

# THE PORT AUTHORITY OF NY & NJ

PROCUREMENT DEPARTMENT  
4 WORLD TRADE CENTER  
150 GREENWICH STREET, 21<sup>ST</sup> FLOOR  
NEW YORK, NY 10007

## INVITATION FOR BID/PUBLIC BID OPENING

### BID INFORMATION

ISSUED DATE: 07/25/16

TITLE: WORLD TRADE CENTER (WTC) SITE WIDE HURRICANE  
PREPAREDNESS 2016

BID NO.: 46621

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

BID DUE DATE: AUGUST 16, 2016

TIME: 11:00 AM

BUYER NAME: THOMAS LAL

PHONE NO.: (212) 435-5383

EMAIL: TLAL@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**

- COVER PAGE: BID AND BIDDER INFORMATION
- PART I – STANDARD INFORMATION FOR BIDDERS
- PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS
- PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS
- STANDARD CONTRACT TERMS AND CONDITIONS
- PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS AND PRICING SHEET(S)
- PART V – SPECIFICATIONS
- ATTACHMENT A - FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS
- ATTACHMENT B - FEDERAL EMERGENCY MANAGEMENT AGENCY REQUIREMENTS
- ATTACHMENT C - FORM PA3760A - MBE/WBE PARTICIPATION PLAN
- APPENDIX C – SURFACE BARRIER PLAN/FACILITY ENTRANCES PLAN (Tier 1 & 2)
- APPENDIX D – CRITICAL MEP SUBGRADE PROJECTION PLAN (Tier 3)
- APPENDIX E – RESERVOIR, PUMP AND GENERATOR PLAN (Tier 4)
- EXHIBIT A - CONTRACTOR QUALITY PROGRAM REQUIREMENTS
- EXHIBIT B - WTC – SITE SECURITY REQUIREMENTS
- EXHIBIT C – INFORMATION SECURITY HANDBOOK |

**PART I - STANDARD INFORMATION FOR BIDDERS, TABLE OF CONTENTS**

1.	General Information: The Port Authority of New York and New Jersey.....	3
2.	Federal Requirements .....	3
3.	Form and Submission of Bid .....	3
4.	Vendor Profile.....	4
5.	Acknowledgment of Addenda .....	4
6.	Firm Offer .....	5
7.	Acceptance or Rejection of Bids.....	5
8.	Bidder’s Questions.....	5
9.	Additional Information To and From Bidders .....	5
10.	Union Jurisdiction.....	6
11.	Assessment of Bid Requirements .....	6
12.	Bidder’s Prerequisites .....	6
13.	Qualification Information .....	6
14.	Contractor’s Integrity Provisions .....	8
15.	Facility Inspection.....	8
16.	Available Documents - General.....	8
17.	Pre-award Meeting.....	9
18.	MBE/WBE Subcontracting Provisions.....	9
19.	Certification of Recycled Materials .....	9
20.	City Payroll Tax .....	10
21.	Automated Clearing House Enrollment.....	10
22.	Additional Bidder Information .....	11
23.	ATTACHMENT I A - Certified Environmentally Preferable Products/Practices	
	12	

## **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, terminals and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia, Atlantic City International, 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. Prior to September 11, 2001, the Port Authority’s headquarters were located in the World Trade Center, and that complex is still owned and being partially redeveloped by the Authority.

### **2. Federal Requirements**

This Agreement may be funded in whole or in part by the Federal Transit Administration (“FTA”) and/or the Federal Emergency Management Agency (“FEMA”) and, accordingly, the successful Bidder may be required to comply with the “Federal Transit Administration Requirements” and/or the Federal Emergency Management Agency annexed hereto as Attachment’s A and B respectively.

### **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 Collective 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.

Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times.

There is extensive security at the World Trade Center Site. Individuals must present a valid government-issued photo ID to enter 4 WTC. If a Bid is to be hand-delivered or if an individual is planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Port Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages and boxes may be subject to additional security screening.

There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited.

Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.

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

To ensure maximum opportunities, it is vitally 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>.

#### **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 of New York and New Jersey 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.

**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, WTC & Federal Procurement & Compliance of the Port Authority and may 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 statement of the names and residences of its officers should be submitted on the Name and Residence of Principals Sheet, directly following the Signature Sheet.

#### **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 Bids from Bidders that can satisfactorily demonstrate meeting the prerequisites specified within Part II hereof at the time of bid submission 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 oral or 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 may 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, and 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. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.
- 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 Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less

**PART I - 7**

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 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 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 documents.

#### **14. Contractor's Integrity Provisions**

By submitting a Bid, Bidders shall be deemed to have made the certifications contained in the clauses entitled "Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information," and "Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees" contained within the Standard Terms and Conditions within these bid documents. If the Bidder is unable to make the certifications contained therein the Bidder shall submit a statement with its Bid explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Bid, clearly marked "CERTIFICATION STATEMENT."

#### **15. 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.

#### **16. 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

**PART I - 8**

Contract. The Port Authority 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.

### **17. Pre-award Meeting**

The lowest qualified Bidder may be called for a pre-award meeting prior to award of the Contract.

### **18. MBE/WBE Subcontracting Provisions**

Bidders shall use every good-faith effort to provide for participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Woman-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services, in accordance with the “MBE/WBE Subcontracting Provisions” contained within Part III, and the section of the Standard Terms and Conditions entitled “MBE/WBE Good Faith Participation.”

### **19. 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 numbered section, the following definitions shall apply:

- a. “Recovered Material” means 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” means 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” means 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" means 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" means 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" means any product that will result in less waste generated due to its use rather than another product designed to serve the same function with an 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.

## 20. 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
- c. City of Yonkers, New York for services performed in Yonkers, New York.

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.

## 21. Automated Clearing House Enrollment

The Port Authority of New York and New Jersey is transitioning to an all electronic method of paying its vendors and contractors via an Automated Clearing House (ACH) funds transfer. The Contractor must complete the Port Authority's "Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)" form, which is available at <http://www.panynj.gov/business-opportunities/pdf/ach-authorization-form.pdf>, in order to receive payment. To avoid delays in payments for commodities and services provided, vendors and contractors must be enrolled in ACH. **Printed accounts payable checks will not be issued.** The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the Contractor of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act on it. Any questions on this initiative may be directed to the ACH Enrollments contact line at 201 216-6002 or emailed to [ACHENROLLMENT@PANYNJ.GOV](mailto:ACHENROLLMENT@PANYNJ.GOV).

## **22. 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>



**PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS,  
TABLE OF CONTENTS**

1. Service(s) Required.....	2
2. Location Services Required .....	2
3. Expected Contract Commencement Date: .....	2
4. Contract Type: .....	2
5. Duration of Contract: .....	2
6. Available Documents.....	2
7. Facility Inspection.....	3
8. Specific Bidder’s Prerequisites .....	3
9. Contractor Staff Background Screening .....	3
10. Federal Bid Submission Requirements:.....	4
11. Background Qualification Questionnaire (BQQ) .....	4
12. Contract Award Submission Requirements .....	4

## **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**

Hurricane preparedness is critical to protect people and property from the potential destruction of an impending weather event. The intent of the work outlined herein, and further described in Part V (the “Specifications), is to protect the World Trade Center (WTC) site from threats posed by an impending weather event with an accompanying storm surge, such as a hurricane, tropical storm, and or Nor’easter that could threaten WTC facilities.

The Port Authority of New York and New Jersey has purchased material and equipment for the purposes of preventing water intrusion and damage to the site. The material and equipment deployment will accomplish this purpose through several means; securing critical openings, directing water into collection areas, pumping water out of collection areas, and environmental recovery.

The Port Authority has developed best practices plan and procedures. The Scope of Work under this contract includes providing all labor, equipment, and tools to implement those plans, which are outlined in Part V, and attached hereto as Appendix C, D and E to accomplish the goals set forth therein.

### **2. Location Services Required**

World Trade Center Site, as more fully described in the definition of “Facility” in Part V.

### **3. Expected Contract Commencement Date:**

On or about August 31, 2016.

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

Not to Exceed, Service Contract

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

Commencement Date through June 1, 2017

### **6. Available Documents**

N/A

## 7. Facility Inspection

**DATE AND TIME:** July 29th, 2016 at 10:00am

**PLACE:** 4 World Trade Center, Lobby

Please contact Thomas Lal at [Tlal@panynj.gov](mailto:Tlal@panynj.gov) to confirm attendance and/or receive travel directions.

## 8. Specific Bidder's Prerequisites

- a. The Bidder shall have had at least **three (3)** years of continuous experience immediately prior to the date of submission of its bid in the **management and operation of a business that protects people and property from the potential destruction of an impending weather event** and during that time have actually engaged in providing said services to commercial or industrial accounts under contract. 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 **three (3)** year(s) of experience immediately prior to the date of the submission of its bid in the **management and operation of a business that protects people and property from the potential destruction of an impending weather event** 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. During the time period as stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have satisfactorily performed or be performing under at least **two (2)** contract(s) requiring similar services to those required under this Contract.
- c. 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 (a) and (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 should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants should be listed followed by the words "acting jointly and severally". All joint venture Bidders must provide documentation of their legal status

Proof that the above prerequisites are met should be submitted with the bid.

## 9. Contractor Staff Background Screening

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. 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. Federal Bid Submission Requirements:**

- A. The following items are additional Bid submittal requirements and are contained within the FTA/FEMA and/or Solicitation Document Requirements 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. PA 3760A: MBE/WBE Participation Plan And Affirmation Statement

#### **11. Background Qualification Questionnaire (BQQ)**

The Bidder shall submit a completed Background Qualification Questionnaire (BQQ), required for itself and all subcontractors and vendors known to the Bidder at the time of bid submission. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link: <http://www.panynj.gov/inspector-general/inspector-general-programs.html>

#### **12. Contract Award Submission Requirements**

The following shall be submitted for approval within **5 working days** after Contract Award:

- A. Certificates of Insurance in accordance with the contract provisions contained herein.

**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS,  
TABLE OF CONTENTS**

1.	General Agreement .....	2
2.	Order of Precedence.....	2
3.	Daily Record Requirements .....	2
4.	Delivery Schedule.....	2
5.	Time is of the Essence .....	2
6.	Bill of Sale .....	3
7.	Title to Materials.....	3
8.	Invoices .....	3
9.	Payment.....	3
10.	Default- Delays .....	4
11.	Liquidated Damages .....	4
12.	Equipment Warranty .....	4
13.	Materials and Workmanship.....	5
14.	Inspection and Acceptance .....	5
15.	Errors and Omissions.....	5
16.	Approval by the Director .....	5
17.	Changes.....	6
18.	Variations in Quantity.....	6
19.	MBE/WBE Subcontracting Provisions.....	6
20.	Integrity Monitor.....	10

## PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

### **1. General Agreement**

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter called the “Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, materials, and equipment 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 fully set forth in the Specifications, and 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.

In case of an event, all terms mandated by the FTA/FEMA shall be deemed to control in the event of a conflict with other provisions contained in this Contract.

### **3. Daily Record Requirements**

The Contractor shall follow the instructions for the proper method of record keeping and reporting daily activities. Failure to do so may result in delayed payments.

All daily records always contain:

1. The Port Authority Purchase Order and/Contract Number.
2. A description of the work performed.
3. The quantity and/or description of the work performed.

### **4. Delivery Schedule**

Deliveries, if required, shall be made as directed by the Construction Manager.

### **5. 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 it can and will complete such delivery as required.

The delivery times shall be extended (subject, however, to the provisions of this numbered clause) only if, in the opinion of the Director of World Trade Center Operations or his designated representative, the Contractor is necessarily delayed in the delivery solely by fault of The Port Authority.

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.

## **6. Bill of Sale**

Not Applicable.

## **7. Title to Materials**

Not Applicable.

## **8. Invoices**

An invoice with a unique invoice number and the backup delivery receipts/work tickets with Contract number shall be submitted to the Port Authority before payment can be made. The Contractor's invoice, which shall state:

- a) The starting and ending dates of the services provided/work performed; and
- b) The associated daily work records for which the Contractor is billing.
- c) All invoices shall be sent to the contract and address depicted on the Contract Award letter and reference the Project name and number.

## **9. 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 items(s) and/or service(s) provided by the Contractor hereunder, a compensation calculated from the respective prices inserted by the Contractor in the Pricing Sheet(s) for actual services performed/provided, forming a part of this Contract. The manner of submission of all bills for payment to the Contractor for Service(s) and/or 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 computations 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 on a monthly basis, minus ten percent (10%) plus 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 or price adjustments if set forth herein.
- 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

### **TABLE OF CONTENTS**

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

07/18/16 – WTC Site Wide Hurricane Preparedness 2016

**PART III - 3**

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.

Prior to the release of any amount withheld from the Contractor's monthly payment by the Port Authority, the Contractor shall submit to the Construction Manager a certification of all unresolved requests for additional compensation including all items in dispute and potential claims which the Contractor had actual knowledge of or by reasonable inspection and inquiry should have known of, to the date of the certification.

Any such items not made known to the Port Authority by inclusion in the certification of additional compensation requests submitted by the Contractor will be deemed to have been released by the Contractor. Notwithstanding the above provisions, before making any release of monies the Port Authority may require the Contractor to submit further information for the Construction Manager's review and analysis, and shall require the Contractor to execute a separate written release of claims as described above in a form acceptable to the Port Authority.

"Final Payment", as the term is used throughout this Contract, shall mean the final payment made for the delivery and acceptance of all services 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.

#### **10. Default- Delays**

If the Contractor fails to perform in accordance with the terms of this Contract, the Port Authority may obtain the services required to perform the Work from another Contractor 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.

#### **11. Liquidated Damages**

Not Applicable.

#### **12. 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

**TABLE OF CONTENTS**

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

07/18/16 – WTC Site Wide Hurricane Preparedness 2016

**PART III - 4**

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 Port Authority 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 Port Authority, 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 Port Authority to comply with the above warranty at no cost to the Port Authority.

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

### **13. Materials and Workmanship**

All Item(s) and/or Service(s) shall be manufactured and/or provided in accordance with the best current practice in the industry and free from defects. All Item(s) and/or Service(s) shall at all time and places be subject to the inspection of the Port Authority. Should any Item(s) or Service(s) fail to meet the Port Authority'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).

### **14. 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.

### **15. Errors and Omissions**

If the Contractor discovers any errors or omissions in the Specifications or in the Work undertaken and executed by it, it shall immediately notify the Construction Manager and the Construction Manager 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, it shall do so at its own risk, and the work so done shall not be considered as work done under and in performance of this Contract.

### **16. Approval by the Director**

The approval by the Director of any Item(s) shall be construed merely to mean that at that time the Director knows of no good reason for objecting thereto and no such approval shall release the Contractor from its full responsibility for the satisfactory operation of the Item(s). The decision of the Director 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).

## **17. 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./work performed.

If any such change causes an approved 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 the actual 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.

## **18. Variations in Quantity**

The quantities set forth in the Price Schedule are estimates; actual total quantity 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.

## **19. MBE/WBE Subcontracting Provisions**

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Woman-owned Businesses (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The Contractor shall use every good-faith effort to provide for participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Woman-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

The Contractor shall use good faith efforts to achieve participation equivalent to twelve percent (12%) of the total Contract price for Port Authority certified MBEs and five percent (5%) of the total Contract price for Port Authority certified WBEs.

Good faith efforts to include participation by MBE/WBEs shall include, but not be limited to 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 MBE/WBEs as may be appropriate.
- c. Soliciting services and materials from a Port Authority Port Authority certified MBE/WBE or seeking MBE/WBEs from other sources. To access the Port Authority's Directory of MBE/WBE Port Authority certified Firms go to [www.panynj.gov/supplierdiversty](http://www.panynj.gov/supplierdiversty)

### **TABLE OF CONTENTS**

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

07/18/16 – WTC Site Wide Hurricane Preparedness 2016

**PART III - 6**

- d. Ensuring that provision is made to provide progress payments to MBE/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Bidders are directed to use form PA3760A as the recording mechanism for the MBE/WBE Participation Plan, annexed hereto as Attachment C or may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

Bidders shall include their MBE/WBE Participation Plan with their bids, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Contractor to the Port Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subcontractors listed on the MBE/WBE Participation Plan must be certified by the Port Authority in order for the Contractor to receive credit toward the MBE/WBE goals set forth in this Contract. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Contract.

Subsequent to Contract award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/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 MBE/WBE Plan, Contractors are directed to use form PA3760B, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/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 MBE/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 in the form of the MBE/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 MBE/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

**TABLE OF CONTENTS**

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

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.

### **Prompt Payment/Retainage**

The Contractor agrees to pay each subcontractor under this Contract, for satisfactory performance of its subcontract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The prime contractor agrees further to return retainage payments, if any, to each subcontractor within ten days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Authority.

### **MBE/WBE Conditions of Participation**

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

A. **Commercially Useful Function.** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Contractor shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

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

C. **Supervision.** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

#### **TABLE OF CONTENTS**

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

07/18/16 – WTC Site Wide Hurricane Preparedness 2016

**PART III - 8**

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

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

B. Manufacturers/Fabricators. One hundred percent (100%) of the expenditure to a MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.

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

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

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

F. Trucking Operations. If using an MBE/WBE firm for trucking operations, the MBE/WBE trucking firm of record is the firm that is listed on the MBE/WBE Participation Plan. The MBE/WBE 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 for which it is responsible on a particular contract, and there cannot be a contrived

**TABLE OF CONTENTS**

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

arrangement for the purpose of meeting the MBE/WBE goal. The MBE/WBE trucking firm of record shall control the day-to-day MBE/WBE 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. MBE/WBE Owned/Leased Trucks. One hundred percent (100%) of the value of the trucking operations the MBE/WBE provides for the performance of the Work using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the MBE/WBE using drivers it employs, will be counted toward the MBE/WBE goal.

2. MBE/WBE Short-Term Leased Trucks. The MBE/WBE may lease trucks on a short-term basis from another MBE/WBE, including an owner/operator who is Port Authority certified as a MBE/WBE. One hundred percent (100%) of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.

3. Non-MBE/WBE Trucks. The MBE/WBE may lease trucks on a short-term basis from a non-MBE/WBE, including an owner-operator. One hundred percent (100%) of the fee or commission the MBE/WBE receives as a result of the lease arrangement will be counted toward the MBE/WBE goal. The value of the trucking operations provided by the lessee will not be counted toward the MBE/WBE goal.

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

## **20. Integrity Monitor**

The Authority may elect to hire and retain an integrity monitor (“Integrity Monitor”) in connection with an extreme weather event at the World Trade Center site. The Contractor shall cooperate and cause its subcontractors, consultants and subconsultants to cooperate fully with the Integrity Monitor and the Port Authority and its Inspector General, including but not limited to providing complete access to all personnel and records related to the performance of this Agreement. Failure to comply with this provision shall be a material breach of this Agreement.

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

- 1. SIGNATURE SHEET ..... 2
- 2. NAME AND RESIDENCE OF PRINCIPALS SHEET..... 3
- 3. PRICING SHEET(S) ..... 4
  - Entry of Prices..... 4
  - Pricing Sheet ..... 5

**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 the services and/or materials in compliance with all terms, conditions, specifications and addenda 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 90 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.

If certified by the Port Authority as a M/WBE: \_\_\_\_\_ (indicate which one and date).

**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 items 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 Estimated Total Delivered Contract Price, as required, based upon the applicable Unit Price inserted by the Bidder, which amount shall govern in all cases.
- e. The Total Estimated Not to Exceed 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".

## Pricing Sheet

Position	Description	Time Period	Estimated	Total
		Monday through Friday 7am-3pm	Number of Hours	
Rate / Hour				
1. Project Manager (PM)	Additional (POC) & PM for the Project	\$	192	\$
2. Supervisor	Directs Labor / Project Logistics	\$	168	\$
3. Operator	Equipment Operator	\$	1,440	\$
4. Laborer	Man-power in support of project	\$	1,068	\$
5. Carpenter	Safety Barriers / Framing / Etc	\$	240	\$
6. Painter	Safety markings / Aesthetics	\$	96	\$

**TOTAL ESTIMATED NOT TO EXCEED BID PRICE:**

\$ \_\_\_\_\_  
(SUM OF 1+2+3+4+5+6)

**NOTE:**

1. **“Hourly Rate” is an “all-inclusive” and shall include, but not be limited to: labor (wages and benefits) supervision, administration, materials, supplies and vehicle costs, including fuel, tolls, travel time, insurance, overhead and profit.**
2. **Cost Breakdown Sheet below shall be completed and submitted with the Pricing Sheet.**
  - a. **Submit prices for administrative fee for additional services that may be required.**
  - b. **Submit prices for Hourly Rates for off hour/weekend and holiday rates.**

**AWARD WILL BE MADE TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER FOR THE TOTAL ESTIMATED NOT TO EXCEED BID PRICE.**

**Cost Breakdown Sheet**

The bidder should fill out the sheet below and insert each component of its cost comprising the “Hourly Rate” for off hour/weekend and holiday hours.

Position	Description	Time Period	Time Period	Time Period
		3PM - 11PM	11PM - 7AM	Sat/Sun/Hol
		Rate / Hour	Rate/Hour	Rate/Hour
Project Manager (PM)	Additional (POC) & PM for the Project	\$	\$	\$
Supervisor	Directs Labor / Project Logistics	\$	\$	\$
Operator	Equipment Operator	\$	\$	\$
Laborer	Man-power in support of project	\$	\$	\$
Carpenter	Safety Barriers / Framing / Etc	\$	\$	\$
Painter	Safety markings / Aesthetics	\$	\$	\$

**Additional Services**

Sub-contracted Services	___% Admin fee above invoice total
Expediter Services	___% Admin fee above invoice total
Trucking / Rigging	___% Admin fee above invoice total
Equipment Rental	___% Admin fee above rental invoice total
Vehicle Rental	___% Admin fee above rental invoice total
Fuel / Consumables for Vehicles / Equipment	___% Admin fee above invoice total
All other permit/license fees	___% Admin fee above invoice total

## **PART V – SPECIFICATIONS – SCOPE OF WORK**

### **1. Specific Definitions**

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

“Construction Manager”- means the authorized representative(s) to manage construction under the direction of the Director of World Trade Center Operations.

“Director” - means the Director of World Trade Center Operations, or his duly authorized representatives acting within the scope of the particular authority vested in them.

“Facility” means the 16 acre World Trade Center (WTC site) in lower Manhattan that is owned and managed by the Port Authority of New York and New Jersey.

“Government, United States Government, Federal or words of like import” mean the United States of America.

“UMTA or FTA” - mean the United States Department of Transportation, Federal Transit Administration (formerly known as the Urban Mass Transportation Administration).

“FTA/ FEMA” and Federal Government may be used interchangeably.

“DOT” - means the United States Department of Transportation.

“DCAA” - means the Defense Contract Audit Agency.

### **1. Item(s) and/or Service(s) Required by the Specifications**

The Scope of Work under this contract includes providing all labor, equipment, and tools to implement the attached plans outlined in Appendix C, D provided by the Port Authority. The requirements of the plans are summarized below, but in the event of conflict, the Appendix will govern.

#### **a. General**

- i. It is the responsibility of the Contractor to manage and coordinate all activities for the work included herein.
- ii. The Contractor is responsible to mobilize its own resources and assist in managing the resources currently at WTC site.
- iii. The Contractor will provide all necessary services to pre-fabricate, stage, maintain, and relocate materials and equipment or otherwise prepare in advance of a storm event at the direction of the Port Authority.

- iv. Upon the direction and notification by the Port Authority of a storm event, the Contractor shall mobilize and implement the Specifications within the timeframe indicated herein. The Contractor will maintain and repair materials, equipment, and systems during a storm event to maintain the effectiveness of the materials, equipments, and systems.
- v. The Contractor shall obtain and maintain at its sole expense, any permits and licenses as may be necessary or required to perform the work.
- b. Implementation Timeframe
  - i. Upon notification by the Port Authority the Contractor shall furnish and provide the work under the Specifications within a timeframe that will reasonably provide protection to the WTC site during a storm event. The Port Authority shall provide notification no more than ten (15) days and no fewer than four (4) from a storm event.
- c. Coordination:
  - i. The Contractor will coordinate with all contractors on the WTC site, including, but not limited to those under the direction of the World Trade Center Construction Department, World Trade Center Redevelopment Department, and Office of Emergency Management Department.
  - ii. Should Contractor or its Subcontractors cause damage to the work or property of the Port Authority, the party causing such damage immediately shall remedy such damage and pay to the damaged party any costs and expenses incurred in connection with such damage.
- d. Staffing and Personnel
  - i. The Contractor shall furnish a competent and adequate staff as necessary for the proper business administration, coordination, supervision, and superintendence of the Work; shall organize the procurement of all additional materials and equipment so that they will be available at the time they are needed for the Work; and shall keep an adequate force of skilled workers on the job to successfully complete the Work in accordance with all requirements of these Specifications.
  - ii. The Contractor will coordinate site access approval for augmentation workers ahead of any storm event.
  - iii. Provide three (3) designated representatives that can be contacted 24 hours a day, 7 days a week for entire Contract duration.
  - iv. The Contractor shall provide certified payroll and timesheets for all staff and sub-contractors.
- e. Material & Equipment
  - i. The Port Authority will provide equipment, materials, and systems for use during a storm event. Should the Contractor require any additional materials, above those provided by the Port Authority,

the Contractor shall promptly notify the Port Authority, or its Agent, and procure the required materials with the Port Authorities approval. It is the responsibility of the Contractor to assess and inventory the materials, equipment and systems provided by the Port Authority.

- ii. The Contractor is responsible to procure any special equipment required for placement or recovery of barrier plan not otherwise provided by the Port Authority
- iii. Upon notification by the Port Authority, the Contractor shall transport materials and/or equipment from offsite Port Authority storage areas to the WTC site.

f. Means and Methods:

- i. The means, methods, techniques, sequences, procedures, and safety measures utilized in the performance of work under these Specifications are the sole responsibility of the Contractor. Any means, method, technique, sequence, or procedure set forth in the Specifications is solely to specify the desired end product. If the means, method, technique, sequence, or procedure will not result in the desired end product or is unsafe or illegal because of some defect in the Specifications or the particular conditions under which the Work is being performed, it is the Contractor's responsibility to select a correct means, method, technique, sequence or procedure.
- ii. If deviations from the Specifications are necessary; or if, in the expert opinion of Contractor or Subcontractor, the application as shown deviates from normal and proper application as recommended by the manufacturer; or if job conditions have necessitated deviations from manufacturer's instructions or other minimum standards of good practice; or if such deviations have been agreed upon by the Port Authority prior to the installation, then such deviations shall be recorded on the request for substitution, submitted for approval by the Port Authority.
- iii. Contractor shall cause Subcontractor(s) to bear at their own cost (and at no cost to the Port Authority whatsoever) all costs that may be incurred to correct defective work, including, but not limited to, any cost incurred by the Port Authority, if any, for additional work or services required as a result of the correction of the defective work.

g. Sub-contractors:

- i. The Contractor shall use qualified sub-contractors that can prove experience in facilities or projects of equal magnitude and scope to that listed herein. References shall be furnished upon request of the Port Authority
- ii. Subcontracts shall be subject to the approval of the Port Authority.
- iii. Contractor shall be responsible to fully administer, direct, supervise, coordinate, inspect, scrutinize, manage, perform and

- oversee other related work and services related to the work in order to coordinate the activities and responsibilities of the Subcontractors, each with the other and those with the activities and responsibilities of the Port Authority and as otherwise required by the Specifications.
- iv. Contractor shall analyze, evaluate, and prepare an Application for Payment based on the Contractors' and Subcontractors' payment applications.
  - h. Technical Protection Plan: The physical protection plan consists of four tiers in successive layers that provide redundancy in protecting the site. The Contractor shall provide all labor, equipment, materials to construct the full barriers, a means of recovery and/or disposal of all materials, equipment, and systems implemented under this contract.
    - i. Tier 1: Emplace linear flood barriers to prevent storm & tidal surge from encroaching onto the WTC footprint where access or openings to sub-grade levels are present in accordance with Appendix C.
    - ii. Tier 2: Emplace spot barriers to protect every surface and subsurface level opening at or below 312' that leads into WTC sub-grade areas (i.e., doors, vents, shafts, sub-grade utility openings; includes the building of containment structures over the storm sewers located inside the Tier 1 line) in accordance with Appendix C.
    - iii. Tier 3: Protect critical sub-grade Mechanical, Electrical, and Plumbing (MEP) equipment and rooms from flood waters that may enter the buildings despite the barriers in accordance with Appendix D.
    - iv. Tier 4: Channel flood waters to collection reservoirs at lowest building levels and pump back to the surface to prevent accumulations that could damage MEP or other systems in accordance with Appendix E.
    - v. Recovery: Upon completion of any event, recover all reusable materials/equipment/systems, dispose of any contaminated items (in accordance with all applicable standards, laws, and regulations), provide bill of lading for said disposal, and return reusable materials/equipment/systems to a storage location designated by the Port Authority. If so directed, recondition salvageable storm barrier materials for use in subsequent storm events. The work site shall be restored to a clean, safe condition equitable to the condition before the work was commenced.

## **2. Project Schedule**

There is no specific project schedule. This agreement will remain in full effect through the term of the agreement as noted in Part II - Section 5.

### **3. Prevailing Wages**

The Contractor shall provide (and shall cause all sub-contractors to pay or provide) to its workers (who are employed by it to work on an hourly or daily basis at any trade or occupation at or about the Facility) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Services are being performed at the time the Work is being performed and notwithstanding that such rate may be higher than the rate in effect on the date of the opening of the Bids/ receipt of Proposals.

For the purposes of this Contract, the annual prevailing wage and supplements schedules for the work being performed under this contract are those published by the Bureau of Labor Law, pursuant to Labor Law §§220 and 230 and New York City Administrative Code §6-109 and located at the New York City Comptroller's website at <http://comptroller.nyc.gov/general-information/prevailing-wage>, for the locality and for the period of time in which the work is performed.

END SPECIFICATIONS

# Appendix C

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## Surface Barrier Plan / Facility Entrances Plan (Tier 1 & 2)

## WTCR Storm Mitigation Plan

### Appendix C – Surface Barrier Plan / Facility Entrances Plan (Tier 1 & 2)

1. Reference attached schematics and detailed barrier list for Tier 1 and Tier 2 barriers.
2. Coordination. WTCR must determine / identify contractors to execute each of the various obstacle types to fully determine the execution plan:
  - a. Bollard Protection System. 1WTC has three faces (N, W and S) protected by the custom developed Bollard Protection System (BPS), which utilized the force protection bollards embedded in the sidewalks as the structure for a drop-log barrier system. During a storm event the bollard covers must be removed, and custom fit extensions are placed over the bollards that also serve as the sleeves that the water-tight logs fit in to. The BPS is stored in the VSC and must be moved during the storm sequence at 5 days out to preposition near T1. Emplacement starts at 3 days out. Gaps may be left in front of key doors in order to not impede building entrance and egress. As storm surge approaches final logs must be placed and T1 evacuated of all non-essential personnel due to the limited building egress once the full BPS is emplaced. The BPS will prevent storm surge from encroaching on the 1WTC entrance doors, but will also collect water on the protected side due to rainfall, surface runoff within the protected area, and seepage under the BPS. Accordingly, trash pumps inside the BPS line at the lowest point (NW corner at Vesey and West Street) must also be employed when utilizing BPS. Current plans include extending the BPS protection system from the NE corner of 1WTC east along Vesey to an elevation where storm surge protection is not needed, however that procurement will not be made until the temporary PATH station is removed and Performing Arts Center is completed. Meanwhile, site staff must plan for a barrier extension along Vesey that connects to the NE end of the BPS and extends eastward. This may be completed with HESCO, however due to the protection height required (~8') at the BPS connection point, and the limited maneuver room for heavy equipment along Vesey, it is highly recommended that a new procurement of 8' AquaFence be made for the first 156 feet of the barrier extension, and an additional purchase of 104 feet of 4' AquaFence beyond this section to replace the use of HESCO. See schematic for details of barriers beyond this point on Vesey. Also required is a special procurement of a BPS / AquaFence connection for the 1WTC NE corner connection. A connection design is currently being procured by WTCC for multiple uses where the longer term WIPs calls for BPS / AquaFence connections, and should be available for use in 2015 should WTCR pursue it. Both the BPS and AquaFence associated with this protection are to be installed by a WTCR designated contractor. It is highly recommended that rehearsals take place each storm season, and that an equipment inventory and condition assessment is made each year to ensure all required parts are on hand and serviceable. The BPS O&M Manual is included in Vol II of this plan.
  - b. HESCO barriers, which require erection and filling, are planned for selected long linear barriers (Tier 1) and in select locations for doors / openings (Tier 2). See the schematic for

details. Barrier placement requires arranging sand delivery, heavy equipment (bobcats), lighting equipment, and supporting materials (foam tubes for seals against building walls and spray foam to fill gaps). HESCO emplacement is very time, manpower and equipment intensive, and time estimates for erecting the array of HESCO obstacles is a function of crew size, training, shift length, and the positioning of materials, including sand, before HESCO construction begins. Contractor should be directed to size crews and equipment to complete all HESCO tasks within 72 hours of NTP (and issue a stand-by notice at 5 days out on timeline). Stand by support contracts are required for this effort, as resources to emplace these barriers are not currently contracted. As with all the barrier systems, advanced crew training is required each year, as well as HESCO and support materials inventory and condition assessments.

- c. Sandbag & Wood Custom door / opening designs and materials. Specific door by door designs are to be developed by the implementing contractor given general guidelines for this obstacle type, included in this Appendix. Implied in this task are determining requirements for and ordering lumber, sandbags, plastic sheeting, spray adhesive, and spray foam for gaps. As with HESCO install, Contractor should be directed to size crews and equipment to complete all custom door / opening tasks within 72 hours of NTP (assume a stand-by notice issued at 5 days out on timeline). No materials, other than a small collection of spray foam and plastic sheeting, remain from prior year plans, and must be procured new for 2015.
- d. AquaFence. All AquaFence currently owned by WTC is planned for use in the Central Fan Plant reservoir or the entrance doors of T1 (to be installed by Durst). As noted in the section above regarding the barrier for Vesey Street that must connect to the BPS at the NE corner of 1WTC, it is highly recommended that WTCR consider the procurement of additional AquaFence for the Vesey Street barrier as opposed to using HESCO barriers. The use of HESCO in this area may not be feasible. Due to the low elevation of this area, a portion of the Vesey Street HESCO barrier will require two 4' high HESCO rows with an additional 4' row on top. Constructing such a HESCO structure in the limited space available between T1 and the PATH entrance along Vesey Street may not be possible. Before committing to using HESCO for this barrier, it is recommended that the emplacing contractor assess the site for placement feasibility and how long it will take (access to the operational 1WTC Vesey Street entrance will be impacted). The lengths suggested for a new AquaFence purchase are estimates based on scale footprint and site elevation drawings. Exact transition points for different height barrier sections of the Vesey Street barrier could not be made during the reconnaissance for this report, as the 312' protection level markings had been removed from this area. Transition points will determine the exact lengths of 4' vs. 8' AquaFence to purchase. If procured, the AquaFence for Vesey must be emplaced by a WTCR designated contractor.
- e. Floodstop (or equivalent) Barriers. These may be used in lieu of HESCO or sandbags for Vesey between 1WTC and the PATH entrance where protections of under 3' are required. This will avoid the use of HESCOs in that area, which will limit interruption of this heavily used pedestrian area. These systems must also be procured new for 2015. Lengths are TBD

per comment above regarding 312' markings, however.

- The Tier 1 and Tier 2 Barrier Plan Schematic is shown below in Figure C-1. Given the low elevation areas of the WTC site are at the northwest and southwest corners, the barriers protecting the site from a storm surge are also oriented in those directions. There are two clusters of barriers – one protecting 1WTC, and the other protecting the VSC. Five openings not associated with either building also require protection, and include the two each stairwells at the northwest and south faces of the Memorial Plaza, and the vent opening at the southeast corner of the Plaza. Additionally, the River Water Pump House, located on the waterfront west of the WTC site, requires separate protection. All other protections are tied to either 1WTC or the VSC. Not shown on this schematic (to retain clarity), are protections required for the storm sewer system that connect underground storm sewer lines on both sides of the Tier 1 protections, creating a vulnerability as water seeks its own level. This is covered in the Utility Points of Entry and Storm Sewer Plan - App F.

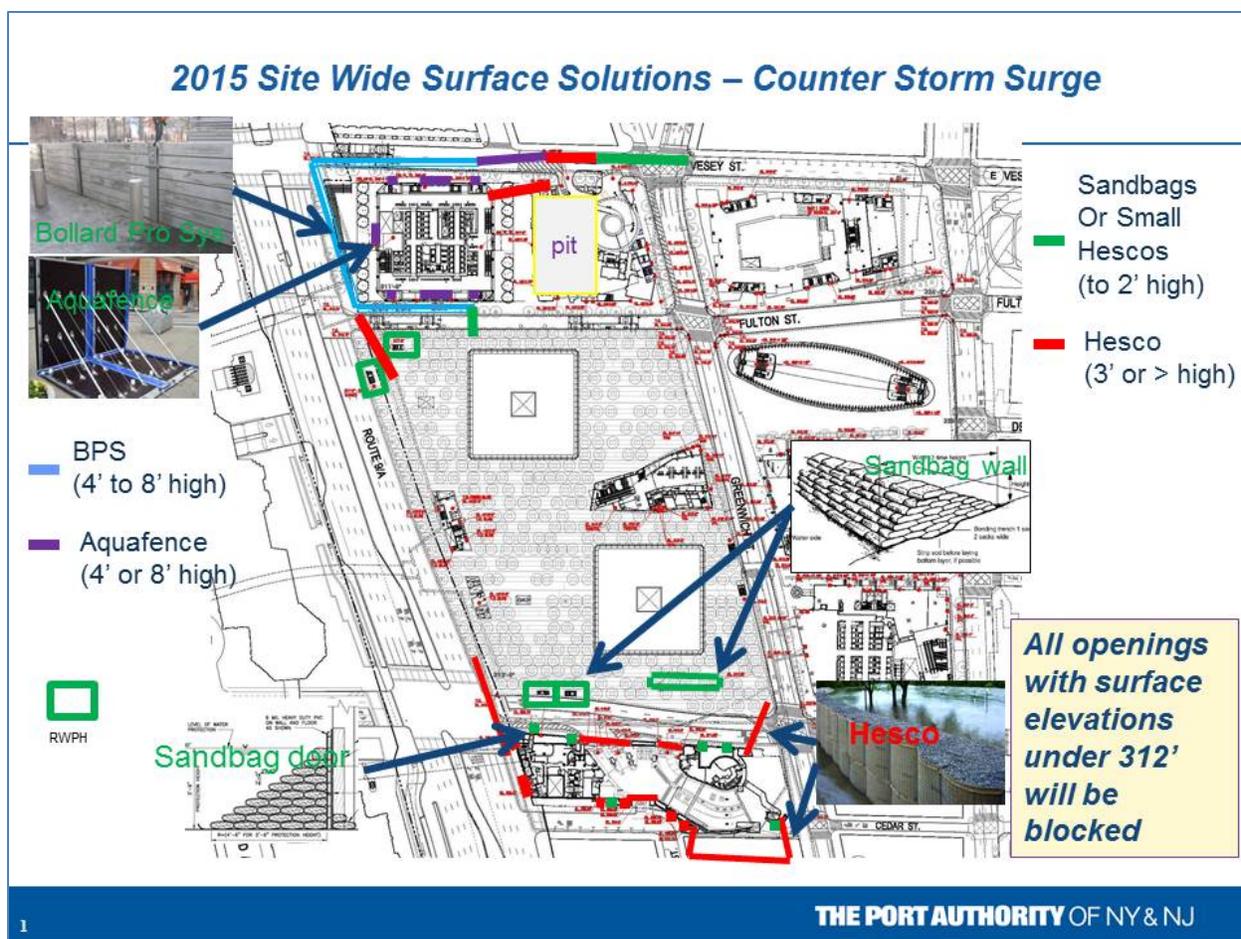


Figure C-1: Tier 1 and Tier 2 Barrier Plan Schematic

a. A detailed Schematic for 1WTC is shown below in Figure C-2.

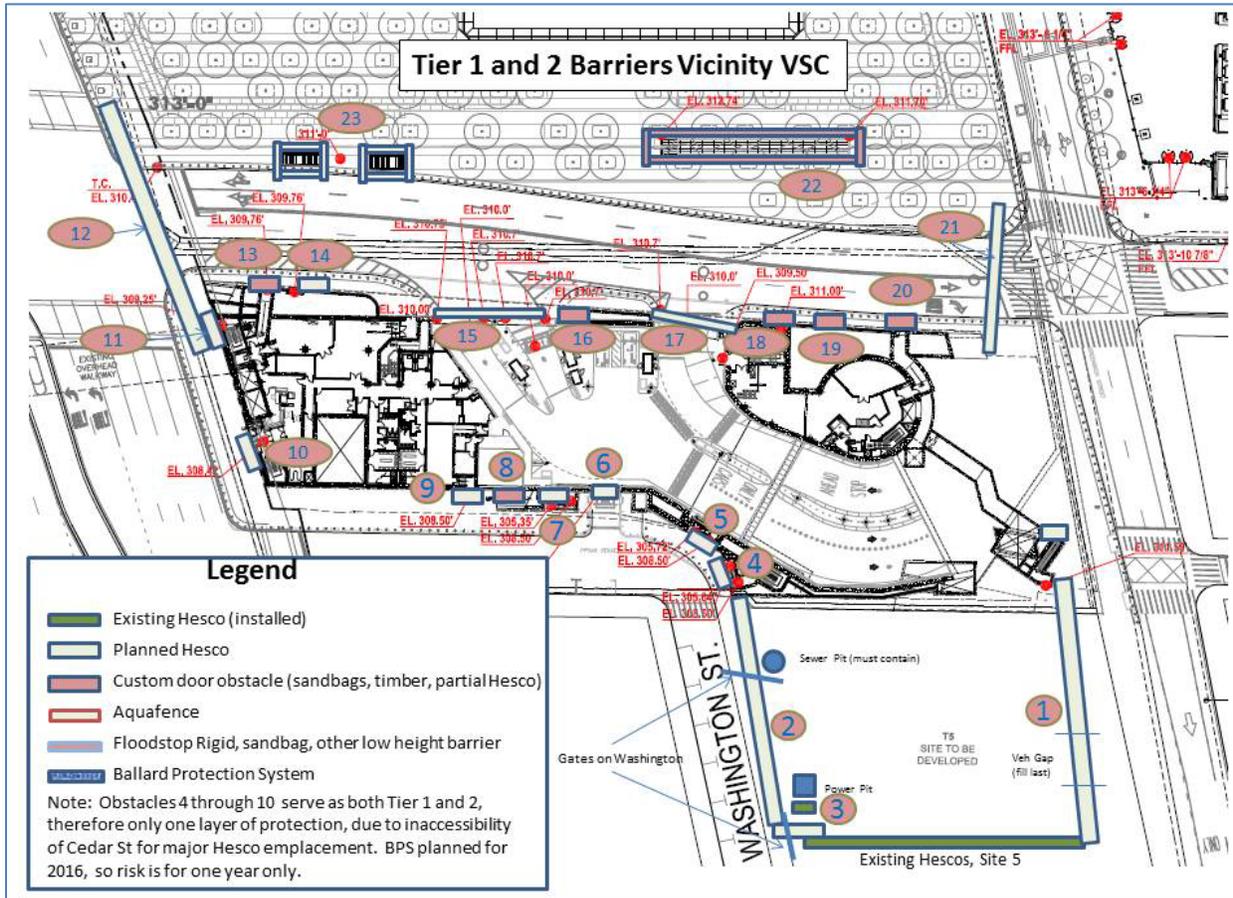


Figure C-2: Detailed schematic of Tier 1 and Tier 2 Barrier Plan for VSC

b. A detailed Schematic for 1WTC is shown below in Figure C-3.

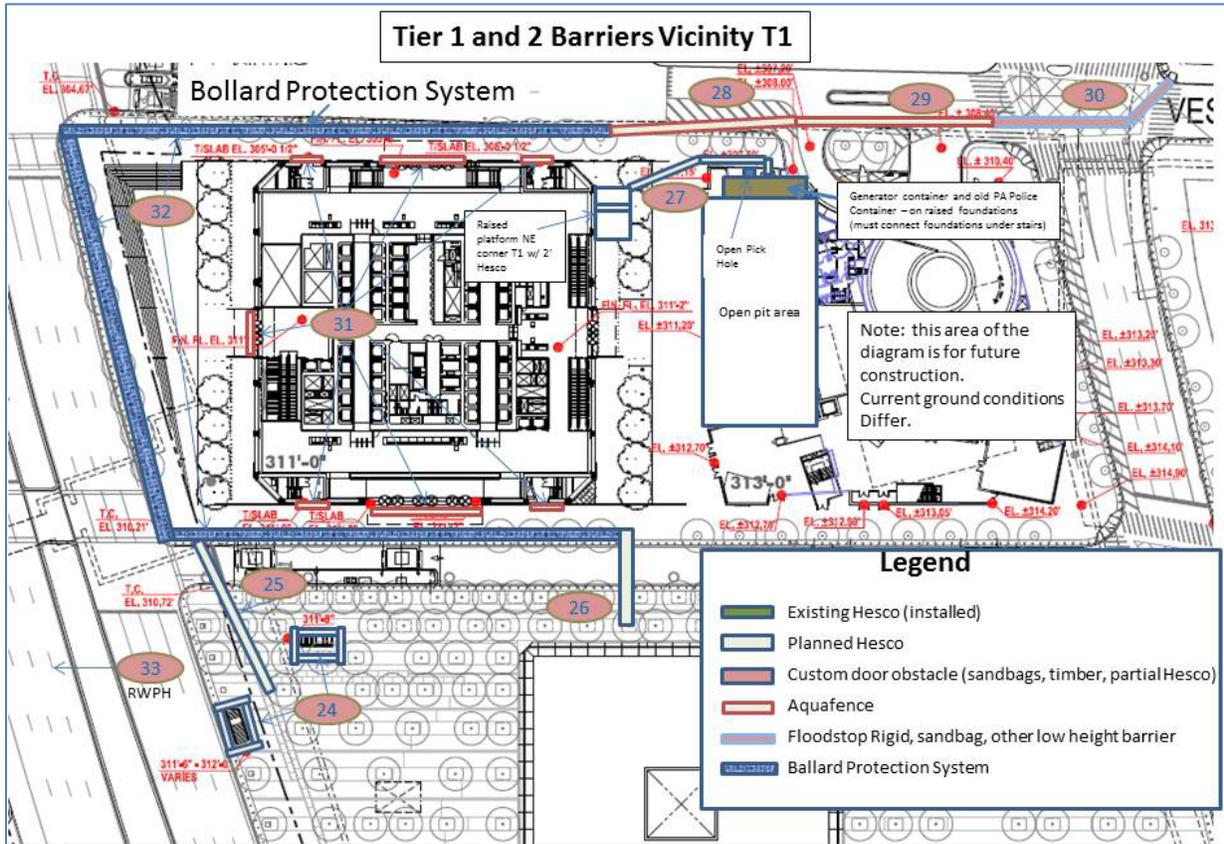


Figure C-3: Detailed schematic of Tier 1 and Tier 2 Barrier Plan for 1WTC

c. Obstacle List Tier 1 and 2 as currently planned in Table C-1 below:

No	Description	Protections	Length	Height	Notes	BOM
1	S. East end 'SITE 5' // Existing HESCO tied to SE corner of VSC	3' HESCO	109 feet	2-3 feet	Connect from end of existing HESCO wall to wall at VSC SE corner - connect in to protect door to the left. Add a short 2' or 3' HESCO wall across ramp that runs to Liberty side of VSC (need 312' markings to verify 2' vs 3'). Can leave vehicle gap at Site 5 entrance and fill in last to maintain access to Site 5. Door sill to left is just under 312' - add layer of sandbags in door sill.	8 each 3' HESCO units (can partial fill)
2	S. West end 'SITE 5' // Protect from existing HESCO to VSC center of structure.	2 + 1 HESCO 4'	145	8 feet	Increase height existing 3 box HESCO next to power pit. Run main barrier out gate and on sidewalk and tie to mid-point of VSC at Washington and Cedar. Must clear water line from ground or build HESCOS over it. **Need NYC permission to run HESCOS on sidewalk / street.	30 each 4' HESCO units
3	S. West end 'SITE 5' // Connect existing HESCO by gate opposite Club Quarters Hotel (last installed obstacle)	2 + 1 HESCO 4'	20'	8'	Consider closing as soon as possible unless needed for emergency vehicles (unlikely as no place for them to go).	6 each 4' HESCO units
4	South door to VSC on Cedar (off corner with Site 5)	4' HESCO	45 inch	50inch	door just around corner coming from Site 5	1-2 stack of 4' HESCO. Requires custom design to get protection from existing ground to door level.

5	South door to VSC on Cedar - just to west of door 4	4' HESCO	3 feet	4 feet	just to left (west) of door above	1-2 stack of 4' HESCO. Requires custom design to get protection from existing ground to door level.
6	South truck opening of VSC on Cedar	2 + 1 HESCO 4'	18 feet	8 feet	Consider back up containment inside VSC with 2nd line of AQUAFENCE.	4 each 4' HESCO units (1 for partial cells)
7	South door to VSC on Cedar - Door to left of truck opening	4' HESCO	34"	45"		1-2 stack of 4' HESCO. Requires custom design to get protection from existing ground to door level.
8	Air louvers near south truck opening of VSC on Cedar	Plywood / Sandbag barrier placed from inside	28'	1'	Note: contractor equipment that could float needs to be tied down in this area	Needs custom design. ROM incl 3/4" ply x 7, 15ea 4x4x10s, 140 sandbags
9	South door to VSC on Cedar - to left of louvers	2 Cells 4' HESCO	4'	4'	Note - open door on ground level below door #4 into storage space under stairs does not connect to inside of VSC except for small POEs that must be waterproofed. Door does not need to be blocked.	1-2 stack of 4' HESCO. Requires custom design to get protection from existing ground to door level.
10	West doors VSC on West St	4' + 2' HESCO	17'	6'	This barrier protects two doors adjacent to each other. South most doors on West St.	2 ea 4' HESCO units; 2 ea 2' HESCO units - requires partial cell configuration
11	West doors VSC on West St	4' + 2' HESCO	6'	6'	North most doors on West St.	1 ea 4' HESCO unit; 1 ea 2' HESCO unit - requires partial cell

						configuration
12	NW corner VSC north Memorial Plaza	4' then 3' HESCO or AquaFence	75'	4'	Must gain permission to pass through Police chain link fence.	3 ea 4' HESCO units; 2 ea 3' HESCO units. (could eventually replace with AquaFence once ground paving is completed)
13	North door opening at VSC on Liberty	Plywood / Sandbag barrier	6'	2.5'	western most door north face	Standard sandbag / plywood door package
14	North door opening at VSC on Liberty	2' HESCO	15'	1'	just east of door above - two doors side by side	2 ea 2' HESCO units
15	North truck western most opening at VSC on Liberty	2' HESCO	66'	1.5'	two openings separated by column	7 ea 2' HESCO units (could replace with AquaFence)
16	North door opening at VSC on Liberty	Plywood / Sandbag barrier	6'	1'	door between major truck entrance / exit	Standard sandbag / plywood door package
17	North truck #2 opening at VSC on Liberty	2' HESCO	38'	2'	eastern most truck opening	4 ea 2' HESCO units (could replace with AquaFence)
18	North door opening at VSC on Liberty	Plywood / Sandbag barrier	6'	2'	just east of eastern most truck opening north face	Standard sandbag / plywood door package
19	North door opening at VSC on Liberty	Plywood / Sandbag barrier	6'	1'	door to left of #18	Standard sandbag / plywood door package

20	North door opening at VSC on Liberty	Plywood / Sandbag barrier	6'	2'	eastern most door north face	Standard sandbag / plywood door package
21	NE corner VSC to mid-point on sidewalk Mem Plaza vic Liberty Greenwich (above 312' line).	3' HESCO	95 feet	2'	45' inside the VSC area and 50' outside the fence. Must get permission to run out gate an onto Memorial sidewalk.	7 ea 3' HESCO units. (could eventually replace with AquaFence once ground paving is completed)
22	Vent structure on SE end of Memorial Plaza	Sandbags with plastic	100'	6"	SE corner Memorial Plaza just off Liberty	Base at 311.7 – may take risk
23	Perimeter of two (2) stairway enclosures	2' HESCO	140'	12"	25' x 10' stairway X 2 each south Mem Plaza on Liberty	14 ea 2' HESCO units (7 per stairwell)
24	Perimeter of two (2) stairwells NW corner Memorial Plaza	2' HESCO	140'	6"	25' x 10' stairway X 2 each	14 ea 2' HESCO units - 7 per stairwell
25	West end of Bollards on Fulton (SW corner T1) up to 312 point (get past D stairs onto Memorial sidewalk)	2' HESCO	40'	2'	Consider Flood Stop barriers if HESCO unacceptable this area	4 ea 2' HESCO units
26	East end of Bollards on Fulton (SE corner T1) up to 312 point (directly across Fulton and 10' onto Memorial sidewalk)	2' HESCO	40'	2'	Need to design a tie in to BPS for all types barriers contemplated for connections.	4 ea 2' HESCO units

27	Tie to NE Corner T1 to base generator foundation (east of pick hole). Raised platform is on east side of T1 right at NE corner.	Multi- 2' HESCO on upper platform, 4' HESCO against platform wall to Gen foundation (through fence)	Need to verify lengths. Estimate 95'	2', then 4'	Need to connect two foundation walls under Gen Set near stairs that go between Gen and old Pol Station container. Connect Gen front wall to back wall. See Fig C-4 below.	Approx (to confirm) 2 ea 2' HESCO units; 5 ea 4' HESCO units. Custom design & install of barrier under stairs.
28-30	Last Bollard NE corner 1WTC on Vesey to 312' point east on Vesey Sidewalk vicinity temporary PATH station entrance	AquaFence 8', AquaFence 4', and HESCO 2'  (Alternate if AquaFence not purchased for 2015: 4', 3' and 2' HESCO)	410'	8' to 4' to 2'	Note: survey elevation markings were not visible during the site visit on this section of Vesey. Plans below are based on site elevation drawings and drawing based estimates. Recommend renewed survey and measurements to verify requirements.  Plan 39 units of 8' AquaFence (156') from the last bollard at NE corner 1WTC to transition point to 4' AquaFence.  Plan 13 units of 4' AquaFence (104') from the last 8' AquaFence to the next transition.  Plan 150' of 2' HESCO (15 units) or one of the alternate systems, i.e. Flood Stop, that do not require sand. Use may be made of the existing barrier if made water tight – see Fig C-5. End point is vicinity of the temporary PATH entrance on Vesey, exact limit TBD by new survey.	The AQUAFENCE for these barriers is not yet purchased. The alternative for this area is HESCO barriers, in varying heights, for the entire length of Vesey from the corner of 1WTC to the current temporary PATH entrance. HESCO is extremely difficult here due to location and width of area to install. Access with Bobcats would be limited.
31	T1 Doors	AquaFence	Durst plan	4' & 8' units	Specifics of Durst plan not available. AquaFence units stored in 1WTC on C4, NE corner storage room.	

32	Bollard Protection System	BPS			Stored in VSC - rehearsal required	Interfaces required for AquaFence and other barriers.
33	River Water Pump House	2' HESCO	200'	1.5'	Offsite location	20 each 2' HESCO
NA	Memorial Doors	N/A			All building entrances are above 312'	
NA	Tower 4, SW corner	Unk			T4 SW corner doors entrance elevation to be verified. Likely solved with L-shaped configuration of 4-6 2' HESCO units on sidewalk (Silverstein responsibility)	
NA	Tower 3 and 4 areas	N/A			All building entrances are above 312'	
NA	Oculus	N/A			All building entrances are above 312'	

d. Bill of Materials for the above effort is provided in the BOM Appendix.

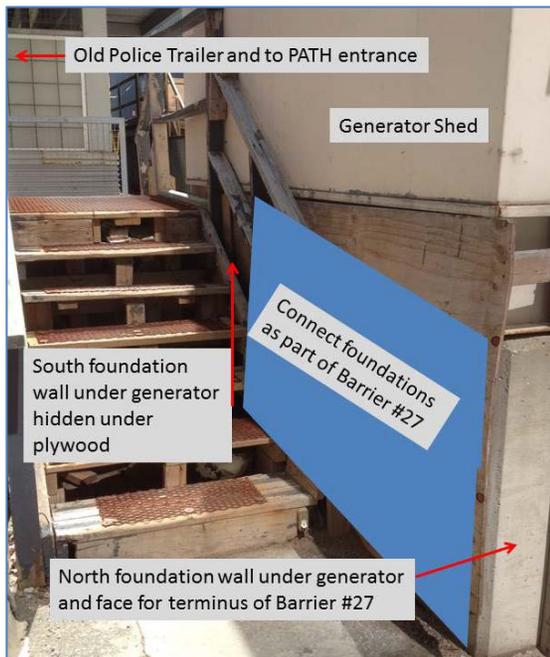


Fig C-4 (left): Detail of custom barrier to be placed under stairs between foundation walls under Generator Trailer on the North Temporary Access site.

Fig C-5 (right): Vesey St sidewalk from PATH station looking towards 1WTC. Existing barrier may be incorporated into plan for Barriers 28-30 where elevation permits.



4. Equipment and Support for Surface Barrier Plan Tier 1 and Tier 2.
  - a. Heavy Equipment. The 2013 and 2014 plans called for standby Bobcat Loaders, Model T750 Skid Steer. This versatile small loader has a tight turning radius and is sufficient for filling HESCO barriers up to 2 levels high. Above this level a larger bucket loader is required. The 2015 plan does not call for HESCO barriers above 2 layers high in order to meet the 312' protection level. Should a higher level protection be required in future years using HESCO, the fill height limitations of rented equipment must be taken into account. The optimal number of Bobcats will depend on the contract terms negotiated by PA with the vendor, and must take into account daily allowed operating hours (before maintenance shutdown) as well as licensed operators available to work 24 hour shifts. Ideally PA can lease sufficient Bobcats and operators to begin sand fill at the 3 days out point and be completed prior to storm surge arrival. Once lease terms are determined by PA planners can determine the number of Bobcats and operators to procure. It is suggested that PA lease 1-2 Bobcats to pre-position on site for the duration of storm season to assist with maintenance on preplaced HESCO, and for training purposes. The remainder must be guaranteed on a standby contract with mobilization instruction. In previous years the vendors were notified when a 10-day sequence had started, given a NTP warning at 5 days, then NTP at 3 days. This timeline will need to be re-evaluated by WTCR planners once lease terms are arranged.
  - b. Sand for HESCO Barriers. Sand was purchased and stored at Redhook by PA in 2013. PA planners should inspect quantity and serviceability of this sand for the 2015 and later seasons. WTCC latest inventory conducted in early 2015 showed 1540 tons on hand. If all present and serviceable, this amount is sufficient for executing the 2015 plan. See Technical Details Appendix for HESCO sand requirement planning factors and the Bill of Materials Appendix for details on sand requirements.
  - c. Truck Sand Haul Redhook to WTC. WTCR planners must negotiate a standby hauling contract for moving the required amount of sand from Redhook to WTC the week of a storm should it be decided to begin HESCO filling. In previous years this was planned to start at the 5 days out point, however planners must negotiate terms for trucking that meets the volume requirements in accordance with the Bill of Materials Appendix. It may be necessary to begin sand movement prior to 5 days out. Sand drop points will be based on ground and access conditions at the week of a storm, but should generally be made in two locations: one convenient to 1WTC, and one to VSC. The corner of Vesey and West Streets is the best location to feed HESCO loading operations for 1WTC, while VSC is best filled from the corner of Liberty and West St. Planners may adjust sand drop locations based on ground conditions, and may decrease the round trip turn time for Bobcats by establishing multiple sand drop points around the site.
  - d. Lighting. Light stands are required to support 24 hour operations. Previous years arranged for 5 each 5000 watt light towers, Model R711. Several were pre-positioned at WTC for the duration of storm season for readiness, and training support. Lights are gasoline powered and fuel must be procured sufficient to run lights both during the last 3-5 days of 24 hour operations pre-storm, and also for several days to support the recovery post storm. WTCR

planners must negotiate terms for light towers for 2015.

- e. Lumber. Standard dimensional lumber and plywood is required for the standard design door barrier using sandbags. PA Logistics has a bulk purchase arrangement for lumber purchases, and WTCR planners should submit lumber requirements to Logistics for 2015. Given the potential lead time and demand for lumber in the period just prior to a storm, it is recommended that lumber requirements for 2015 be pre-purchased and stored at JFK. Additionally, it will save considerable time during barrier emplacement if the lumber sets are pre-configured and pre-cut prior to storm week. Sets can be labeled and stored year to year until the WIPS procurements are fully operational. WTCR planners must carefully control lumber stocks. Prior year lumber supplies stored on site were absorbed by various site users and little remains for the current year. Detailed 2015 requirements are listed in the Bill of Materials Appendix. See concept for standard door barrier in Figure C-6 below. A technical specification sheet to provide to contractors is included at the end of this Appendix.

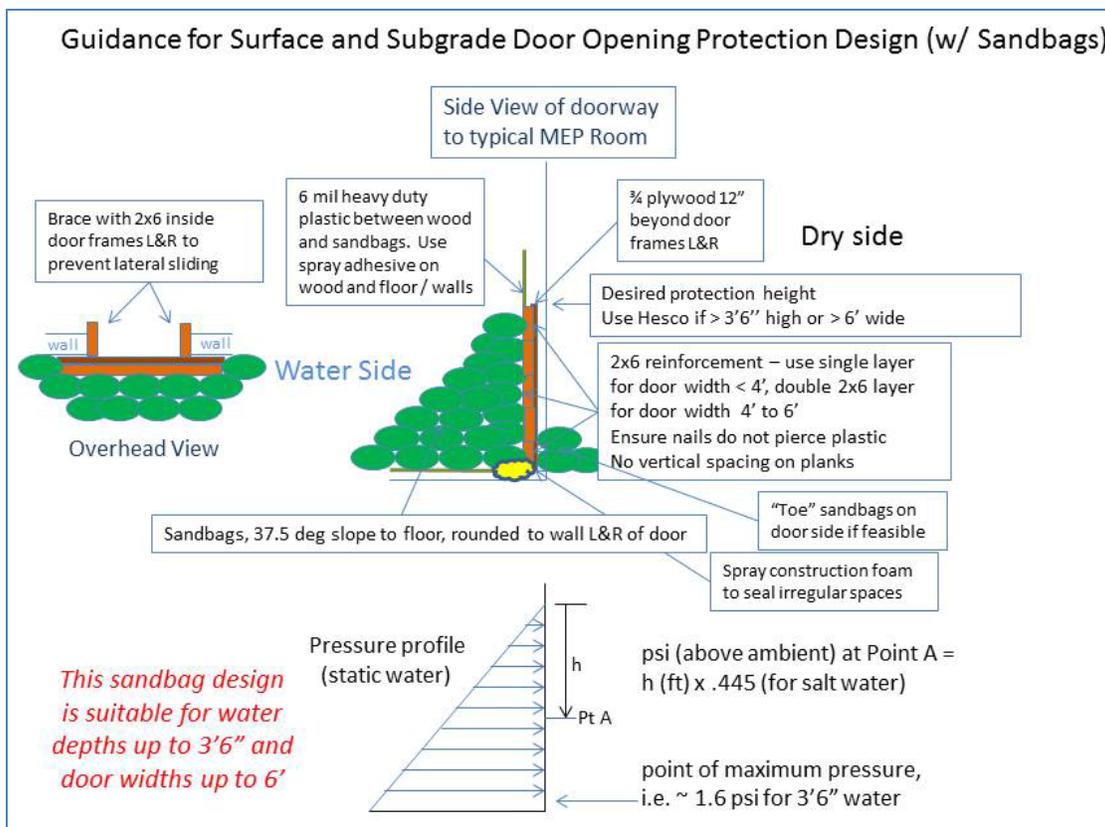


Figure C-6: Standard Lumber and Sandbag Door Barrier Concept

- f. Sandbags. As with lumber, PA Logistics has a bulk purchase arrangement for sandbags. There are 200 sandbags (5 pallets) on hand at JFK. Given the potential lead time and demand for sandbags in the period just prior to a storm, it is recommended that 50% of the sandbag requirements for 2015 be pre-purchased and stored at JFK, with the remaining 50% obligated for through pre-arranged contract, to be negotiated by WTCR planners and / or PA Logistics. Similar to the sand, the best download locations for sandbag pallets is in the

vicinity of 1WTC (Vesey and or Fulton) and VSC (Liberty). Sandbags are also required in significant numbers below grade, and can be delivered directly to the VSC Bus Parking Level and the VRN for VSC and HUB placement.

- g. Other equipment / materials.
  - i. Plastic Sheeting. Optional use, but can be placed under HESCO barriers and wrapped up and over the water side of the barrier to reduce water infiltration and to limit HESCO sand contamination for during clean up. Plastic sheeting augmented with spray foam or adhesive is also used to line the lumber backstops for standard door obstacles. It is important when placing plastic that it is placed firmly against the backstops with no air gaps or voids, as water pressure could puncture the membrane. Plastic requirements are listed in the Bill of Materials Appendix.
  - ii. Spray Foam (i.e. DOW Great Stuff, Spray Foam Insulation). For filling gaps between walls and barriers.
  - iii. Spray adhesive. For holding plastic sheeting in place when erecting barriers.
  - iv. 2" Foam Pipe Insulation Tubes. These are used wherever a HESCO is utilized to press against a wall or door frame to create a good waterproof seal. 2-3 tubes are placed vertically between the solid wall and the empty, positioned HESCO basket. Use spray foam to fill between the tubes and to hold them in place. Once the HESCO is filled it will expand and press against the tubes and wall, creating a watertight seal.
  - v. Special HESCO Tools. Several specialized tools were purchased for handling and emplacing HESCO in the 2013 season. These should have been transferred from the previous site wide contractor to the current site wide O&M contractor.
  - vi. Communications. Key / select vendors should be provided with portable radios by WTCR in order to report barrier execution status to the Control Center during the barrier preparation period.

# Appendix D

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## **Critical MEP Subgrade Projection Plan (Tier 3)**

## WTCR Storm Mitigation Plan

### Appendix D: Critical MEP Subgrade Projection Plan (Tier 3)

1. Reference attached schematics and detailed barrier list for Tier 3. This list is a combination of prior year plans, with selected improvements from WTCC's ongoing Water Intrusion Protection System (WIPS) plans. Some details of the new VSC WIPS subgrade barrier plan were made available for this study, and have been partially incorporated into these lists. 1WTC access for this study was limited, hence the plan below assumes no changes to the 2013 or 2014 plans, and are to be coordinated / executed by others (Durst). HUB requirements were updated by the WTCC Project Team for 2015, and are reflected in the plans below, although HUB indicated further reductions may be warranted. Further coordination with the HUB Project Team is suggested to finalize this plan.
2. WTCR must determine execution responsibilities for erecting the various subgrade door protections, the vast majority of which consist of standard design door obstacles utilizing lumber and sandbags, but also include subgrade installed HESCO Barriers. Specific coordination is required for T1, where WTCR does not have open access to subgrade areas. WTCR must further employ the services of specific trades contractors to provide detailed designs for each individual obstacle. Once this is accomplished, detailed material estimates, work / time estimates, and recommendations for pre-positioning materials can be finalized. As with surface preparations, Contractors executing the subgrade barriers should be directed to size their workforce to accomplish all assigned barriers within 72 hours of NTP. If this is deemed unfeasible by the trades, then the execution timelines dictated by this plan will require adjustment.
3. VSC. Subgrade plan focuses on protecting key subgrade MEP rooms. The list of rooms to protect based on the draft WTCC WIPS plan is extensive, and is not likely feasible to accomplish with hasty measures using lumber and sandbags in 2015 given the time it would take to emplace all in the lead up week to a storm. Accordingly, a subset of rooms to protect primarily on the Bus Parking Level (BPL) and exposed rooms along the spiral roadway from the entry level to the BPL are listed below for 2015 protection. This does create some risk as not all the critical MEP rooms will be protected in the event of a major failure of the Tier 1 or Tier 2 barriers at ground level. This risk could be mitigated by pre-placing barriers wherever feasible during the 2015 season well ahead of any threat. Full information on the planned WIPS barriers can be obtained from the WTCC VSC Project Team. It is not included in this report as it is a C&P document. Refer to the schematics below for a visual reference of each subgrade door barrier. Also included in these drawings are the larger barriers used to create water collection areas for storm surge that bypasses surface barriers. Pumps are used to keep these reservoirs from overtopping during the storm surge, not just for emptying the subgrade after a flood (although they can serve that roll as well). Water may access the VSC by bypassing any of the surface barriers, with the majority opening up to the truck entrance areas and the Spiral down to the lowest level on the Bus Parking Level (BPL). Another source could be the exterior door on the NW VSC corner, as the stairs there drop all the way to the MEP room under the BPL. There may be any number of unidentifiable Points of Entry throughout the VSC, which is why the redundancy in door protections and reservoirs. The reservoir and pump plan is addressed in the Tier 4 Appendix.

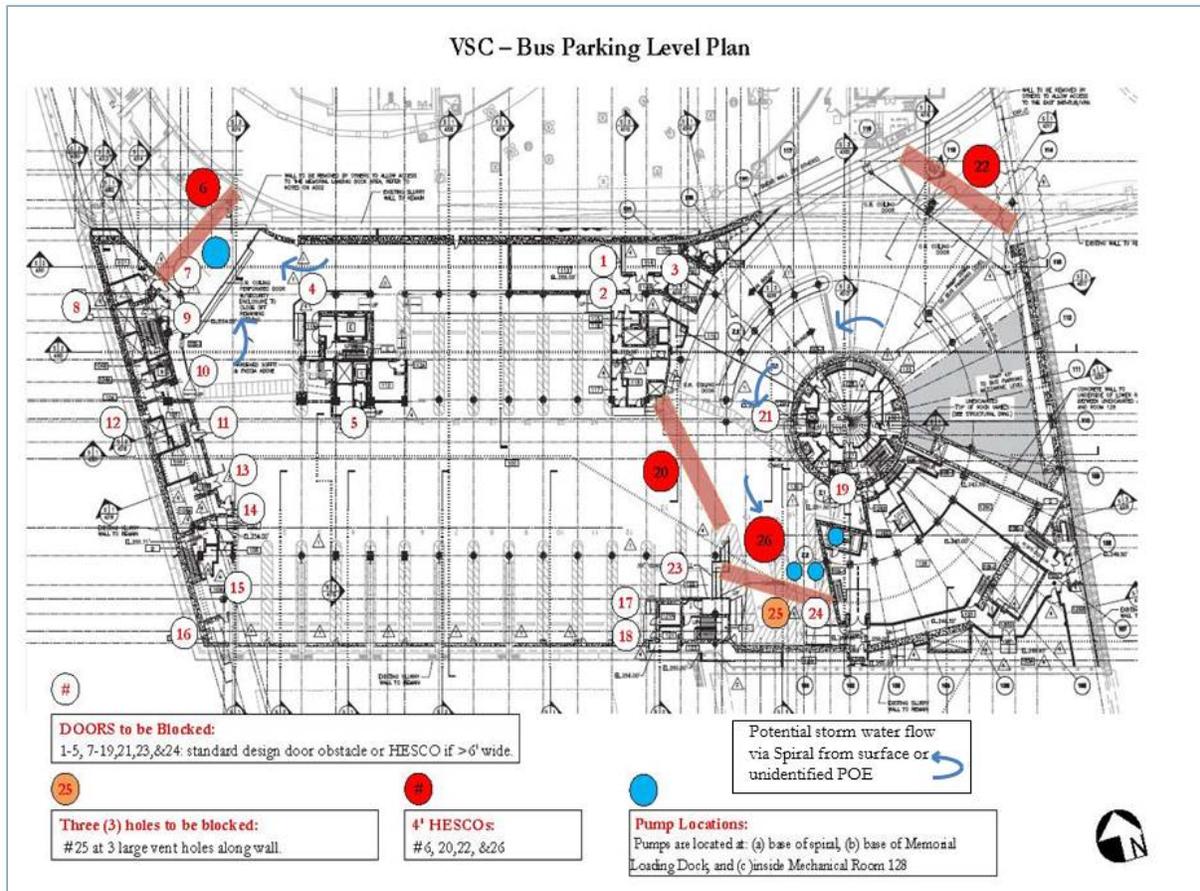


Figure D-1: Subgrade Barrier Plan for VSC, Bus Parking Level

- a. The schematic for the Bus Parking Level designates 19 door obstacles, 4 linear reservoir directing barriers, and 4 pump locations. The vast majority of the door obstacles are achievable using the standard lumber and sandbag barrier, except where noted in Table D-1 below where full height is called for (standard door barrier as shown in Figure C-4 in Appendix C). The linear barriers are currently designated as HESCO, however replacing these with AquaFence will drastically reduce the time, materials and effort associated with emplacing these critical barriers the week of a storm. Additionally, their removal requires a fraction of the effort needed to remove filled HESCO. The WTCC long term WIPS plan includes these same four linear barriers and recommends using AquaFence for them, so a procurement of AquaFence for these barriers for 2015 is also an investment in the longer term plan, in addition to making the 2015 far more feasible to implement in a 10 day sequence.

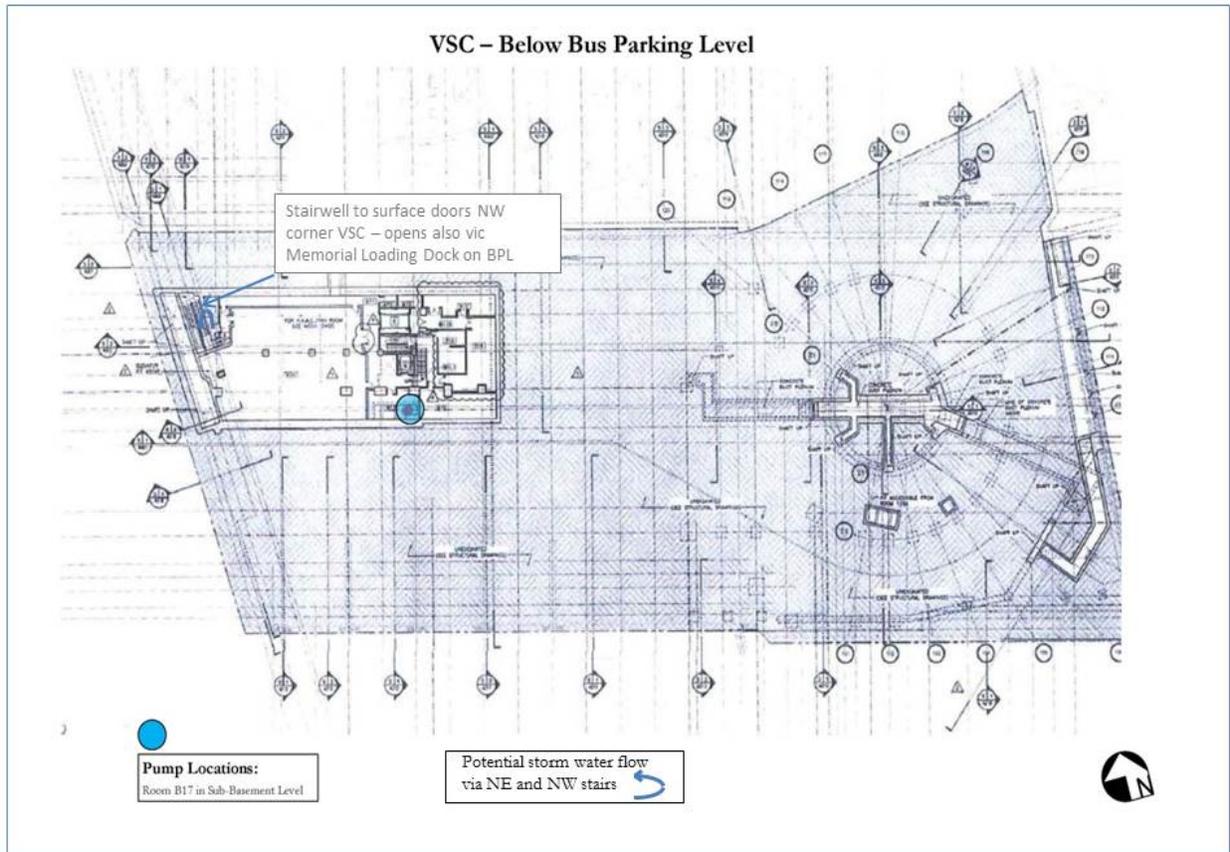


Figure D-2: Subgrade Barrier Plan for VSC, Sub-Basement Level

- b. The schematic for the VSC Sub-Basement Level indicates one pump in room B-17. See Tier 4 Appendix for details.
- c. Sub-Grade Barrier List for the VSC is shown in Table D-1 below. Five doors exceed 6' in width therefore require HESCO protection vice a standard lumber and sandbag barrier. The diagrams above show 4' HESCO, however given PA stocks on hand for 2015, the logistics plan and the table below direct the use of 3' HESCO. The VRN protection is also reduced to 3' as it serves only as a water diversion and not a reservoir containment. Overall door height is shown, and when WIPS is implemented, the protections will be full height. Given access limitations for HESCO emplacement, full height protection is not feasible for the 2015 temporary protection plan. This introduces some risk for 2015. A focused effort on a high quality Tier 1 and Tier 2 barrier emplacement at the surface is the best mitigation for this risk.

No.	Location	W (ft)	H(ft)	A(SF)	Material	Description	Quantity	Room #	Comments / Coordination
V1	BPL	8.7	8	69	HESCO - 3'	Door	3 cells 4' HESCO	114B	Protect to 3'
V2	BPL	5.7	8	45	Standard door design	Door	see std design	115	Protect to 3' 6"
V3	BPL	6.3	8	51	HESCO - 3'	Door	3 cells 4' HESCO	100	Protect to 3'
V4	BPL	8.7	8	69	HESCO - 3'	Door	3 cells 4' HESCO	111A	Protect to 3'
V5	BPL	5.7	8	45	Standard door design	Door	see std design	111	Protect to 3' 6"
V6	BPL	68.0	7	476	HESCO - 4'	Mem Load Dock Prot	5 ea 4' HESCO		Protect to 4'
V7	BPL	5.7	8	45	Standard door design	Door	see std design	101A	Protect to 3' 6"
V8	BPL	4.3	6	26	Standard door design	Door	see std design	102	Protect to 3' 6"
V9	BPL	6.3	8	51	HESCO - 3'	Door	3 cells 4' HESCO	103	Protect to 3'
V10	BPL	5.7	8	45	Standard door design	Door	see std design	104	Protect to 3' 6"
V11	BPL	5.7	8	45	Standard door design	Door	see std design	105A	Protect to 3' 6"
V12	BPL	4.3	6	26	Standard door design	Door	see std design	105	Protect to 3' 6"
V13	BPL	8.7	8	69	HESCO - 3'	Door	3 cells 4' HESCO	106B	Protect to 3'
V14	BPL	5.7	8	45	Standard door design	Door	see std design	106C	Protect to 3' 6"
V15	BPL	5.7	8	45	Standard door design	Door	see std design	109A-1	Protect to 3' 6"

V16	BPL	4.3	6	26	Standard door design	Door	see std design	109A-2	Protect to 3' 6"
V17	BPL	5.7	8	45	Standard door design	Door	see std design	121	Protect to 3' 6"
V18	BPL	5.7	8	45	Standard door design	Door	see std design	121A	Protect to 3' 6"
V19	BPL	3.0	7	21	Standard door design	Door	see std design	122	Protect to 3' 6"
V20	BPL	68.0	4	725	HESCO – 3'	BPL barrier	5 ea 4' HESCO		Protect to 3'
V21	BPL	5.7	8	45	Standard door design	Door	see std design	129	Protect to 3' 6"
V22	BPL	85.0	7	595	HESCO	VRN protection	6 ea 4' HESCO		Protect to 4'
V23	BPL	3.7	7	26	Standard door design	Door	see std design	122	Protect to 3' 6"
V24	BPL	6.0	7	42	Standard door design	Door	see std design	124A	Protect to 3' 6"
V25	BPL	3X3	N/A	N/A	Standard door design (modify for smaller openings)	Vent Openings	See std design		Protect 3 ea vent openings (plywood, plastic and sandbags)
V26	BPL	68	4	725	HESCO	Reservoir Wall	5 ea 4' HESCO		Protect to 4'

Table D-1: VSC Subgrade Barrier List

- d. Execution. The time, work force and equipment required to emplace the above barrier list will vary based on the degree of pre-positioning of sandbags and pre-configuring / pre-cutting of lumber for each door. HESCO, sandbag pallets, and pre-configured lumber packages should be stored in the VSC on the BPL. Sand for the HESCOs can be dumped at the BPL, and emplaced in HESCO baskets either by hand or with a Bobcat. Emergency workers must ensure that ventilation systems are functioning in order to use Bobcat loaders subgrade.
- e. Materials. As described in Appendix C, all HESCO placement requires plastic sheeting, foam tubes, spray foam, and sand. Sandbag and lumber door blocks require plastic sheeting, spray adhesive, spray foam, and fasteners (nails) for the lumber.

4. Tower 1. The subgrade requirements for T1 were last validated just prior to the 2014 season, as shown below in the following schematics for each level. Barriers range from 3' 6" high standard sandbag door barriers to 3' and 4' HESCOs. A limited number of locations call for full door or opening height protection. Early Action Plan efforts (the original name for the WIPS effort) are still under procurement, hence coordination with WTCC and / or Durst should be made to determine which subgrade door improvements are underway and when they will be installed, reducing the need for the barriers indicated below. A limited visit to the 1WTC subgrade conducted for this study did not find any of the EAP door barrier plans implemented. A more thorough evaluation may conclude that a reduced barrier effort is needed. Access to 1WTC to make a thorough assessment was not granted for this study, hence the 2014 barrier plan is re-proposed for 2015. Note that multiple naming conventions exist for the subgrade floors in 1WTC, and some references used for the 2015 plan may refer to either. The following table is a cross reference to avoid confusing floor levels when reviewing old and current drawings.

<b>Construction Floor Designation</b>		<b>Renamed Current User Floors</b>
<b>B1</b>	is now	<b>C1M</b>
<b>B2</b>	is now	<b>C1</b>
<b>B3</b>	is now	<b>C2</b>
<b>B4M</b>	is now	<b>C3</b>
<b>B4</b>	is now	<b>C4</b>

Table D-2: Floor Designation Cross Reference for 1WTC

- a. T1 C1M (B1) Level: The barrier scheme for C1M and levels down through C4 are twofold. First, any critical MEP room on each level must be protected from water infiltration. Secondly, for any storm surge water that bypasses Tier 1 and Tier 2 barriers at the surface, the intent is to channel water through the use of barriers and allow it to work down the two utility stairwells in the NE and NW corners of 1WTC in order to reach the lowest level. Potential flow paths are indicated by the blue arrows in the drawings. In the case of the NW stairwell, water will collect ultimately in the Bravo Zone pump room on C3. Emergency pumps are located in this room. For the NE stairwell, water will work down to the hallway on C4, and further to the storage room B4-032 (SE corner). These are indicated in the C3 and C4 drawings below.

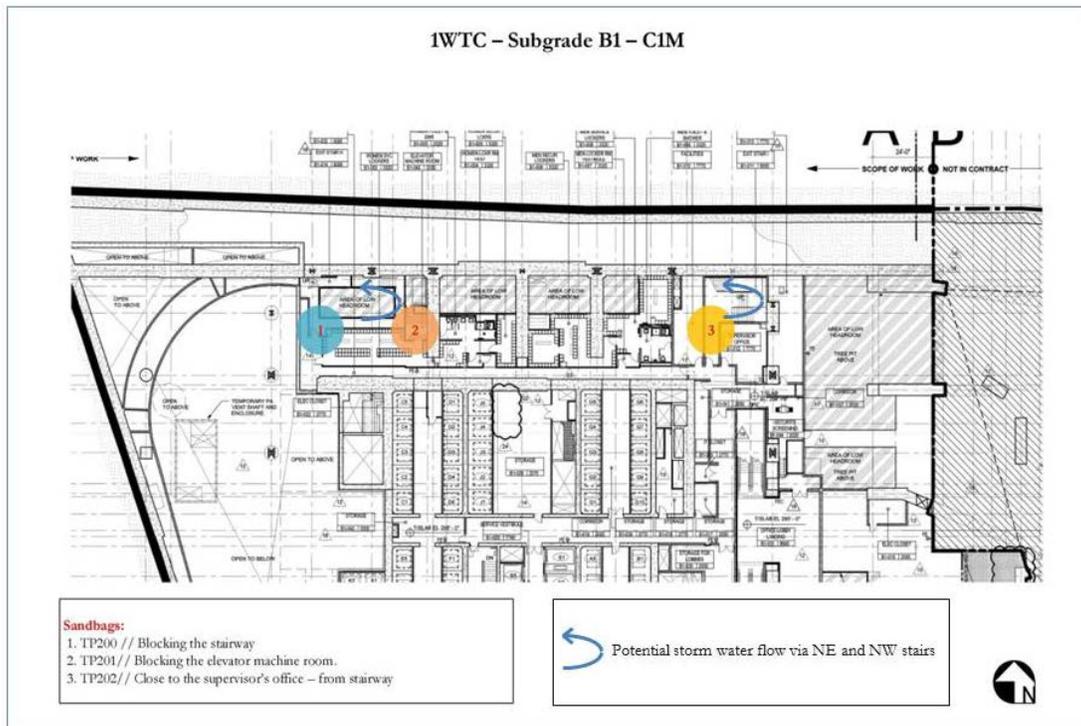


Figure D-3: Subgrade Barrier Plan for 1WTC, Floor C1M

- b. T1 C1 (B2) Level. This level has critical Splice Chamber protections, as well as carefully placed water routing barriers to channel water down to the next lower floor via the northern stairwells. The plan for this floor consists of seven different HESCO placements. Six use 3' HESCO, and one is 4' HESCO. Lengths vary from 2-3 individual baskets to 15' sections. Access to this area for detailed measurements was not possible for this study, so rough estimates are used in the T1 materials table below. WTCR should coordinate with Durst to validate both locations and lengths of proposed protections and water routing to implement the general scheme described above. WTCR may also consider the use of materials other than HESCO, given the time and materials intensive nature of this system for subgrade use.

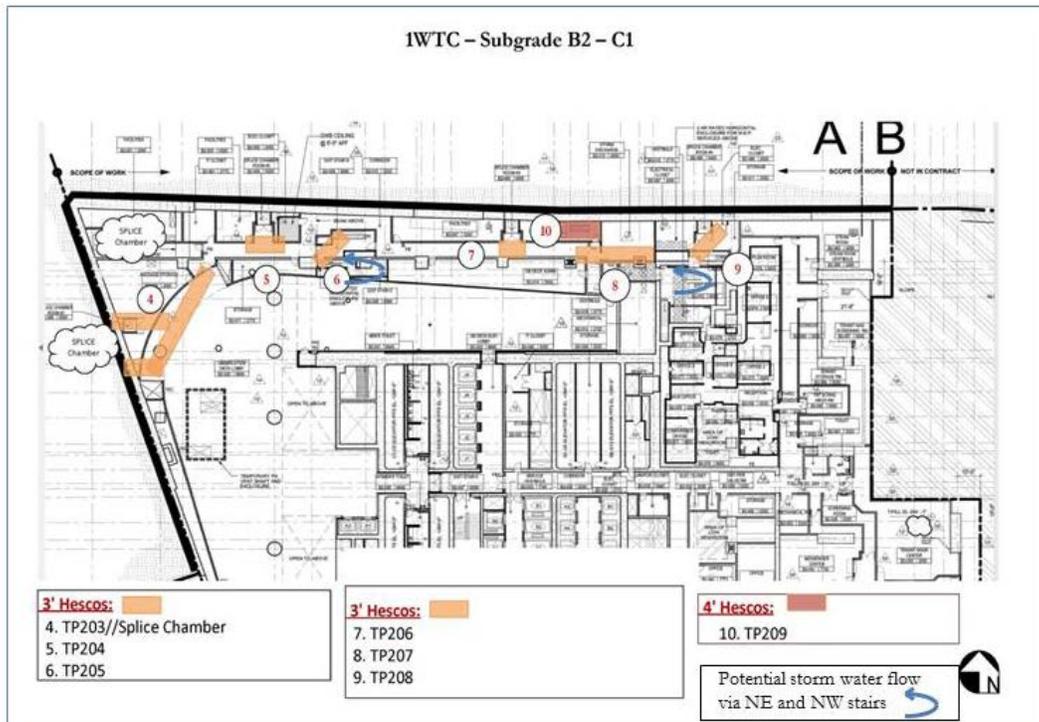


Figure D-4: Subgrade Barrier Plan for 1WTC, Floor C1

- c. T1 C2 (B3) Level. Primary purpose of HESCO barriers is to keep water away from the building central core with critical MEP equipment, and channeled to emergency pump locations. Two additional HESCO barriers in the central corridor (#14 and #15) are safeguards for the central core from the east and west. The protection consists of five each 3' HESCO barriers of various lengths. Exact placement and lengths to be coordinated with Durst.

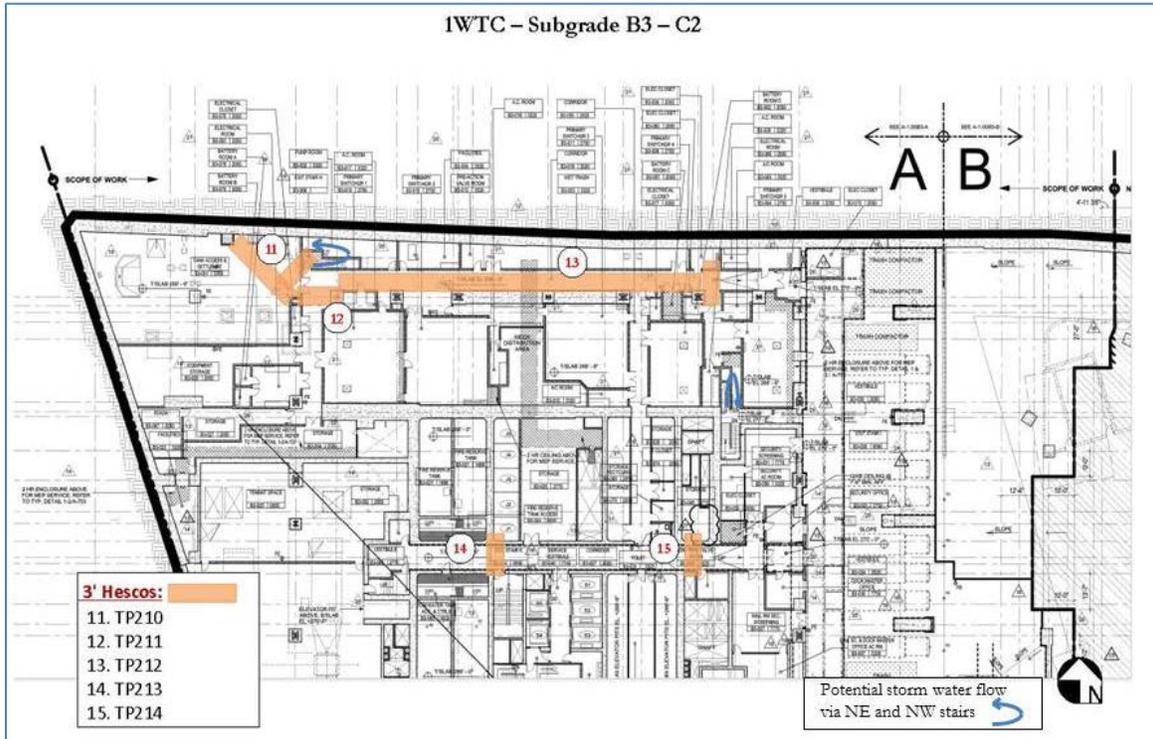


Figure D-5: Subgrade Barrier Plan for 1WTC, Floor C2

- d. T1 C3 (B4M) Level: On this level only three rooms require direct protection, and shown in the diagram below, with three each 3' HESCO. The northwest stairwell drops into the Bravo Zone pump area on this level, C3-001, and this room serves as the T1 reservoir in the northwest corner. Note that two large pumps are located in the area. Also in the Bravo Zone is a full height barrier to keep water that collects in the pump room from pouring out into the PATH track area (Obstacle #16). This can be accomplished with layered HESCO, or some other more efficient and easier to emplace method. The obstacle is intended to keep water in the Bravo Zone, and away from PATH. The emergency pumps in the Bravo Zone will be cycled to keep reservoir levels low enough as to minimize damage to the MEP in that room. It is anticipated that some MEP damage may occur in the room due to its use as a reservoir, as there is some mechanical pump equipment mounted on the floor.

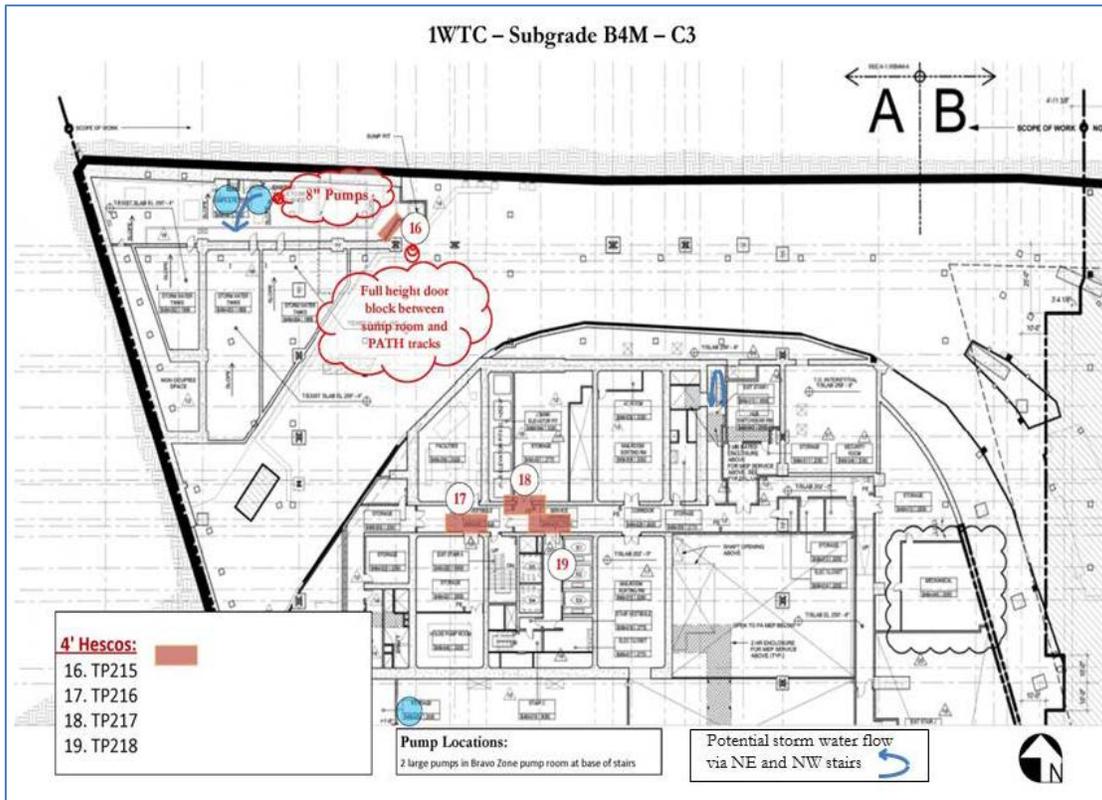


Figure D-6: Subgrade Barrier Plan for 1WTC, Floor C3

- e. T1 C4 (B4) Level: The protections on this level are especially important as they protect critical MEP from the waters that may collect on this level as the T1 southeast reservoir. The lowest area is Room C4-032, and those doors should be removed or left open during a storm event to facilitate waters collecting there. The primary large pumps are placed in this room. Additional pumps are placed in the sump pit rooms, in case the existing house pumps fail to get power or get overwhelmed (all the building's floor drains end in these sumps). Another is placed in the Fuel Cell Room, with hose over to the Sump room, in the event that water somehow enters this level from the Central Chiller Plant (in 2013 there was an opening between the two – this may have been since closed but we were unable to confirm for this study). The HESCO barriers on this floor should be full door or opening height in protecting the specified doors since this level is the reservoir level, and the corridor that circles C4 is part of the reservoir.

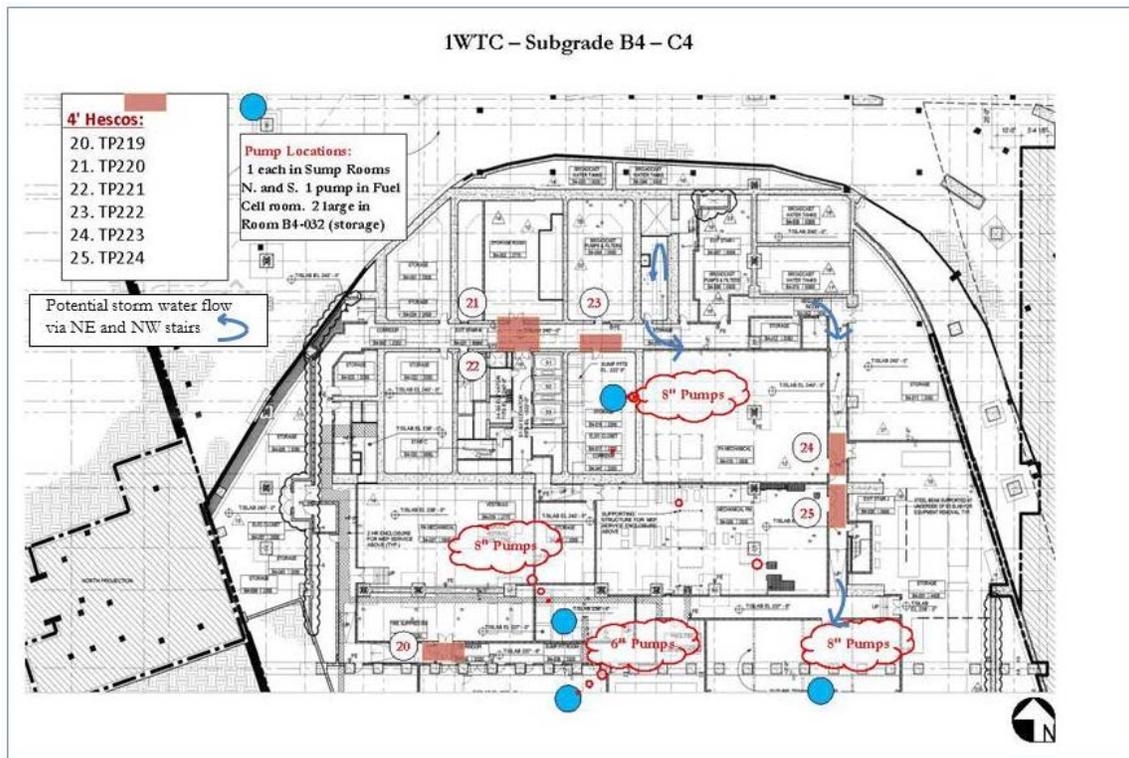


Figure D-7: Subgrade Barrier Plan for 1WTC, Floor C4

g. Sub-Grade Barrier List for 1WTC is shown in Table D-3 below. The protection heights in the figures above and the table below follow prior year plan requirements, when failure of the Tier 1 and 2 protections, as well as cross building inundation, was a larger concern. If no implementation of longer term barrier solutions is anticipated for the 2015 season, the locations in the above diagrams should be revisited for execution by the responsible contractor, and materials requirements revalidated and ordered. It is very probably that barriers on floors C1 through C3 can be reduced to 2' HESCO or equivalent. The barriers on C4 should remain 4' high minimum as that area forms the reservoir. Barrier TP215 must be full height.

### 1WTC Subgrade Storm Mitigation Plans

Obstacle Number	Constr.	Floor	Material	Description	Quantity	Executed By	Materials Stored	Ref.	Comments / Coordination
TP200	B1	C1M	Sandbags	standard 3' high sandbag design				1	
TP201	B1	C1M	Sandbags	standard 3' high sandbag design				2	
TP202	B1	C1M	Sandbags	standard 3' high sandbag design				3	
TP203	B2	C1	3' HESCO	Length to be field determined				4	
TP204	B2	C1	3' HESCO	Length to be field determined				5	
TP205	B2	C1	3' HESCO	Length to be field determined				6	
TP206	B2	C1	3' HESCO	Length to be field determined				7	
TP207	B2	C1	3' HESCO	Length to be field determined				8	
TP208	B2	C1	3' HESCO	Length to be field determined				9	
TP210	B3	C2	4' HESCO	Length to be field determined				10	
TP211	B3	C2	3' HESCO	Length to be field determined				11	
TP212	B3	C2	3' HESCO	Length to be field determined				12	
TP213	B3	C2	3' HESCO	Length to be field determined				13	
TP214	B3	C2	3' HESCO	Length to be field determined				14	
TP215	B4M	C3	4'	Full height door block required				15	

			HESCO					
TP216	B4M	C3	4' HESCO	Length to be field determined				16
TP217	B4M	C3	4' HESCO	Length to be field determined				17
TP218	B4M	C3	4' HESCO	Length to be field determined				18
TP219	B4M	C3	4' HESCO	Length to be field determined				19
TP220	B4	C4	4' HESCO	Length to be field determined				20
TP221	B4	C4	4' HESCO	Length to be field determined				21
TP222	B4	C4	4' HESCO	Length to be field determined				22
TP223	B4	C4	4' HESCO	Length to be field determined				23
TP224	B4	C4	4' HESCO	Length to be field determined				24

Table D-3: 1WTC Subgrade Barrier List

5. HUB. Subgrade barrier plans for the HUB were revalidated for 2015 by the WTCC HUB Project Team. They consist of a mix of standard door barriers, sandbags, and 2' HESCO Barriers.
  - a. HUB Area – Power Distribution Center (PDC) Rooms north of Central Fan Plant: This is the area just north of the Central Fan Plant, accessible up the ramp at the north end of the plant. These rooms have several openings to areas that may witness flood waters cascading down to the Central Fan Plant, which is the primary WTC reservoir area for the whole site. It is not anticipated that these flows will be of significant height, so the use of 2' HESCO as protection is deemed sufficient. This area sits just below the temporary PATH entrance, and just east of the large open pit area that will become the Performing Arts Center. That area will remain an open construction area through all of 2015, and has multiple, unidentifiable potential Points of Entry into the general PDC area. This is an area that is frequently wet during heavy rains. Small pumps are also distributed in these rooms, with any infiltrated water pumped back out and towards the reservoir.

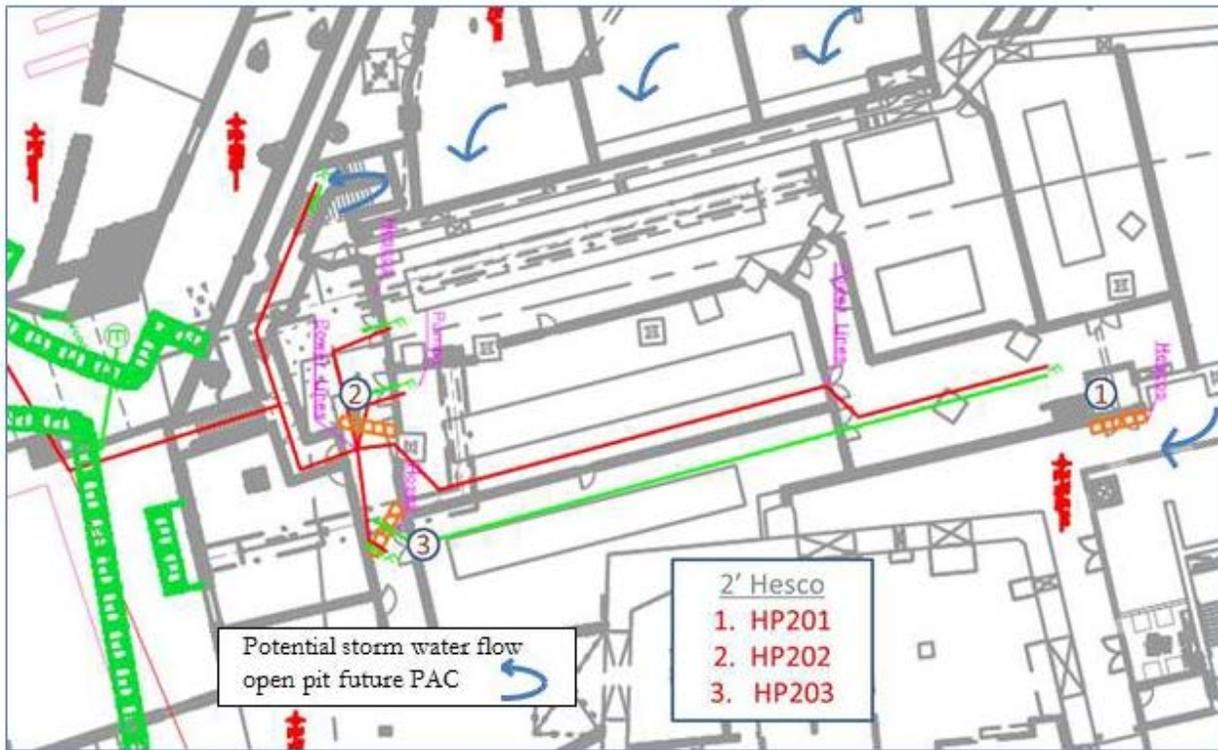


Figure D-8: Subgrade Barrier Plan for North HUB / Central Fan Plant

- b. HUB Area – MEP rooms south of CFP: These barriers protect one MEP room, two plenum openings, one small stairwell, and the opening between the T2-T3 parking area and the CFP.

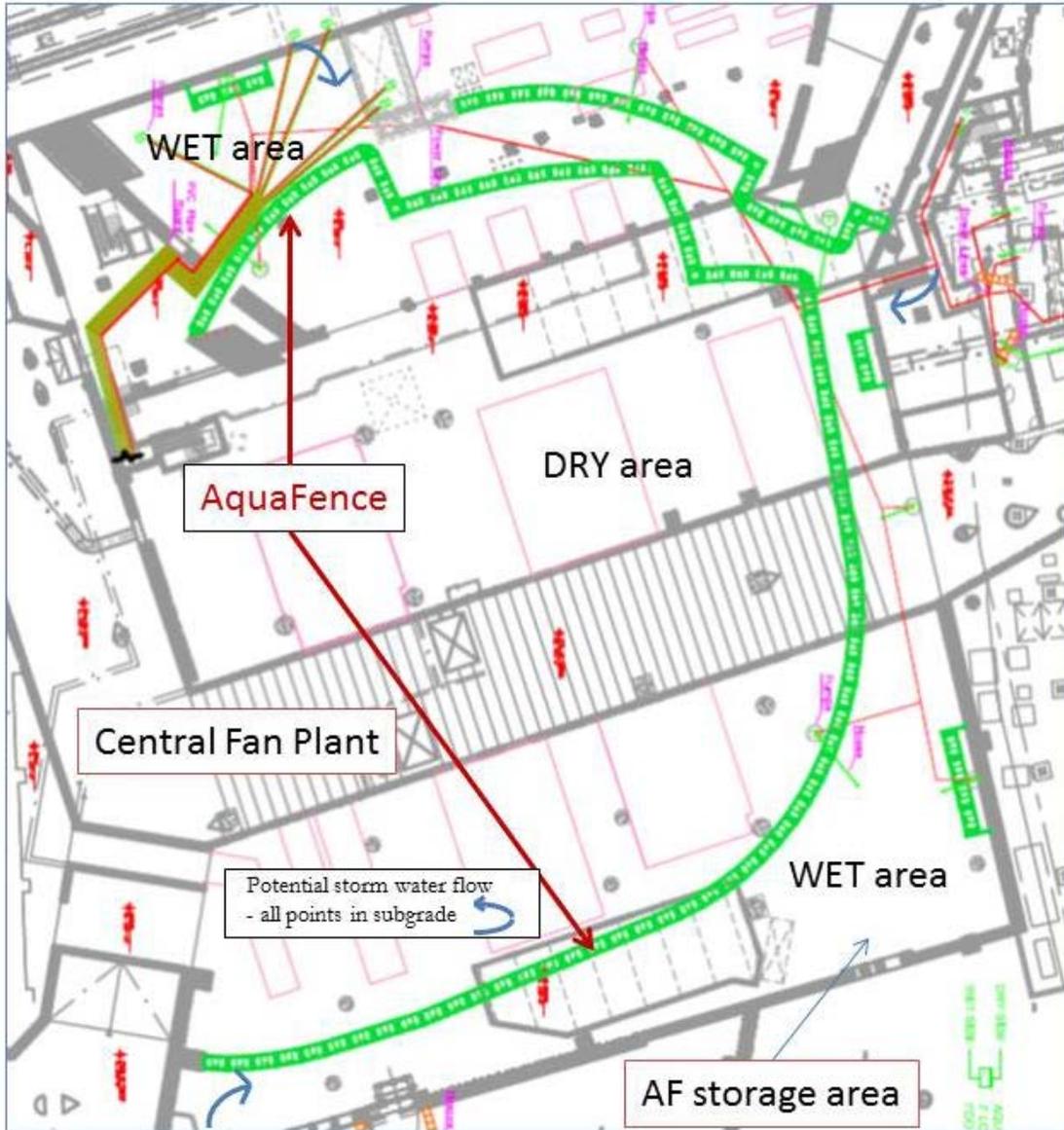


Figure D-9: Subgrade Barrier Plan for South HUB / Central Fan Plant

c. Sub-Grade Barrier List for the HUB is shown in Table D-4 below.

Hub Subgrade Storm Mitigation Plans								
Obstacle Number	Location	Material	Description	Quantity	Executed By	Materials Stored	Drawing Reference	Comments / Coordination
HP201	PDC North	2' HESCO	Entry Stair T2	One 2x2x10 unit (10' long)			1	
HP202	PDC North	2' HESCO	Floor vic PDC	One 2x2x10 unit (10' long)			2	
HP203	PDC North	2' HESCO	Floor vic PDC	One 2x2x10 unit (10' long)			3	
HP204	CFP South	2' HESCO	MEP room	One 2x2x10 unit (10' long)			4	
HP205	CFP Plenum	2' HESCO	Plenum	3 each 2x2x10 units (30' long)			5	
HP206	CFP Plenum	2' HESCO	Plenum	4 each 2x2x10 units (40' long)			6	
HP207	Top stairs T3	2' HESCO	Stair opening	One 2x2x10 unit (10' long)			7	
HP208	Opening to CFP T3	2' HESCO	old ramp access CFP	4 each 2x2x10 units (40' long)			8	

Table D-4: Barrier Plan for HUB

6. Once validated by WTCR planners and the executing contractor, the subgrade barrier requirements can be assembled into a consolidated execution matrix, with execution responsibilities and timelines determined for the overall time sequenced plan.

# Appendix E

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## **Reservoir, Pump and Generator Plan (Tier 4)**

The final line of defense for storm surge waters that may pass the Tier 1, 2, and 3 protections is to collect the water in the least harm producing areas in the WTC subgrade, and then pump them back to the surface. There are several key elements to this approach:

1. The identification and preparation of reservoir areas in each region of the site where water will naturally flow due to open paths or openings between floor levels due to gravity.
2. The locating and installation of controlled pumps with dedicated emergency power, individually controlled, to keep reservoir water levels within the defined containment area.
3. The routing of discharge hoses from pump locations to the surface, and then beyond the outer perimeter of the Tier 1 protections to dump back into the storm surge.

The subgrade Tier 3 Appendix already presented the need to both protect critical MEP rooms, and use barriers to channel water to locations that facilitate the ultimate flow to these designated reservoir locations. Barriers that simply block water flow like miniature dams throughout the facility will do more harm than good, as they will create localized ponds, like beavers on a stream, and damage all locations subsequently inundated. The “channeling” concept is critical to embrace – assume some quantities of water will make it past the first three tiers – and work with gravity and using barrier materials, help the water find the path we want it to take.

There are four major and one minor designated reservoir areas:

- Central Fan Plant
- 1WTC Bravo Zone
- 1WTC Southeast Rooms and Corridor
- VSC Base of Spiral
- Central Chiller Plant Utility Trench (minor)

See Figure E-1 below for location references.

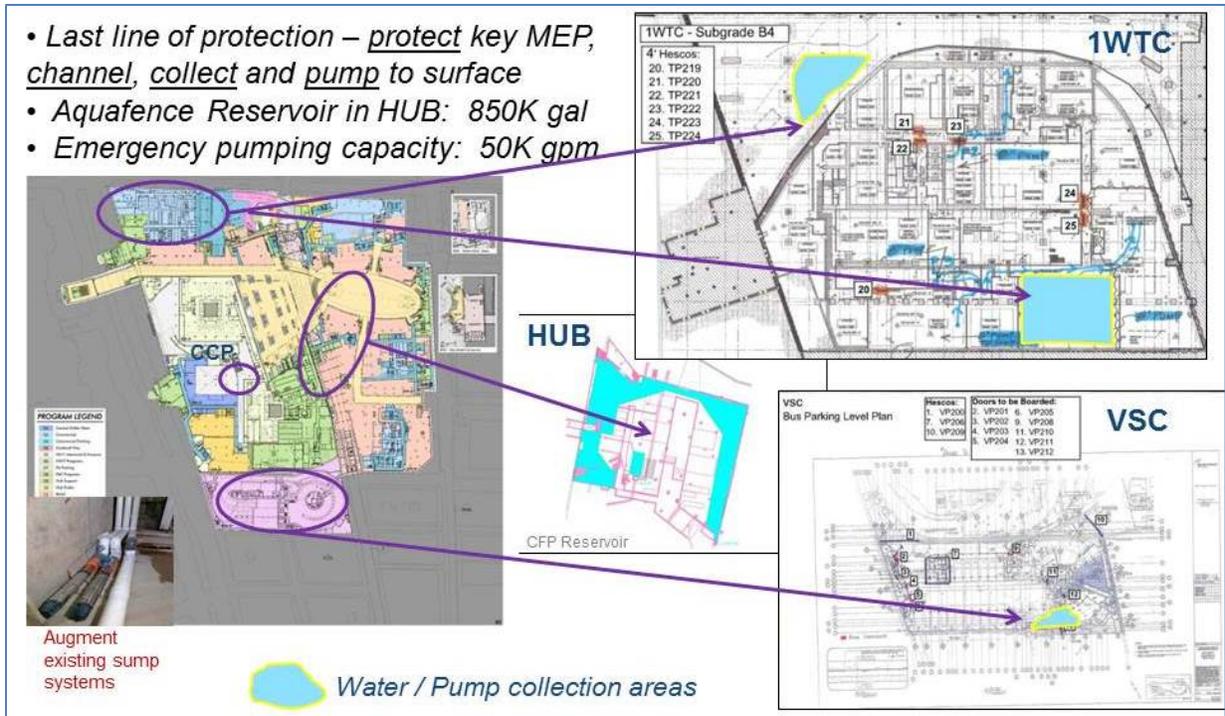


Figure E-1: WTCR Reservoirs for Storm Mitigation Plan

- A. Central Fan Plant Reservoir. This is the largest, and lowest elevation area in the WTC complex where water may accumulate. The reservoir is constructed by emplacing 4' high AquaFence in a snaking pattern in and around the installed Air Handling Units.
- a. Reservoir Details. The reservoir (wet) area is the space between the U-shaped laydown and the exterior walls of the CFP (see figure above). Additional protections are placed for MEP along the external wall where needed. The emplacement is to be accomplished by a trades contractor TBD by WTCR. AquaFence (AF) panels are stored in the CFP, and can be erected by a trained crew of 8-10 workers in approximately 12 hours. Recent changes in the CFP footprint due to the addition of mechanical plant will require a new AF layout plan that can only be adequately established with a physical layout. This may be accomplished in sections at a time as to not entirely shut down CFP operations. The new layout will also require the additional acquisition of specialty end units for connecting AF panels to the fixed walls. Figure E-1 below shows the planned AF layout, as verified by the WTCC HUB Project Team for the 2015 season. This plan, however, must still be floor tested to ensure all AF panels mesh and can make the turns around fixed equipment while maintaining water tightness, as well as for identifying additional specialty items required. AquaFence is capable of manufacturing on short notice any specialty pieces needed to accommodate routing the reservoir fence around equipment. Additionally, workers must cover any floor drains on the wet side of the reservoir panels to keep water from crossing into the protected area via the drains. **Important Note:** there is an underground air tunnel that connects the Utility Trench to an Air Handling Unit in the center of the CFP. This tunnel must be blocked to keep rising reservoir water from coming up through AHU and into the protected area. Alternatively, the one AHU that connects to the tunnel can be boxed in with AquaFence, limited water damage to this one AHU (this is the blue box depicted inside the CFP area in the

figure above). The HUB Project Team is aware of this situation and is exploring longer term solutions to this exposure. AquaFence panels are stored inside the CFP area along the western wall. Coordination with WTCC HUB Project Team is needed to schedule access and rehearsals.

- b. Central Fan Plant Pump Plan. The precise pump locations for the 2015 season must be determined by a qualified pumping contractor, TBD by WTCR, as the contractor must determine the feasibility of pump placement, electrical wire routing, and egress hose routing. For the 2013 and 2014 seasons, the primary pump location was the Utility Trench on the west edge of the fan plant, and as this is the lowest area in the created reservoir, this is where the majority of pumping capