. In addition to any on-site visits and observations required to be made as the Engineer-of-Record, Contractor shall, at the request of the Authority, attend two (2) pre-construction meetings and two (2) field progress meetings for each month of the construction period.
- e. Prepare and submit, at the first pre-construction meeting, an outline list of required Contractor's submittals, to include but not be limited to, shop drawings, catalog cuts, samples, certificates and test reports, including submittal requirements in design documents.
- f. Upon completion of construction, modify the Design Drawings to "Drawing-of-Record" condition using Contractor provided mark ups to certify the same.

## **11. SCHEDULE AND SUBMISSIONS FOR FINAL DESIGN**

The Contractor shall submit the work identified for review by the Authority within the number of calendar days/weeks stipulated after receipt by you one copy of the Agreement executed by the Authority.

The submission durations for each effort will be the following:

- |                                      |  |
|--------------------------------------|--|
| 1. Summary of Design Criteria (SDC): | Three weeks after authorized to proceed by the Authority |
| 2. 50% Submission:                   | Six weeks after approval of SDC                          |
| 3. Incorporate 50% comments:         | Two weeks from 50% Submission                            |
| 4. 75% Submission:                   | 2 weeks after receipt of 50% comments                    |
| 5. Incorporate 75% comments:         | Two weeks from 75% Submission                            |

- |                                   |   |
|-----------------------------------|---|
| 6. 100% Submission:               | 12 weeks after approval of SDC          |
| 7. Incorporate 100% comments:     | Two weeks from 100% Submission          |
| 8. Final Submission               | Four weeks from PA Law/Contract Reviews |
| 9. Construction Final Completion: | 360 Days after completion of Design     |

The completed Design Drawings and Technical Design Specifications submitted above will be subject to review by the Authority's Law Department. Contractor shall make any changes to the Contract Drawings and Technical Specifications resulting from this legal review and shall submit the revised Contract Drawings and Technical Specifications, which will be used in the construction phase.

## **12. ADDITIONAL INFORMATION FOR PREPARATION OF DESIGN DOCUMENTS**

### **1. General Requirements:**

- a. Prepare all Design Drawings on standard size Authority drawing sheets. Documents shall be prepared in such a manner as to produce clearly legible drawings after reduction to half size. Scales shall be graphical rather than numerical.
- b. Meet with the Authority and incorporate Authority comments after all submittals.
- c. The following additional services shall be provided as part of the Contractor's task:
  - 1.) Document Management Standards:
    - a. The Contractor shall maintain clear, dated records of all pertinent documents, including but not limited to transmittals, submittals and responses, Authority requests and responses, meeting journals and minutes, drawings, original marked shop drawings, engineering design, calculation and drawings prepared during each project stage. These documents shall be made readily available for review by the Authority upon request. Upon the completion of each project stage, or at the request of the Authority, all these documents shall be listed, filed and submitted to the Authority.
    - b. Submit proposed paper and electronic formats of all deliverables for Authority approval prior to first or draft submittal; include this process on the appropriate schedule. In every instance when information can be communicated in several ways, propose the clearest and least complex method: outlines are preferred over text, matrices are preferred over narrative, complete diagrams are preferred over incomplete detailed drawings, and sketches and photographic images are preferred over

complex rendered images.

- c. Consult with the Authority and fully coordinate electronic strategy, so that all deliverables are accessible, and so that the drawings, specifications, schedules, and estimates become the basis for computer aided management of the project as each construction phase is completed. Review anticipated Authority electronic strategy and utilize approved hardware and software.

END SPECIFICATIONS

## ATTACHMENTS

Attachment A – Electrical Engineering Performance Criteria

Attachment B – Geotechnical Engineering Performance Criteria

Attachment C – Plumbing Engineering Performance Criteria

Attachment D – Structural Engineering Performance Criteria

Attachment E – In-Ground Lift Performance Criteria

Attachment F – PATH Operations and Conditions

Attachment G – Hours of Work and Construction Staging

## Attachment A – ELECTRICAL ENGINEERING PERFORMANCE CRITERIA

### 1. General

- A. The existing in-ground lift motors for four existing tracks # 13, 14, 15 and 16 are fed from an existing Motor Control Center (MCC) located by the south exterior wall, adjacent to track 16. This MCC is rated 600 amperes, 480/277V, 3 phase and fed from existing 3000A, 480V, 3 phase, 4 wire, 60HZ double-ended Switchboard No. 1, Bus B, located in 2<sup>nd</sup> floor Electrical room in HCMF via a 200A circuit breaker in the switchboard No.1. These existing in-ground lifts will be replaced by new in-ground lifts. The power source of the new in-ground lifts will be a new 480/277 V, 3 phase supply via MCC which will be furnished by lift manufacturer and designed and installed near the existing MCC by the Contractor. The power source for the new MCC will be a spare breaker from Switchboard No.1 or Switchboard No. 2.
- B. The existing MCC, related feeder and other electrical conduits and wiring will be demolished and the breaker feeding the existing MCC will be marked as spare in the Switchboard.

### 2. Applicable Codes, Guidelines, and Standards

- A. Institute of Electrical and Electronic Engineers (IEEE)
- B. National Electrical Manufacturers Association (NEMA)
- C. Insulated Power Cable Engineers Association (IPCEA)
- D. Instrument Society of America (ISA)
- E. Occupational Safety Hazard Administration (OSHA)
- F. National Fire Protection Association (NFPA)
- G. American National Standards Institute (ANSI)
- H. Underwriters' Laboratories (UL)
- I. National Electrical Safety Code (NESC)
- J. National Electrical Code (NEC)
- K. Port Authority Tenant Construction Review Manual
- L. NFPA 101 Life Safety Code
- M. IESNA G-1-03 Guideline for Security Lighting
- N. Occupation Safety and Health Administration (OSHA)
- O. Underwriters Laboratories (UL)
- P. UL 57 Electric Lighting Fixtures
- Q. UL 935 Fluorescent Lamp Ballasts

R. UL 1570 Fluorescent Lighting Fixtures

3. Criteria

A. Assumptions

- 1) The existing double-ended Switchboards shall have enough capacity to provide adequate 480/277V, 3 phase, 60Hz power for the new in-ground lifts, but Contractor shall verify, confirm and analyze properly after the load analysis.
- 2) Contractor shall also check the spare breaker available in the switchboards and find out the right size breaker for this application. If not found any suitable breaker, consultant shall furnish and install right size breaker in the space available in the switchboards and change feeder accordingly.

B. Design Criteria – Power and control

1) Electrical Power Distribution System

a. General Overview

- (1) The power distribution system shall meet all relevant codes, standards and regulations.
- (2) The Primary Power for the new in-ground lifts shall be sized according to in-ground manufacturers specification and fed from existing 3000A, 480V, 3 phase, 4wire, 60 Hz double-ended Switchboard No. 1 Bus B via a properly sized breaker.
- (3) The similar alternate power feed shall be from existing double-ended Switchboard No. 2 via spare breaker after verification of adequate power available in this Switchboard.
- (4) Emergency Lighting and other life safety equipment shall have their own dedicated battery backup power.
- (5) All new pit receptacles, lighting and power/control conduits and wiring for each in-ground lift system shall be provided as required.
- (6) Power conduit and wiring from the existing switchboard to the new approved MCC shall be provided.
- (7) 120/208V, 3 phase, 4W panel board shall be provided to provide 120V power for auxiliary circuits such as pit receptacles, lighting and control.

b. Low Voltage Switchboard

Low voltage (below 600V) draw-out type circuit breaker switchboard No. 1 and Switchboard No. 2 shall have spare breakers and can be used for feed to new MCC of new in-ground lift systems. If any modifications are needed, consultant will be responsible for design accordingly.

c. Motor Control Center

Motor control centers shall be indoor, totally enclosed, dead-front and dead-back, freestanding, consisting of unitized sections, bolted and bussed together to form a mechanically sound and electrically coordinated assembly, with provisions for future additions or rearrangement of control units. Each vertical section shall be divided into compartments which shall contain a combination starter unit, a circuit breaker or other overcurrent protective devices, or other control assemblies.

Removable lifting angles shall be provided on top of each motor control center shipping section

Each section shall be 90 inches high, 20 inches deep and shall contain a minimum of a 72 square inch horizontal wireway at the bottom and the top. The top wireway shall be cover plate. The bottom of each structure shall be provided with a minimum 17" x 14" rectangular area for termination of bottom entrance conduits. Adequate space for conduit and wiring to enter top or bottom shall be provided without structural interference and safely accessible without disrupting service. All openings shall be closed to prevent rodents from entering the enclosure.

End vertical sections shall have cover plates that can be easily removed to allow addition of future vertical sections and extensions of horizontal wiring troughs and horizontal bus.

Compartments for housing control units shall be incremented to allow six NEMA, size I starter units to be mounted in each section and arranged for easy unit removal. Unit heights shall be of modular dimensions to allow for unit layout, in any combination without structural interference. A vertical wireway with a minimum of 50 square inches of cross sectional area, free of all live parts and containing cable supports, shall be adjacent to each compartment.

Doors shall be formed of 16-gauge steel or heavier, with all edges flanged 5/8-inch deep minimum. Doors shall be mounted on adjustable and removable pin type concealed hinges and so arranged that unit doors may be removed without disturbing unit doors above or below.

All buses shall be hard drawn copper, sized on the basis of not more than 1000 amperes per square inch current density. Main horizontal buses shall have a minimum rating of 600 amperes, but not less than that of the incoming feeder.

Vertical buses feeding unit compartments shall be securely bolted to the main bus, each rated to carry the full connected loads, but not less than 300 amperes. Bus assemblies shall be braced to withstand short circuit current not less than 25,000 amperes symmetrical.

Provide a neutral copper bus rated 600 amperes minimum. A continuous copper equipment ground bus shall be provided in all sections. This bus shall have a minimum current rating of 300 amperes, and shall be located in the bottom of the structure, with cable lugs at each end of the line-up.

Control units shall be drawout-type, with tin-plated stab assemblies for connection to the vertical bus. No wiring to stab assemblies shall extend into the bus compartments. Unit guides shall be provided to properly align stabs with the bus without the possibility of misalignment.

Construction shall be NEMA 12, Type B, with factory wired terminal blocks mounted within the unit. No disconnection of factory wiring shall be necessary for unit withdrawal.

Provide thermal magnetic circuit breakers with minimum interrupting capacity of 22,000 amperes, RMS symmetrical for feeding other equipment from the motor control center.

Each motor control unit shall be provided with a laminated phenolic nameplate, identifying the motor or devices.

Combination motor starters shall be full voltage non-reversing combination-type, with arc-extinguishing characteristics and silver to silver renewable contacts.

Starters shall be provided with magnetic only-type circuit breakers. Starters and circuit breakers shall have a coordinated minimum short circuit interrupting capacity equal to or greater than the maximum available fault current specified for each motor control center, but not less than 22,000 amperes symmetrical.

All overload elements shall be of the bi-metallic manual reset type, NEMA Class 10, equipped with one normally open alarm contact.

Each starter unit shall be provided with not less than two normally open and two normally closed auxiliary contacts.

Each disconnect shall have provisions for padlocking in the "on" and "off" positions. Each starter shall be complete with primary and secondary fused control transformer, with hand-off-automatic selector switch and running light mounted on the hinged front cover of each compartment.

Control transformers shall be sized to adequately provide power to the connected control devices. Each ungrounded leg of the primary circuit shall be fused, using a 600-volt rated fuse, Bussmann KTK or approved equal. One leg of each 120-volt secondary circuit shall be fused using a standard 250-volt fuse. The other secondary leg shall be solidly grounded. Minimum transformer size shall be as follows:

<u>Starter Size</u>	<u>Transformer VA</u>
1	100
2	150
3, 4	200

Pushbuttons, selector switches, and indicating lights shall be heavy-duty oil-tight type. Indicating lights shall be transformer type, with push-to-test lens assembly.

Combination motor control units, Size 1 through Size 4, as well as other electrical assemblies including feeder tap units through 225 amps shall be provided with appropriately rated stab assemblies for drawout type construction. Starter units Size 5 and larger, as well as feeder tap units above 225 amps, shall be bolt-in construction and will be cabled directly to the horizontal bus.

The motor control center shall be thoroughly cleaned and degreased before painting, then given a prime coat of zinc chromate paint. The finish shall consist of electrostatically applied paint. The finish thickness shall be between 1-1/2 and 3 mils and shall provide a highly durable, attractive surface appearance.

d. Panel boards

Each panel board shall have a main circuit breaker, 100% neutral bus, ground bus, copper busses, bolt on type line circuit breakers, and shall be UL listed.

- (1) Panel board shall be 120/208V, 3 phase, 4 wire.
- (2) Provide 20% spare spaces in panelboards, but not less than two spare paces for future expansion.

e. Grounding

- (1) All grounding shall conform to local building code and NESC. Major items of equipment such as switchgear, transformers, motor control centers and control panels shall have integral ground buses connected to the building ground. Ground rods shall be copper, 3/4in in diameter, and ten feet long. Ground cables shall be soft drawn copper, class B stranding and shall be connected to ground rods by exothermic welds.

- (2) Electrical panels, motors, and other equipment, where required, shall be grounded utilizing an insulated ground wire connected in accordance with the manufacturer's recommendations.
- (3) All clamps, connections and other hardware used with the grounding system shall be made of copper.

f. Conduit and Wirings

- (1) Minimum conduit size shall be  $\frac{3}{4}$  inch for all above ground installations. Minimum conduit size shall be 2 inch for all below ground installations.
- (2) All conduits shall be installed concealed in any finished area. No exposed or surface mounted wiring in finished areas.
- (3) In applications where no adjacent wall exists, include PVC coated RGS conduit for workstation power under finished floor in concrete slab.
- (4) All conduits, fittings, and support structures in damp or hazardous locations, exposed, in contact with concrete, or used for fire alarm systems shall be in rigid galvanized steel (RGS) conduit.
- (5) All conduit support shall be spaced at a maximum of 8'-0" OC.
- (6) Each conduit system shall be installed completely before any conductors are drawn.
- (7) All 600V general-purpose power and control cables shall be XHHW-2, low smoke zero halogen. Cable shall be #12 AWG minimum for power and #14 AWG minimum for control.
- (8) Circuit in all cabinets, boxes, wiring troughs and other enclosures, and at all terminal points, i.e. receptacles, shall identify all wires etc.
- (9) Voltage drop on both feeders and branch circuits to the farthest outlet shall not exceed 3%.

g. Lighting

- (1) Lighting shall be integrated into the architectural and structural design in an unobtrusive manner, except in circumstances where attachment to structure is deemed unfeasible. Where lighting fixtures and related equipment are within view, their placement and scale must relate to and reinforce the architecture. The lighting shall reinforce circulation clarity by emphasizing visual connectivity between contiguous spaces.
- (2) For ease of maintenance and future procurement simplicity, standardization of light sources and lighting fixtures shall be incorporated.
- (3) All lighting design shall be as per IES standard. To improve visual acuity and comfort while maximizing the efficiency of the lighting approach, the lighting design

shall be coordinated with the architectural design to assure utilization of highly reflective (light value, non-specular) floor, wall, and ceiling materials.

- (4) Power for lighting system shall be 277V or 120V depending on the power availability.
- (5) Location of luminaries and lighting system components shall be considered for feasible, safe, and convenient maintenance.
- (6) Luminaries shall be located to maximize safety and minimize the potential for deliberate vandalism and/or inadvertent damage by other systems.

h. Wiring devices

Wiring devices in the pits such as receptacles etc. shall be rated 120V, 1 phase, and ground-fault interrupter type.

- i. Furnish and install fire alarm devices in the lift pit and connected to the existing Fire Alarm System as required by code.

#### 4. Required Design Submittals

##### A. 50% Submittals

##### 1) Drawings/Documents

Contractor shall submit electrical progress drawings on Authority standard 22"x34" contract sheets. These drawings shall include as a minimum, but not be limited to, the following information:

- a. Floor plans to describe the scope of work required in the Basic Specifications at a minimum scale of 1/8"=1'-0".
- b. Legend, Abbreviations, General Notes and List of Manufacturers.
- c. Single line diagram.
- d. Equipment location and its power layout plan.
- e. Lighting layout plan, if any and lighting fixtures schedules.
- f. Removal Plan , if any.
- g. List of Specifications Sections and cost estimate.

##### 2) Calculations for:

- a. Panel board and Motor control Center loads.
  - b. Overall load study.
- 3) Preliminary electrical equipment list, including the following equipment information:
- a. Size
  - b. Weight
  - c. Indicate what each piece serves
- 4) Lighting calculations
- a. Luminance and Uniformity Criteria Achievement
  - b. Lighting Power Density Calculations
  - c. Fixture Illustrations, including proposed mounting conditions
- 5) Cost Estimate
- B. 100% submittal ( Progress Documents):
- 1) Drawings/Documents
- Contractor shall submit electrical progress Drawings on Authority standard 22"x34" contract sheets. These drawings shall include as a minimum, but not be limited to, the following information:
- a. Floor plans to describe the scope of work required in the Basic Specifications at a minimum scale of 1/8"=1'-0".
  - b. Legend, Abbreviations, General Notes and List of Manufacturers.
  - c. Single line diagram.
  - d. Equipment location, power layout, grounding and raceway plans.
  - e. Lighting layout plan, if any and lighting fixtures schedules.
  - f. Demolition Plan , if any.
  - g. Sections and details
  - h. List of Specification Sections.
  - i. Cost estimate
- 2) Calculations for:

- a. Panel board and Motor control Center loads.
  - b. Overall load study.
- 3) Preliminary electrical equipment list, including the following equipment information:
- a. Size
  - b. Weight
  - c. Indicate what each piece serves
- 4) Lighting calculations
- a. Luminance and Uniformity Criteria Achievement
  - b. Lighting Power Density Calculations
  - c. Fixture Illustrations, including proposed mounting conditions

C. Final Submittals:

1) Drawings/Documents

Contractor shall submit all final electrical Drawings on Authority standard 22"x34" contract sheets. These drawings shall include as a minimum, but not be limited to, the following information:

- a) Floor plans to fully describe the scope of work required in the Basic Specifications at a minimum scale of 1/8"=1'-0".
- b) Legend, Abbreviations, General Notes and List of Manufacturers.
- c) Single line diagram.
- d) Electrical equipment location, power layout, grounding and raceway plans.
- e) Staging plan, including re-routing of existing equipment, demolition of any existing equipment and installation of temporary power equipment if necessary.
- f) Fire alarm system description, equipment layout plan and riser diagram.
- g) Lighting Plans and lighting fixtures schedules.
- h) Typical details, sections, and wiring diagrams.
- i) Panel board and motor Control center schedules.

- 2) Coordination study indicating the circuit breaker settings and system coordination
- 3) Voltage drop calculations justifying selected sizes of cables and wires
- 4) Final lighting calculations and design
- 5) Detailed Specifications for equipment and materials.
- 6) Construction cost estimate.
- 7) Operations and maintenance manuals for all electrical equipment

End of Attachment A – ELECTRICAL ENGINEERING PERFORMANCE CRITERIA

## Attachment B – GEOTECHNICAL ENGINEERING PERFORMANCE CRITERIA

### 1. General

This section specifies performance criteria for the Geotechnical portions of the work. The design will include drilled minipile foundations, shoring for temporary excavation, underpinning and seismic analysis in accordance with the current edition of International Building Code New Jersey Edition and all applicable Codes, Standards, Regulations and Guidelines listed in this criteria and in the Summary of Design Criteria (SDC).

### 2. Design Criteria

#### A) Drilled minipiles:

- 1) Allowable capacities: Compression = 60 kips, Uplift = 10 kips and Lateral = 2 kips
- 2) Permanent steel casing: 10.75 inches O.D., 3/8 inch thick steel casing to minimum elevation -10.00
- 3) Protective coating for permanent steel casing: 18 mils of coal tar or fusion bonded epoxy from pile cutoff to elevation -10.00
- 4) Minimum pile spacing = 2.5 feet

#### B) Equivalent Fluid Pressures for temporary sheeting:

The temporary sheeting shall be designed to retain an equivalent fluid pressure of 40 pcf and 80 pcf, respectively, above and below ground water level. A uniform surcharge lateral pressure of 200 psf shall be considered for construction equipment.

### 3. Required Design Submittals

#### A. At 50% Level of Design Development:

- 1) Design Drawings - Contractor shall provide Preliminary Geotechnical Drawings for review by Engineer. The Preliminary Geotechnical Drawings shall include, but not be limited to the following items:
  - a) Notes on drawing showing design codes, design capacities of drilled minipile, drilled minipile installation and reference standards. Details of drilled minipile.
  - b) Notes for excavation and backfilling. Layout of temporary bracing, if required, shall be shown on the Design Drawings since a sloped cut is not feasible at the site.

#### 2) Design calculations:

The design calculations shall include, but not be limited to:

- a) A minimum drilled minipile length for the required structural capacities. Since load test is not required, a factor safety of three shall be applied to the calculated ultimate capacities to obtain the design capacities.

- b) Seismic evaluations based on consideration of Geotechnical issues.
- c) Temporary bracing.
- 3) Summary of Geotechnical Design Criteria
- 4) List of required Specifications
- B. At 75% Level of Design Development:
  - 1) Foundation design calculations.
  - 2) Detailed Design Drawings and Detailed Technical Specifications.
- C. At 100% Completion of Design and Final Submission:
  - 1) Contractor shall submit final Detailed Design Drawings that are identified in previous design submittals plus all the itemized items listed below. Address all the Engineer's comments from previous submittals. The scale of all details shall be sufficient to clearly show all relationships and materials.
  - 2) Final foundation design calculations signed and sealed by a Professional Engineer licensed in State of New Jersey.
  - 3) Detailed Design Drawings and Detailed Technical Specifications.
- D. The Contractor shall follow the Authority Stage IV submittal requirements.

The Contractor shall provide a copy of record of each drilled minipile installed and as-built drawings to show all the information of the installed minipiles.

End of Attachment B – GEOTECHNICAL ENGINEERING PERFORMANCE CRITERIA

## Attachment C - PLUMBING ENGINEERING PERFORMANCE CRITERIA

### General

1. This part specifies the design criteria for the Plumbing systems. The plumbing systems shall include floor drains with associated industrial waste and vent piping, compressed air with associated piping and components.
2. Applicable Codes, Guidelines, and Standards

Design shall comply with all applicable Federal, State and Local laws, ordinances, regulations and codes, and the latest industry guidelines and standards including, but not limited to the entities listed below.

- A. International Building Code, New Jersey Edition, 2009.
- B. National Standard Plumbing Code, 2009.
- C. Occupational Safety and Health Administration (OSHA).
- D. Standards – ASHRAE, ANSI, ASPE, ASTM and AWWA.

3. Design Criteria

- A. Industrial Waste and Vent Piping Systems

- 1) Floor drains shall be provided for the new pits with connection to the existing industrial waste and vent systems. The waste branches will be gravity drains as the bottom elevation of the existing and proposed lift pits are similar. Evaluate and provide sump pit and sump pump in case of the bottom elevation of the lift is below the existing drainage system.
    - 2) Floor drains shall be provided with cast iron P-traps. Floor drains shall be heavy duty construction, coated cast iron body with flashing collar and adjustable nickel Bronze strainer head including sediment bucket.
    - 3) Underground waste and vent piping shall be service weight cast iron pipe conforming to ASTM A-74, with hub and spigot joints. Joints shall be made of compression gasket conforming ASTM C-564.
    - 4) Aboveground vent piping shall be no hub cast iron pipe conforming to ASTM A-74, with hub-less fittings. Fittings shall be of stainless steel shield and clamps with neoprene gasket conforming to CISPI 301-85.
    - 5) All hub-less piping shall be anchored at each side of any joints or connections and at five (5) foot intervals.
    - 6) Floor drains and associated drain piping shall be a minimum of 4" in diameter. Associated vent piping shall be a minimum of 2" in diameter.

- B. Compressed air system

- 1) Portions of the existing compressed air system including piping trenches shall be rerouted to avoid conflict with new pit layouts and corresponding excavation work. All pits within designated area of work shall be provided with compressed air outlets consisting of filter, lubricator, pressure gauge, quick connect outlet, drain and valves. The compressed air outlets shall be connected to the existing compressed air system.
- 2) The compressed air piping shall be schedule 40 galvanized steel pipe conforming to ASTM A53 and threaded galvanized fittings.

#### 4. Required Design Submittals

##### A. At 50% Level of Design Development:

- 1) Contractor shall provide Plumbing Design drawings for review by the Engineer. The Plumbing Design drawings, unless otherwise noted, shall measure 22"x 34". The minimum drawing scale shall be 1/8" = 1'-0" but shall be adequate to clearly present the design intent and meet the Basic Specifications. Determination of the adequacy of the content and scale of the drawings shall be at the discretion of the Engineer.
- 2) Preliminary piping and equipment layout in floor plan showing main piping distribution and sizes.
- 3) Preliminary riser diagrams for all applicable systems.
- 4) List of Specifications for all materials, equipment, and installation requirements.
- 5) Preliminary load calculations for all applicable systems including seismic protection. Calculations shall be prepared by a Professional Engineer licensed in the State of NJ.

##### B. At 75% Level of Design Development:

- 1) Contractor shall prepare and submit Detailed Design Drawings using Authority standard 22"x 34" drawing sheets. The Engineer will determine at his discretion the sufficiency of drawings, their contents and scale. These drawings shall include, but not be limited to, the following:
  - a. Floor plans showing all spaces as indicated on Basic Design Drawings. Design system utilizing design performance requirements.
  - b. Floor plans illustrating equipment locations and associated main run sizes for all piping
  - c. All equipment details, pipe support systems (seismic protection) shall be indicated using a minimum scale of 3/4" = 1'-0".
- 2) Load calculations for all applicable systems including seismic protection. All calculations shall be prepared by a Professional Engineer licensed in the State of NJ.
- 3) Piping and equipment layout in floor plan showing the location, layout and spacing of all plumbing fixtures; the summation of plumbing loads; the size, location and materials for all industrial waste, vent, and compressed air distribution piping.
- 4) Riser diagrams for all applicable systems.

5) Detailed Specifications for all materials, equipment, and installation requirements.

C. At 100% Completion of Design and Final Submission:

1) Detailed Design Drawings

Contractor shall prepare and submit final Detailed Design Drawings that are identified all associated details, addressing all the Engineer's comments from the 50% and 75% submittals. The scale of all details shall be sufficient to clearly show all components, relationships and materials.

2) Final Load calculations for all applicable systems including seismic protection. All calculations shall be prepared and signed by a Professional Engineer licensed in the State of New Jersey.

3) Final piping and equipment layout in floor plan showing the location, layout and spacing of all plumbing fixtures; the summation of plumbing loads; the size, location and materials for all industrial waste, vent, and compressed air distribution piping.

4) Final riser diagrams for all applicable systems.

5) Final detailed specifications for all materials, equipment, and installation requirements.

End of Attachment C – PLUMBING ENGINEERING PERFORMANCE CRITERIA

## Attachment D – STRUCTURAL ENGINEERING PERFORMANCE CRITERIA

### 1. General

This part specifies Structural performance criteria for the design and detailing of all structural components required for the in-ground lift replacement Contract. Major structural design components shall include but are not limited to the following:

- A. Cutting existing structural members, such as foundations, grade beams, track beams, slabs and supports to remove existing in-ground lifts.
- B. Modify existing structural members, such as pile caps, grade beams, track beams, slabs and supports to accommodate new in-ground lifts in place.
- C. After the installation of piles, reconstruct all structural components as required to complete the installation of the new in-ground lifts.
- D. Design and install temporary supports, shoring, underpinning as required to support existing structures and to facilitate the installations of the new in-ground lifts.
- E. Structural supports for all equipments, utilities and other installations as required in the project.
- F. Investigate the existing structures, the HCMF site and installations as required to validate the proper use of construction equipments and procedures in the project.
- G. Conduct constructability evaluation conforming to project criteria. Prepare detail construction staging and phasing plans.

### 2. Applicable Codes, Guidelines and Standards

The design shall conform to the current edition of all applicable Codes, Standards, Regulations and Guidelines listed below in this criteria and in the Summary of Design Criteria (SDC):

- A. American Concrete Institute (ACI) – Manual of Standard Practice for Detailing Reinforced Concrete Structures, ACI-315.
- B. Building Code Requirements for Structural Concrete (ACI 318).
- C. American Institute of Steel Construction (AISC) - Manual of Steel Construction.
- D. American Society of Civil Engineers (ASCE) - Minimum Design Loads for Buildings and other Structures (ASCE 7).
- E. American Welding Society (AWS) – AWS D1.1 Structural Welding Code – Steel.
- F. American Railway Engineering and Maintenance-of-Way Association (AREMA) – Manual for Railway Engineering.

### 3. Criteria

The Structural criteria shall also include, but are not limited to the following requirements:

#### A. Design Criteria

- 1) Reinforced concrete structures shall be designed in accordance with the “Strength Method”.
- 2) Steel structures shall be designed in accordance with the “Working Stress method”.
- 3) Design Railcar Loads: PA-4 cars 69,000 pounds empty plus 30,000 live load (total 12,375 pounds per wheel – eight wheels per car). Fifteen percent (15%) impact additional.
- 4) Floor Live Load – 150 psf, or actual equipment concentrated load(s), or a concentrated load of 5,000 pounds at any place, whichever produces the most severe condition.
- 5) Seismic design shall conform to requirements of the current edition of the International Building Code (IBC) – New Jersey Edition. Seismic Use Group I.
- 6) Materials
  - a. Concrete
    - (1) All concrete shall be normal weight concrete conforming to all pertinent requirements and specifications.
    - (2) Cast-in-place concrete shall have a minimum compressive strength ( $f'_c$ ) of 4000 psi in 28 days, except for “mud” slab, if used, shall be 2,500 psi.
    - (3) Steel reinforcement shall be epoxy coated conforming to the requirements of ASTM A775, deformed, Grade 60.
    - (4) Performance categories for the concrete work shall be Category IV.
  - b. Anchor Bolts
    - (1) Anchor Bolt material shall conform to ASTM F1554 Grade 55 and shall be mechanically galvanized in conformance with ASTM B 695, Class 50.
  - c. Structural Steel
    - (1) Unless otherwise specified or approved by the Authority, structural steel shall conform to the requirements of ASTM A 36. All steel shall be painted or coated per specification specified, unless otherwise noted in design drawings.
  - d. High Strength Bolts
    - (1) Unless otherwise specified or approved by the Authority, high strength bolts shall conform to the requirements of ASTM A 325, slip critical (SC) type, with compatible washers and nuts.

#### 4. Required Design Submittals

##### A. At 50% Level of Design Development:

1) Drawings

The Contractor shall provide progress Structural Drawings for review by the Authority according to the schedule Specified in the Division 1 Section entitled "Basic Design Criteria". The Structural Design drawings, unless otherwise noted, shall measure 22"x34". The Structural Drawings shall be prepared using the proper scale, and shall include, but not be limited to the following items:

- a. Drawings showing design codes, design loads, reference standards, structural notes and sequence of construction.
- b. Floor plan showing location of existing tracks, structural elements, in-ground lifts and installations, location and size of proposed pit for new in-ground lifts.
- c. Drawing showing location, size of construction pits, extent of demotion and removal, cutting of existing structural elements, temporary sheeting, shoring and support required.
- d. Drawing showing location, number of new piles driven and size and geometry of new pile caps. Modification of existing pile caps and foundation elements.
- e. Extent of cutting and modification of existing structural elements, including foundations, grade beams, track beams, slabs and lifts pits.
- f. Sections, elevations and details required to clarify design elements included in items "2' through "5" listed above.

2) List of required Specifications

B. At 75% Level of Design Development:

1) Drawings

The Contractor shall submit Detailed Design Drawings on Authority standard 22"x34" drawing sheets. The scale of plans and elevations shall be at a minimum bar scale of 1/8"=1', but a larger scale may be required to show all the information required. Sections and details shall be at a minimum bar scale of 3/4"=1'. The Authority will make all decisions concerning the sufficiency of drawings and their scale. These drawings shall include, but not be limited to, the following information:

- a. Plans, Sections and Details of all required removal work, including structural and mechanical elements.
- b. Plans, Sections and Details of all new pile, pile caps and foundation elements showing all required geometry, dimensions and elevations.
- c. Plans, Sections and Details showing modification of existing grade beams, track beams and slabs including all required dimensions, elevations, supports and reinforcement.

- d. Plans, Sections and Details showing new in-ground lift supports and pits, including anchor bolt layout and details. The drawings shall include all geometry, dimensions, elevations and notes that are pertinent to the installation of the new lifts. Other installations that are required for the operation of the lifts and are installed in the lift pits shall also be included in the drawing.
- e. Plans, Sections and Details of all structural elements at the completion of construction, including waterproofing details. The drawing shall include all required dimensions and elevations.
- f. Staging and phasing plans of construction, including construction schedules.

2) Design Calculations

The design calculations shall include, but not be limited to:

- a. Foundation design, including modification of existing foundation elements.
  - b. Grade beam and track beam designs, including modification of existing grade beams and track beams.
  - c. Design of new lift pits, including lift supports design.
  - d. Design of temporary structures, including structural system of temporary supports, shoring and underpinning.
  - e. Computer print outs of the analysis of the structural system and design of structural elements and user's manuals for computer software packages used in the structural analysis and design.
- 3) Progress Detailed Specifications.

C. At 100% Completion of Design and Final Submission:

1) Design Drawings

Contractor shall submit final Detailed Design Drawings of all structural components required for the project, including that are identified in previous design submittals and all associated details. Address all the Authority's comments from the previous submittals. The scale of all details shall be sufficient to clearly show all structural design requirements, and coordination of design information pertaining to all involved disciplines. Decisions related to adequacy of scale and detail sufficiency shall be as approved by the Engineer. The drawings shall also include, but are not limited to the following:

- a. Provide a list of materials that will require "Special Inspections" in accordance with The Uniform Construction Code of New Jersey and its Sub-code. List each type of test and the frequency of each test for each material requiring "Special Inspections."
- b. The complete Construction Sequence to replace the in-ground lifts required for this project.

2) Final Complete Design Calculations ( to show Code and Program conformance)

Contractor shall submit final Design calculations of all structural elements required for the project, including, but not limited to, the information identified in 4.B.2 above and the following:

- a. Design analysis and drawings.
  - b. All required calculation sheets shall be numbered and indexed. The indexed sheets shall define the total number of sheets submitted and shall bear both the seal and signature of a structural engineer holding a Professional Engineer's License in the State of New Jersey, who is familiar with the design conditions and is responsible for the design.
- 3) Final Detailed Specifications.

End of Attachment D – STRUCTURAL ENGINEERING PERFORMANCE CRITERIA

## Attachment E – IN-GROUND LIFT PERFORMANCE CRITERIA

### 1. General

- A. This section specifies requirements for a railcar hoist system consisting of four (4) sets of two (2) synchronized C-frame in-ground lifts with at least four (4) integrated body stands to be furnished and installed in the Harrison Car Maintenance Facility (HCMF).
- B. The railcar hoist system shall be capable of raising and holding a railcar to allow access to under-car components and shall raise the railcar to a desired height by means of the lifts. Body stands that are integrated with the lifts shall hold the railcar in the raised position while the lifts lower the trucks independently to the floor level.

### 2. Design and Performance Requirements

Design and performance of components and methods specified herein shall comply with all applicable Federal, State and Local laws, ordinances, regulations, and Codes, and the latest industry standards, including but not limited to the entities listed below:

- A. National Fire Protection Association (NFPA)
- B. American Welding Society (AWS)
- C. American National Standards Institute (ANSI)
- D. American Society of Mechanical Engineers (ASME)
- E. American Society of Testing and Material (ASTM)
- F. Underwriters' Laboratories, Inc. (UL)
- G. National Electrical Manufactures Association (NEMA)
- H. Occupational Safety and Health Administration (OSHA)
- I. American Railway Engineering and Maintenance-of-Way Association (AREMA)
- J. Society for Protective Coatings (SSPC)

In addition, specific provisions cited herein shall govern for associated specific applications.

### 3. Quality Assurance

- A. Lift equipment of types and sizes required shall have been satisfactorily used for purposes similar to those intended herein for not less than ten (10) years.
- B. Lift installation shall be performed by the manufacturer of the lift or by an authorized installer that is trained and certified by the manufacturer. Provide factory field supervision and start-up on all equipment.
- C. Lift operator training shall be provided by a manufacturer's technical representative.
- D. At least three maintenance contractors in the New York-New Jersey Metropolitan Area shall be authorized by the manufacturer to maintain the lift equipment. The manufacturer shall not limit the number of maintenance contractors who can be authorized to maintain the lift equipment.

#### 4. Delivery, Storage, Handling and Rigging

- A. Deliver lifts and all components with factory installed protective devices and lifting lugs. Pack components in factory-fabricated protective containers.
- B. Handle equipment carefully to avoid damage to components, enclosures, and finish.
- C. Stored equipment shall be kept clean, dry, and protected from weather and construction debris.
- D. Site Storage shall be in area(s) designated by the Engineer.
- E. Comply with approved rigging plan for unloading lifts and moving them to the final locations for installation.
- F. Loose-shipped items shall be packed, protected, and secured with lifts.
- G. Submit the following plans/procedures for approval by the Engineer.
  - 1) Delivery: A procedure for each lift showing unloading at the site and delivery to the pit areas.
  - 2) Rigging Plan: Contractor shall submit a rigging plan, signed and sealed by a licensed Professional Engineer in the State of NJ, which shall be reviewed and approved by the Engineer prior to execution.
  - 3) Drawings showing location of all proposed storage areas.

#### 5. Design Criteria

##### A. General

- 1) C-frame lifts shall allow the removal and replacement of either railcar truck while the railcar is raised. Demounted truck assemblies shall be capable of being passed under a lift supporting a raised railcar on the integrated body stands.
- 2) Railcar hoist system shall be designed to lift PATH PA-4 and PA-5 railcars. Body stand design shall accommodate lifting pads on both types of railcars.
- 3) Lifts shall be designed for in-ground installation. Portable jacks are not acceptable.

##### B. Products

###### 1) Manufacturers

Subject to compliance with the requirements of this section, all lifts supplied under this Section shall be the product of a single manufacturer as a package.

##### C. Materials

- 1) Fabricate the jacking system, caissons, lifts, and body stands from steel, utilizing welded construction.
- 2) Design all hoisting and support equipment using a minimum safety factor of 5, based on the ultimate strength of the material.

##### D. Construction Features

###### 1) General

- a. Lift capacity shall be 25 tons per lift and 50 tons per railcar hoist system.
- b. Rated speed of lifts shall not exceed 5 feet per minute (FPM).
- c. Minimum lift height shall be 5'-0" above the finished floor. Maximum lift height shall be 5'-6" above the finished floor.
- d. Lifts shall be designed for a track gauge of 56.5 inches. Rails on the top of the lifts shall match the existing rails.

- e. Rail crossover capacity shall be 50 tons.
- f. Body stand capacity shall be 50 tons per track/railcar. Body stands shall be able to support the railcar body with the railcar raised to the full height.
- g. Lifts shall allow unobstructed use of the shop floor area when lifts and supports are in the retracted position.
- h. Lifts shall be driven by self-locking screw jacks with lifting nuts, powered by electric motors. Screw jacks shall be self-lubricating.
- i. Screw jacks shall be housed in caissons for protection.
- j. Body stands shall be driven by electric motors.
- k. Maximum limits for lift alignment and deflection:
  - (1) Variation between adjacent lifts: 1/4 inch
  - (2) Variation between adjacent body stands on the same end of the railcar: 1/2 inch
  - (3) Variation between adjacent body stands on opposite ends of the railcar: 1 inch
  - (4) Variation in level of each lift, end-to-end: 1/4 inch
  - (5) Variation in level of each lift, center of rail to center of rail: 1/4 inch
  - (6) Deflection in each rail under full load: 1/4 inch
- l. Lift rails shall mate with connecting rails of the adjacent embedded tracks, so that railcars can roll completely across the location when the lifts are in the retracted position. Gaps between lift rails and shop rails shall not exceed 1/4 inch.

## 2) Controls

- a. Railcar hoist system controls shall be individual for each track, shall be able to operate the two (2) lifts in unison, and also shall be able to operate each lift independently.
- b. Body stands corresponding to a single railcar hoist system shall be able to operate in unison, and also shall be able to operate independently for each lift. When body stands are operating for a single lift, all body stands associated with that lift shall operate in unison.
- c. Control devices shall include programmable logic controllers (PLCs).
- d. Controls shall be push-button where the user must apply constant pressure for the button to operate. Touch screen controls are not acceptable.
- e. Control panels for each railcar hoist system shall include:
  - (1) One (1) main panel
  - (2) Two (2) hand-held local hardwired pendant pushbutton stations, one at each lift location. Wireless controls are not acceptable
- f. Control features on both main control panel and local pendant pushbutton stations shall include:
  - (1) Lift up/down
    - (a) The main control panel shall operate the lifts in unison only; the local pendant pushbutton stations shall operate the lifts individually only.
  - (2) Body stands up/down
  - (3) Emergency stop (mushroom-type button)
- g. Control features on the main control panel only shall include:
  - (1) A Local/Main control switch to change control between the main control panel and the local pendant pushbutton stations.
  - (2) Indicating light that wheel stops are in place (green light)
  - (3) Indicating light that body stands are in place (green light)

- (4) General trouble alarm (red flashing light)
- (5) Console screen that displays type of alarm condition. Alarm conditions shall be as follows:
  - (a) Railcar hoist system is out of tolerance because lifts are not operating in unison.
  - (b) Wear indication
  - (c) Normal limit switch failure
  - (d) Motor failure
  - (e) Lifts out of alignment
  - (f) Body stands out of alignment
- h. All indicating lights, buttons, and switches shall be clearly labeled with their functions.
- i. Main panel shall include key-lock control operated with physical key. Lifts shall not operate unless the key is inserted in the panel.
- j. Lift height shall be adjustable via the lift up/down feature.
- k. Main control panel shall be NEMA 12 stainless steel enclosure with hinged cover. Local pendant pushbutton stations shall be NEMA 4 stainless steel enclosures with hinged covers.

### 3) Safety Features

Lifts shall include the following safety features:

- a. Self-locking screw jacks so that the lifts and body stands will be locked at any position.
- b. Follower safety nuts on lifts and body stands
- c. Wear indicator for nuts or screws that have worn past an acceptable level. Nut wear indication sensor and interlock shall prevent lifts from being able to operate in the raising direction when the nut wear of the primary nut is sensed to be beyond tolerance.
- d. Emergency shut-off switch
- e. Visual and audible alarm during lift operation, mounted on an adjacent column or on main control panel.
- f. Lifts and body supports shall be equipped with upper and lower limit switches to stop the lifts at normal limit of travel. Lifts and body supports shall also be equipped with over-travel and under-travel limit switches in the event of failure of the upper and lower limit switches.
- g. Body stands shall be equipped with load detection switches to ensure body stands are not raised or lowered while they are supporting any load.
- h. Interlocks shall ensure that the body stands are inoperable while the car hoists are being operated and the car hoists are inoperable while the body stands are being operated.
- i. Interlocks shall ensure that an individual lift cannot be raised or lowered unless the body supports associated with that lift are in contact with a raised railcar.
- j. When both lifts on a railcar hoist system are operating in unison, power to the motors shall be automatically interrupted if lifts are not maintaining specified tolerances with respect to each other. This interlock shall not apply when the lifts are being controlled independently.

### 4) Wheel Stops

- a. Wheel stops shall be furnished and installed for each lift to prevent the railcar from rolling in either direction when the lift is not at floor level.

- b. Wheel stops shall be designed to be located to ensure that the railcar lifting pads are accurately aligned with the lifts to achieve full bearing contact and to avoid damage to adjacent undercar equipment.
  - c. Wheel stops shall be manual. Automatic wheel stops are not acceptable.
- 5) Lubrication System
- a. All shafts, jacking screws, and bearings shall be automatically lubricated.
  - b. Access for lubrication system maintenance shall be at the floor level and not be from the inside of the pits.
  - c. Furnish and install lubrication oil for the lifts.
- 6) Motors
- a. Motors shall be 460 V, 3 phase, 60 Hz.
  - b. Motors shall have a service factor of 1.15 and shall have overcurrent protection.
  - c. Motors shall be "Premium Efficiency" type, as described in NEMA MG-12.54-2. Tests shall be performed in accordance with IEEE 112, Method B.
  - d. Motors shall be totally enclosed, fan-cooled (TEFC), and shall have minimum Class "F" insulation and Class "B" temperature rating.
  - e. Furnish and install lockable disconnect switch for each motor, housed in a NEMA 4 assembly.
  - f. Motors shall be interlocked so that the failure of any one drive motor will automatically stop all drive motors in the associated railcar hoist system.
  - g. Bearings for integral horsepower motors shall be sealed, permanently lubricated, and shall have a minimum rated life of L10 125,000 hours for direct-coupled motors and L10 50,000 hours for severe duty motors.
- 7) Grounding:
- a. Ground equipment to the building steel as per the Electrical performance criteria.
- 8) Cover Plates
- a. Pit cover plates shall be solid, non-skid diamond steel plate set flush with the adjacent surface. Top surfaces shall be non-slip.
  - b. Openings in the floor for the lift equipment shall be covered by plates that rise when the lift operates, to permit uninterrupted travel over the floor at all operating heights.
  - c. Furnish and install hinged hatch with a recessed lifting handle for worker access to the underground equipment.
  - d. Plates shall have inserts for lifting eyes.
  - e. Loading capacity for all cover plates shall match the floor loading listed in the Structural performance criteria.
- 9) Labeling
- a. Each lift shall be identified by track number and orientation - E (east) or W (west). Each control panel shall be identified by track number.
  - b. Identify all controls on each lift and control panel using stainless steel plates with engraved lettering secured to the equipment and to the control panel with stainless steel fasteners. Coordinate with the Engineer for wording on plates and exact locations.
  - c. Engraved characters shall be black. Color shall be resistant to fading from all sources (e.g., dirt, extreme temperatures, age, oil, cleansers). Lettering size on plates shall be minimum 1" on the main control panel and the lift equipment and 3/8"-1/2" on the local pendant pushbutton stations. Plastic stick-on identification plates are not acceptable.

- d. All warning signs and instructional information signs on lifts and control panels shall comply with ANSI standards. Coordinate with the Engineer for wording and exact locations of signs.

#### 10) Maintainability

- a. Replaceable worn parts shall be accessible without major disassembly.
- b. Equipment requiring periodic maintenance shall be accessible for service, adjustment, repair, or replacement with the use of common tools associated with the equipment or with specified special tools furnished with the equipment.
- c. Replacement parts and consumables, including lubrication oil, shall be readily available in the United States domestic market.

#### E. Operating Conditions

- 1) Typical hours of operation shall be considered as eight (8) hours per day, five (5) days per week. Occasionally, hours of operation may be extended for special circumstances.
- 2) Lifts shall be designed to operate in a shop environment that is maintained at 55 degrees Fahrenheit (F) in winter and 105 degrees F in the summer.

#### F. Shop Painting

- 1) Apply prime coat and two finish coats of enamel paint, colors selected by the Engineer.
- 2) Clean surfaces to eliminate any oil or grease and remove all rust and mill scale before painting.

### 6. SHOP TESTS

- A. Perform tests as per the manufacturer's recommendations.
- B. Submit shop testing plan and procedures for approval by the Engineer prior to the start of shop testing.
- C. Fully assemble and operationally test the system in the shop prior to shipment. The railcar hoist system shall be tested with a 50-ton load; test all controls and safety interlocks. Disassemble units only as necessary for shipping and handling limitations. Clearly mark units for reassembly and coordinated installation.
- D. The lifts shall be tested with the main control panel and local pendant pushbutton stations to be shipped with the lifts.
- E. Perform a full inventory of all parts and equipment required for the installation and testing of the lifts. All shortages and defects shall be noted in writing and forwarded to the Engineer. The inspection results shall include the expected delivery dates to rectify the shortages.
- F. The Engineer reserves the right to witness all shop testing of the lifts. Provide at least 30 days notice to the Engineer in advance of shop testing. If the Engineer elects not to witness any shop testing, submit written certification attesting to the successful completion of all required testing.
- G. Arrange, schedule, and coordinate with the Engineer for the shop visit where the in-ground lifts are being manufactured and tested.
- H. Items found to be nonconforming during testing shall be repaired or replaced and the equipment shall be retested. If any changes are made to the equipment after testing, the equipment shall be retested.
- I. Submit deficiency and closeout report for approval by the Engineer after shop testing is completed.

### 7. Operation and Maintenance Manuals

- A. The Operation and Maintenance Manuals shall cover all mechanical and electrical equipment installed under this Section. Manuals shall contain descriptive and pictorial details for each component of the system.
- B. The O&M Manuals shall include the following information:
- 1) Identification: Manufacturer name, type, year, serial number, number of units, capacity, and identification of related systems.
  - 2) Functional description detailing operation and control of components
  - 3) Performance criteria and maintenance data
  - 4) Operating instructions and precautions
  - 5) Safety precautions
  - 6) Consumables
  - 7) Maintenance and troubleshooting guidelines/protocol and recommended equipment for troubleshooting analysis and repair.
  - 8) Final test reports
  - 9) Items submitted to PATH required for system operation and preventive maintenance: keys, tools, special devices, maintenance manuals
  - 10) Record drawings, including approved shop drawings for control system
- C. The O&M Manuals shall contain a list of all lift parts, including individual components, assemblies and sub-assemblies. The list shall include the following information:
- 1) Nomenclature of parts
  - 2) Manufacturer's part number
  - 3) Nomenclature of the next higher assembly in which the part is used
  - 4) Original vendor part number if applicable
  - 5) Total quantity in system
- D. The O&M Manuals shall also contain a list of all spare parts and their lead times. For each part, list whether it should be stocked on site by PATH or stocked by the maintenance representative. Include names and addresses of spare parts suppliers.
- E. The O&M Manuals shall include a list of the manufacturer's preventive maintenance procedures, along with the time interval at which each procedure shall be performed. The list of preventive maintenance procedures shall include, but not be limited to:
- 1) Lubrication, including lubrication points and type of lubricant recommended.
  - 2) Oil Changes
  - 3) Adjustments
  - 4) Testing
  - 5) Cleaning
- F. The outside cover of each binder shall be clearly labeled with the manual title, volume number, version (i.e. Preliminary, Final), revision number, location, railcar hoist systems for which it is intended for and Contract title and number. Each binder shall contain a table of contents. Sections shall be tabbed separately. Original catalogues may be used to supplement, but not to replace, the lists described above. Wiring diagrams, flow diagrams, and control diagrams shall be a minimum of 11 X 17 and each individual drawing shall be stored in a separate protective plastic sleeve, which allows removal of the drawings.

- G. The O&M Manuals shall include approved, As-Built comprehensive wiring diagrams, flow diagrams, and control diagrams; including main control panel and pendant pushbutton station layout and identification drawings for the lifts. Each drawing shall be protected by a clear, hard plastic covering, and each drawing shall have metal reinforced holes with fasteners suitable for hanging. Each component on the diagrams shall be properly identified, and the value of the component (e.g., ohm, VA) indicated near it.
- H. The O&M Manuals shall include material safety data sheets (MSDS) and product data sheets, with an index listing each product, along with the application method of the product, approximate quantity of product per lift, and the component the product is applied to or associated with.
- I. The O&M Manuals shall include final approved factory and field testing and inspection reports.
- J. Submit O&M Manuals as follows:
  - 1) Three (3) sets of Operation and Maintenance (O&M) Manuals labeled "Preliminary" shall be submitted for approval 90 days before the Contractor begins the on-site work required for the first lift to be installed at each location. Once the manual has been approved an approved copy shall be maintained at each location for reference and to record all field modifications. After each unit has been tested and accepted by the Engineer. All field modifications shall be documented in the "Final" version prior to the "Final" being submitted.
  - 2) Six (6) sets of the O&M Manuals labeled "Final" shall be submitted for approval within 30 days after the lifts successfully complete field-testing and inspections. The wiring diagram volumes of the installed lifts shall include As-Built wiring diagrams. Finalized versions of the manuals shall have no addenda, corrections or alterations. Upon approval of the Final manual volume, submit eight (8) hard copies and three (3) electronic copies (on CD) of the manuals to the Engineer.

## 8. Training

- A. After the first railcar hoist system has been successfully tested, is fully operational, and has been accepted by the Engineer, secure a technical representative of the manufacturer to instruct PATH's maintenance personnel in the proper operation, maintenance, and troubleshooting of the system. Location to be directed by the Engineer.
- B. Training shall include the following:
  - 1) One (1) shift of eight (8) hours for maintenance training of approximately six (6) maintenance staff
  - 2) Six (6) shifts of four (4) hours each for operational training of approximately forty (40) operations staff and six (6) maintenance staff.

## 9. Special Tools

- A. Equipment design shall minimize the need for special tools for operation and maintenance. Special tools are defined as tools not normally available through commercial tool suppliers.
- B. Furnish all special tools required for the operation and maintenance of the lifts, including any diagnostic tools or devices that are required for maintenance, inspection, testing or troubleshooting (three (3) sets).

## 10. Spare Parts

- A. Furnish spare parts required for maintenance of the equipment installed under this Contract as approved by PATH.
- B. All lifts furnished and installed under this Section shall be of identical construction with interchangeable parts.

## 11. Warranty

- A. Furnish warranty for the equipment installed under these specifications, including parts and labor against defects in material and workmanship and correct any defects not due to ordinary wear which develop within the specified period of time.
- B. Warranty period shall start for each railcar hoist system when it has been successfully tested, is fully operational, and has been accepted by the Engineer. Warranty period shall end for all railcar hoist systems five (5) years after the final railcar hoist system installed under this contract is successfully tested, is fully operational, and has been accepted by the Engineer.
- C. Repairs shall be performed within 48 hours after a service call by PATH. Stock, keep and maintain in a place that allows quick access in the New York-New Jersey Metropolitan Area to a sufficient supply of spare parts and materials, tools and other equipment as may be necessary to make replacements and repairs without delay.

## 12. INSTALLATION

- A. The contractor shall meet with the Engineer and submit a written installation plan for approval.
- B. Install lifts in accordance with approved manufacturer's installation procedures and approved shop drawings.
- C. Retouch marred paint finishes after installation is complete. Manufacturer to furnish matching touch up paint for each color used.
- D. Submit the following plans/procedures for approval by the Engineer.
  - 1) A description of the lift installation, including the sequence of events and time duration of installation.
  - 2) Drawings showing location of all work areas.

## 13. Software Installation

- A. Software shall be loaded for an operational lift control system, including graphics, databases for all points, operational parameters, and system, command, and application software. Submit original and backup copies of source software, excluding the general purpose operating systems and utility programs supplied by computer manufacturer(s) and the non-job-specific proprietary code supplied by the control system manufacturer.
- B. Submit a copy of the final control system program with ladder diagram/logic.
- C. PATH will furnish a Lenovo T430 laptop with a Windows 7 operating system or approved equivalent. Furnish and install a control software program on the laptop for maintenance, diagnosing and troubleshooting equipment problems. This software shall be compatible with the furnished laptop (Lenovo T430 with Windows 7 or approved equivalent) and shall communicate with the main control panel via Ethernet cable. Submit a backup copy of the control software on a CD or DVD.

## 14. Field Testing

- A. General

- 1) Notify the Engineer seven (7) days prior to each scheduled test. All testing shall be in the presence of the Engineer.
- 2) Notify the Engineer a minimum of seven (7) days in advance of any request for final acceptance by the Engineer.
- 3) Furnish all instruments, materials, and labor required for tests specified herein.
- 4) Perform a checkout test of the equipment when installation is complete. The test shall be witnessed by the engineer and by a technical representative of the manufacturer. PATH will furnish a railcar for the checkout test.

#### 15. Protection

- A. During installations and until lifts are fully operative; make necessary provisions to protect the pit and all affected systems from damage, deterioration, and environmental conditions.
- B. Restoration of Existing Surfaces: The Contractor shall restore any existing surface damaged by the Contractor during rigging, removing or installing the lift and any associated appurtenance. The restored surfaces shall seamlessly match the existing adjacent surfaces at no cost to PATH.

#### 16. Submittals

##### A. Design Submittals

- 1) At 50% Level of Design Development:

Contractor shall submit design presentation (written report, design drawings, specification.etc.) for review by the Engineer. The design drawings, unless otherwise noted, shall measure 22"x 34". The minimum drawing scale shall be 1/4"=1'-0" but shall be adequate to clearly present the design intent and meet the Design Criteria. Determination of the adequacy of the content and scale of the drawings shall be at the discretion of the Engineer. The design presentation shall include, but not be limited to, the following items:

- a. Equipment Schedules, including equipment capacities, raising and lowering speeds, equipment weights, and equipment labels.
- b. Design criteria
- c. Electrical power requirements and connections
- d. Preliminary operation and control requirements
- e. Floor plan including equipment layout
- f. Equipment plans and sections, including overall equipment envelope, maximum lift elevations, clearances, and other dimensions required to allow for coordination of the equipment with the lift foundations and with the railcar.
- g. Staging plan, showing limits of construction.
- h. Specification – Submit list of specifications and preliminary custom specifications.
- i. Preliminary design calculations
- j. Maintenance program preliminary specifications, including preventive maintenance routines - monthly, semi-annual, and annual.
- k. Preliminary list of shop drawing submittals.
- l. List of spare parts, including their prices and lead times.
- m. List of special tools required for lift maintenance and operation.
- n. Detailed description of warranty coverage.
- o. List of manufacturer's authorized representatives who are qualified to maintain the lift equipment and who meet the criteria in the specifications.

2) At 75% Level of Design Development

Contractor shall prepare and submit Detailed Design Drawings using Authority Standard 22"x 34" drawings sheets. The Engineer will determine at his discretion concerning the sufficiency of drawings, their contents and scale. These drawings shall include, but not be limited to, the following:

- a. Equipment Schedules, including equipment capacities, raising and lowering speeds, equipment weights, and equipment labels.
- b. Control wiring diagrams for system controls and associated sequence of operations shall be illustrated.
- c. Floor plans, illustrating equipment (minimum scale of 1/8" = 1'-0").
- d. Equipment plans and sections, including overall equipment envelope, maximum lift elevations, clearances, and other dimensions required to allow for coordination of the equipment with the lift foundations and with the railcar.
- e. Wiring diagrams showing power requirements and connections for the lifts and the MCC.
- f. All equipment details, including mounting details, clearly indicated using a minimum scale of 3/4" = 1'-0".
- g. Developed staging and phasing plans, including a written method of installation for the lifts
- h. Specification – Submit preliminary specifications, including specifications for the following:
  - (1) In-Ground Lifts
  - (2) Controls
  - (3) Maintenance program, including preventive maintenance routines - monthly, semi-annual, and annual.
- i. Design Calculations
- j. Shop and field testing procedures
- k. Training plan, training course material, and training schedule.
- l. Hardware requirements for the troubleshooting laptop
- m. List of shop drawing submittals
- n. List of spare parts, including their prices and lead times.
- o. List of special tools required for lift maintenance and operation.
- p. Detailed description of warranty coverage.
- q. List of manufacturer's authorized representatives who are qualified to maintain the lift equipment and who meet the criteria in the specifications.

3) At 100% Completion of Design and Final Submission

- a. Detailed Design Drawings - Contractor shall prepare and submit final detailed Design Drawings that are identified in previous design submittals including all associated details, addressing all the Engineer's comments from the 50% and 75% submittals. The scale of all details shall be sufficient to clearly show all relationships and materials.
- b. Detailed Technical Specifications – Contractor shall submit final detailed Technical Specifications.

- c. Final complete design calculations shall be submitted and shall be signed and sealed by a Professional Engineer licensed in the State of New Jersey. Identify safety factors used in calculations. The design calculations shall include, but not be limited to:
  - (1) Lift and body stand material strength
  - (2) Lift and body stand capacity
  - (3) Screw jack loading
  - (4) Motor torque requirements for lift and body stand motors.
- d. List of spare parts, including their prices and lead times.
- e. List of special tools required for lift maintenance and operation.
- f. Detailed description of warranty coverage.
- g. List of manufacturer's authorized representatives who are qualified to maintain the lift equipment and who meet the criteria in the specifications.
- h. Final list of shop drawing submittals

**B. Shop Drawing Submittals**

- 1) Submit plans, elevations, sections and details of lifts and operating components, including materials, dimensions, gauges, finishes, and relationship to existing construction.
- 2) Submit assembly drawings, including equipment details, electrical drawings, service connections and loads, clearances, and loading reactions.
- 3) Submit shop drawings and sequence of operation for the controls system.
- 4) Submit product data sheets for all commercially-purchased components of the lifts.

End of Attachment E – IN- GROUND LIFT PERFORMANCE CRITERIA

## **PATH OPERATIONS AND CONDITIONS**

### **A. Construction Site Conditions:**

- 1.) Schedule and perform the Work in the sequence shown in the Contract Design Documents submitted to PA Engineering for review and approval in such a manner as not to delay, endanger, or interfere with PATH operations. The Contractor shall notify in writing, the Engineer and PATH Heavy Repair Shop Supervisor at least two working days prior to any anticipated track disruption. Track disruption will not be permitted unless previously approved by the Engineer and the PATH Heavy Repair Shop Supervisor. To the extent feasible the scheduled sequence, if any, and the times of the Contractor's operations, once approved, will be adhered to and operations of PATH and others will be scheduled so as to cause the least interference with the Contractor's operations. However, should the Engineer deem that any portion of the area in which the Contractor is working is required by PATH, the Contractor will be required to suspend operations and remove personnel, and obstructing plant, equipment and materials from such areas, within 1/2 hour of notice to suspend operations and stand by, if necessary, until directed by the Engineer to resume operations in such areas.
- 2.) Should the Contractor be specifically directed to suspend operations as provided in A.1, and if solely because of such direction and not due to fault of the Contractor, the Contractor is necessarily kept idle at the construction site, the Contractor will be compensated as stipulated in the provisions of the Contract concerning compensation for emergency delays.
- 3.) In addition to the notification required in A-1 above and to enable the Contractor to plan Work of the Contract, and to enable PATH to plan train service operations, maintenance operations, and operations of others, prepare and submit for approval in accordance with "Coordination" hereof, prior to any work, a schedule of outages required. PATH, on a monthly basis, prepares a report for all work scheduled for the next month, this must be submitted at least 3-weeks prior to the start of the month when the work is to be scheduled. Once on a monthly schedule, then a weekly schedule of operations for Work of the Contract is to be submitted.
- 4.) Electrical outages in the yard are not anticipated. However, if required, they may be limited based on a number of factors including location of work and PATH operations as outlined in the contract drawings, specifications, or special instructions. Contractor shall incorporate the allowable outages into the schedule of outages for review and approval.
- 5.) It is anticipated that the work, as designed by the Contractor shall be within the limits of PATH's Harrison Car Maintenance Facility (HCMF) and therefore, not under the jurisdiction of any other jurisdiction. Should the Contractor's design include work outside of the limits of PATH's Harrison Yard; at least 7 days but not more than 10 days prior to performing excavation, the Contractor shall call 1-800-272-1000 and provide the information required for excavation(s) in New Jersey.

- 6.) Take all precautions necessary for protection of persons and property during dust or fragment generating operations, concrete mixing or placing, painting or other operations which may stain, soil or damage property, or injure persons. Provide and erect waterproof, fire-resistant, UL labeled tarpaulins with flame spread rating of 15 or less or other protective enclosures as approved by the Engineer.
- 7.) The Contractor, employees of the Contractor, subcontractors, materialmen or other persons over whom the Contractor has control (hereinafter in this Section "Contractors's Personnel") shall conform to the following:
  - a. Do not park any vehicles, including construction vehicles, company vehicles or personal vehicles within any area of PATH property without prior approval of the Engineer, and no representation is made that parking, if approved, will be available throughout the Work of the Contract.
  - b. Do not enter upon PATH right-of-way without first entering through the security gate at the entrance of PATH's Harrison Yard.
  - c. Do not permit material, equipment or other objects to lie within or project into the PATH railroad right-of-way or outside the designated limits of work within the HCMF..
  - d. Provide sound suppression devices on gasoline and diesel powered construction equipment and pneumatic tools as required to maintain noise exposure below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for Construction (OSHA). Maintain such sound suppression devices in proper operating condition throughout the time of their use and make adjustments and repair as required to maintain noise within exposure levels stipulated in 29 CFR 1926.52, Table D-2.
  - e. Do not store combustible products or flammable materials at areas of Work.
- 8.) No smoking in enclosed areas, passenger cars, work trains, or flats. Restrict smoking to areas designated by the Engineer for this purpose.
- 9.) At all times while performing Work, require workers to wear reflective safety vests, hard hats and steel or composite toed work boots with non-slip type soles. Reflective safety vests shall have a visible reflective surface of not less than 100 square inches on front and back. All Contractor, subcontractor, materialmen and agents shall have a photo ID on their person at all time when they are physically on PATH/PA property.
- 10.) Do not burn or bury debris of any type on PATH property, or wash waste materials down sewers, drainage systems or into waterways.
- 11.) Contractors who generate hazardous waste must immediately notify the Engineer who will be responsible for the storage, transportation, and disposal of hazardous waste. The Contractor shall be responsible for the removal, storage, transportation and disposal of all other types of waste. Removal of such waste shall be accomplished daily and storage of waste on PATH property shall not be permitted. The Contractor's work area shall be left broom clean at the end of each day's shift. Contractor equipment may remain on-site with the approval of the Engineer.

- 12.) In the event of damage to or disruption of existing construction, the Contractor shall repair, replace or reinstall such construction to the satisfaction of the Engineer. Should the Contractor fail to perform such repair or replacement, PATH reserves the right to perform such Work and deduct from the Contractor's compensation an amount representing the cost of such Work, as determined by the Engineer.
  - 13.) In addition to the requirements of the Section of Division 1 GENERAL PROVISIONS entitled "Safety Provisions", provide and maintain at areas of Work, two "Pyrene 95-P20M" extinguishers as manufactured by RC Industries, Inc., Linden, N.J., or approved equal UL rated 20A-80BC 20 pound dry chemical multi-purpose fire extinguishers.
- B. Access To Areas of Work:
- 1.) Work of this Contract is at areas that are accessible by road. Transportation for personnel, material and equipment delivery, and debris removal shall be via road transportation provided by the Contractor. Access to the Contractor's work area shall not be permitted using PATH Rail Transportation. The Contractor is confined to his designated work area at all times, with the exception of using the restrooms, which are provided by PATH within the Harrison Car Maintenance Facility.
- C. Traction Power and Existing Utilities:
- 1.) The Contractor's attention is called to the fact that there will be high voltage electric lines and rails for PATH traction power adjacent to the areas of Work and no representation is made that such lines and rails will be de-energized during performance of the Work of the Contract. The Contractor shall take all necessary precautions to protect his personnel and others affected by his operations from injury from such high voltage electric lines and rails. Such lines and rails will remain energized for PATH operations except where shut-off is approved by the Engineer. Even though the tracks within the Contractor's work area will be protected, adjacent tracks may not be. PATH uses energized adjacent tracks to move vehicles into and out of the Shop. The Contractor shall not block these adjacent tracks, with his equipment, material or other construction items, without preapproval from the Engineer. The Contractor shall consider all adjacent tracks to be energized at all times.
  - 2.) Maintain operation of existing utility services such as compressed air, water, sewers, electricity, ventilation or fire protection and PATH surveillance cameras, signal and communication systems during performance of Work of the Contract, except as absolutely necessary for cutoff, cutover or other change of the affected systems, as approved by the Engineer. Coordinate with the Engineer prior to interrupting or otherwise affecting any operating system, utility or service. The Bidder's attention is drawn to the fact that existing electrical or other utility service into the in-ground pits may not be adequate for the new equipment to be designed under this Contract. Connection with existing utilities both within and without the HCMF may be required as a part of this Contract.
  - 3.) Shut-off and turn-on of traction power or existing utility, signal or communication service will be performed by others without cost to the Contractor.

- 4.) Unless approved by the Engineer, the Contractor is required to supply his own compressed air.
- 5.) Notify the Engineer of such shut-off or turn-on requirements in accordance with "Coordination" hereof.

D. Coordination:

- 1.) The progress schedule required under the Section of Division 1 GENERAL PROVISIONS entitled "Progress Schedule and Analysis of Bid" shall contain, but not be limited to, the following items:
  - a. Description of operations and location of Work.
  - b. Start and completion dates of each operation
  - c. Dates of material and equipment delivery.
  - d. Dates and times of Work that:
    - (i) Require crossing or obstruction of tracks
    - (ii) Is within or closer than 25-feet of centerline of track outside the HCMF
    - (iii) Interferes with or interrupts PATH train service operations
- 2.) Where shut-off services of PATH traction power or other utility or service are permitted, notify the Engineer not less than 3 work days prior to the anticipated need for such services. Each notification shall be written and shall include:
  - a. The dates, times and locations of areas of Work involved.
  - b. Description of what utility or service shut-off or turn on is required.
  - c. Duration of shut-off times.

E. Coordination Rescheduling or Cancellation:

- 1.) When the Contractor obtains approval under "Coordination" hereof for the use of PATH services and should the Contractor thereafter require a rescheduling or cancellation of such services for the approved days, submit written notification of such rescheduling or cancellation to the Engineer not less than 48 hours in advance of each day for which approval was given. Failure by the Contractor to provide such notification of rescheduling or cancellation shall result in deduction by PATH of the actual losses and/or damages to PATH from the Contractor's compensation:

F. PATH On-Track Safety Program

It is anticipated that the design documents prepared by the Contractor shall not affect PATH operations either on the running rail or in the Harrison Yard. Should this not be the case, PATH requires that all Contractor personnel who may enter the track area at any time be certified by successfully completing the "PATH ON-TRACK SAFETY PROGRAM", in compliance with the Rules and Regulations set forth in Federal Railroad Administration (FRA) Regulation 49 CFR Part 214, Subpart C, entitled "RAILROAD WORKER PROTECTION". Contractor personnel not certified under this program will not be permitted to enter the PATH track area. On a monthly basis, PATH will provide a four-hour certification class at no cost to the Contractor which includes a certification test for supervisory staff representing the Contractor. The Contractor's supervisory staff will then be required to train and certify all additional Contractor personnel that may be performing Work of the Contract. A letter certifying that the listed Contractor personnel have been trained on the "PATH ON-TRACK SAFETY PROGRAM" and, that they fully understand and will comply will all requirements of FRA rules, shall be filed with PATH's Training Supervisor at One PATH Plaza, Jersey City, NJ 07306, 10<sup>th</sup> floor, within 48 hours of such training. Only the persons specified in such letter will be permitted to enter the track area.

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

## 1. HOURS OF WORK AND CONSTRUCTION STAGING

### A. Hours of Work

- 1.) Subject to all requirements stated elsewhere herein, the Work of this Contract shall be performed in accordance with Construction Stages in B. below and during the following hours of Work:
  - a. Work requiring delivery and unloading of material and equipment shall be coordinated with the Engineer and shall be performed only between the hours of 7:00 AM and 1:00 PM Monday through Friday, unless otherwise preapproved by the Engineer.
  - b. Work requiring interruption or interfacing with active circuits or equipment shall be coordinated with the Engineer and shall be performed only between the hours of 7:00 AM and 3:00 PM Monday through Friday.
  - c. Construction Stage A  
Perform the Work under B.1) without restrictions as to Work hours
  - d. Construction Stage B  
Perform the Work under B.2.) without restrictions as to Work hours
- 2.) Unless otherwise noted, do not perform Work outside of these hours of Work, on a legal holiday in the State of New Jersey.
- 3.) The Contractor shall submit to the Engineer, at least one week in advance, his scheduled hours of Work for each week.

### B. Construction Staging

The Contractor shall be given access to two adjacent tracks at a time for specific durations as indicated on the approved Contractor's Work Schedule, to be submitted as per the specifications of this contract.

#### 1.) Stage A

- a. Tracks 15 and 16 shall be shutdown.
- b. The Release Track and the Storage Track shall both be shutdown during this stage.
- c. Install the in-ground lift system in Tracks 15 and 16.
- d. Track 13 and 14 shall remain in operation and active for use.
- e. Install the Motor Control Center (MCC). Perform all Work in the Release Track and the Storage Track.
- f. Notify the engineer at least 3 working days prior to request for PATH assistance in loading or unloading deliveries. PATH makes no guarantees that it will be able to assist the Contractor by loading or unloading deliveries.
- g. Complete all Work in Stage A Work prior to proceeding to Stage B.

#### 2.) Stage B

- a. Track 13 and 14 shall be shutdown.
- b. Track 15 and 16 shall remain in operation and active for use.

- c. Install the in-ground lift system in Tracks 13 and 14.
- d. Notify the engineer at least 3 working days prior to request for PATH assistance in loading or unloading deliveries. PATH makes no guarantees that it will be able to assist the Contractor by loading or unloading deliveries.

END OF SECTION

**STANDARD CONTRACT TERMS AND CONDITIONS**

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## **STANDARD CONTRACT TERMS AND CONDITIONS**

### **PART I GENERAL DEFINITIONS**

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

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

PATH – shall mean the Port Authority Trans-Hudson Corporation.

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

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

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

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

Director/General Manager – shall mean the Director/General Manager of PATH which operates the facility of PATH at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

Superintendent/Manager – shall mean the Superintendent/Manager of the PATH Division responsible for operating the said Facility for the time being, or his/her successor in duties for the purpose of this Contract, or his/her duly authorized representative for the purpose of this Contract.

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

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

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

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

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

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

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

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

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

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

## **PART II GENERAL PROVISIONS**

### **1. Facility Rules and Regulations of PATH**

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

### **2. Contractor Not An Agent**

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

### **3. Contractor's Warranties**

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this

Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

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

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

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

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

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

#### **4. Personal Non-Liability**

Neither the Directors of PATH, the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee of PATH or the Port Authority, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

## **5. Non-Discrimination Requirements**

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

- A. Contractor 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 subcontractors and/or vendors under this Contract. Contractor 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. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled “Default, Revocation, or Suspension of Contract.”
- C. Contractor 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.”

## **6. Rights and Remedies of PATH**

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

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

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

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

## **7. Rights and Remedies of the Contractor**

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

rescind this Contract or to suspend or abandon performance.

## **8. Submission To Jurisdiction**

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

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

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

## **9. Harmony**

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

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

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

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

## **10. Claims of Third Persons**

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

## **11. No Third Party Rights**

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

## **12. Provisions of Law Deemed Inserted**

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

## **13. Costs Assumed By The Contractor**

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

## **14. Default, Revocation or Suspension of Contract**

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

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

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

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

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

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

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

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

c. If any of the following shall occur:

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

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

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

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

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

## **15. Sales or Compensating Use Taxes**

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

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

## **16. No Estoppel or Waiver**

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

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

## **17. Records and Reports**

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

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

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

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

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

## **18. General Obligations**

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

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

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

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

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

aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

## **19. Assignments and Subcontracting**

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

## **20. Indemnification and Risks Assumed By The Contractor**

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

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

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

loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

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

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority or PATH, the immunity of the Port Authority or PATH, their Directors, Commissioners, officers, agents or employees, the governmental nature of the Port Authority or PATH or the provision of any statutes respecting suits against PATH or the Port Authority.

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

## **21. Approval of Methods**

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

## **22. Safety and Cleanliness**

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

## **23. Accident Reports**

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

## **24. Trash Removal**

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

## **25. Lost and Found Property**

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

## **26. Property of the Contractor**

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

## **27. Modification of Contract**

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

## **28. Invalid Clauses**

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

## **29. Approval of Materials, Supplies and Equipment**

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

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

hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

### **30. Intellectual Property**

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

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

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

### **31. Contract Records and Documents – Passwords and Codes**

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of PATH (or the Port Authority as applicable), and PATH (or the Port Authority as applicable) shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

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

### **32. Designated Secure Areas**

Services under the Contract may be required in designated secure areas, as the same may be designated by the Superintendent/Manager from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

### **33. Notification of Security Requirements**

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

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

- Execution of Port Authority Approved Non-disclosure Agreements

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

- Contractor/ Subcontractor identity checks and background screening

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

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

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

- Issuance of Photo Identification Credential

No person will be permitted on or about a Port Authority or PATH construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority and/or PATH. If the authority requires facility-specific identification credential for the Contractor's and the subcontractor's staff, the Authority and/or PATH will supply such identification at no cost to the

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

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

- Access control, inspection, and monitoring by security guards

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

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority or PATH information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor 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 Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

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

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

· Audits for Compliance with Security Requirements

The Port Authority and/or PATH 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, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

### **34. Construction In Progress**

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

### **35. Permit-Required Confined Space Work**

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

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

### **36. Signs**

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

### **37. Vending Machines, Food Preparation**

The Contractor shall not install, maintain or operate on the Facility, or on any other PATH property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be

prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by PATH for such purpose.

**38. Confidential Information/Non-Publication**

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

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013)*, Protected 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 Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract.

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

**39. Time is of the Essence**

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

**40. Holidays**

The following holidays will be observed at the Site:

New Year's Day

Labor Day

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

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

#### **41. Personnel Standards**

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

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

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

#### **42. General Uniform Requirements for Contractor's Personnel**

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

#### **43. Labor, Equipment and Materials Supplied by the Contractor**

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

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

PATH by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents,

servants and employees and to do any act or thing which PATH may be obligated or have the right to do under this Contract or otherwise.

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

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

#### **44. Contractor's Vehicles – Parking - Licenses**

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

#### **45. Superintendent/Manager's Authority**

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

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

#### **46. Price Preference**

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

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

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

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

#### **47. M/WBE Good Faith Participation**

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

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

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials from a Port Authority certified MBE/WBE or seeking MBEs/WBEs from other sources. To access the Port Authority's Directory of MBE/WBE Certified Firms go to [www.panynj.gov/supplierdiversty](http://www.panynj.gov/supplierdiversty)
- d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

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

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

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

### **PART III CONTRACTOR'S INTEGRITY PROVISIONS**

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

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

- a. been indicted or convicted in any jurisdiction;

- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of 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;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party

official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

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

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Contract, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, 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 Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, 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 Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In

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

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

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

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

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

### **4. Contractor Responsibility, Suspension of Work and Termination**

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

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

Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor's expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port 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 Contractor associated with such termination.

### **5. No Gifts, Gratuities, Offers of Employment, Etc.**

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

Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

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

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

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.," it shall report such occurrence to the Port 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 to report information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

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

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

## **6. Conflict of Interest**

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor 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 Contractor 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 Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the 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 Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at

the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority's determination regarding any questions of conflict of interest shall be final.

## 7. Definitions

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

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

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

Investigation - Any inquiries made by any federal, state or local criminal prosecuting 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 Bidder by whatever titles known.

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.

**APPENDIX A1**

**DBE GOALS STATEMENT**

The undersigned Bidder has satisfied the requirements of the Contract in the following manner (Complete the appropriate spaces and check one box):

- The Bidder is committed to meeting the DBE goal set forth in this Contract.

OR

- The Bidder is unable to meet the DBE goal set forth in this Contract, but is committed to a minimum of \_\_\_\_\_% DBE utilization on this Contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Contract. Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.

It is the present intent of the Bidder to utilize the specific DBE firms identified in Appendix A2 in the performance of the Work under this Contract. If for any reason, one or more of the DBE firms identified in Appendix A2 are unable or unwilling to participate, the Bidder will make good faith efforts to replace the DBE firm with another DBE firm in accordance with the Information For Bidders clause entitled “Disadvantaged Business Enterprise Program (DBE)”.

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the Appendix A1 – DBE Goals Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**APPENDIX A1 - DBE GOALS STATEMENT (reverse)**

ACKNOWLEDGEMENT  
of

STATE OF \_\_\_\_\_ )

S.S.:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to be known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

\_\_\_\_\_  
Notary Public  
My commission expires:

**APPENDIX A2**  
**THE PORT AUTHORITY OF NY & NJ – OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS**  
**DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT**

Instructions: Submit one DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Contract.

CONTRACT NUMBER AND TITLE: \_\_\_\_\_

**BIDDER:**

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**DBE:**

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Description of work to be performed by DBE: \_\_\_\_\_

\_\_\_\_\_

Calculation (supply only): \_\_\_\_\_

The Bidder is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_ or \_\_\_\_\_% of the total contract amount of \$ \_\_\_\_\_. The anticipated start date is \_\_\_\_\_ and the anticipated completion date is \_\_\_\_\_.

**AFFIRMATION**

The above-named DBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of DBE and Title

If the Bidder does not receive award of the Contract, any and all representations in this DBE Participation Plan and Affirmation Statement shall be null and void.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Bidder and Title

<b>FOR OBDCR USE ONLY</b>		
Contract Goals:	<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected <input type="checkbox"/> Preliminary Plan Approved
Reviewed By:	_____	
	OBDCR Business Development Representative	
Signature:	_____	Date: _____

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.



**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**APPENDIX A3  
INFORMATION ON SOLICITED FIRMS (reverse)**

ACKNOWLEDGEMENT  
of

STATE OF \_\_\_\_\_)

S.S.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to be known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

\_\_\_\_\_  
Notary Public  
My commission expires: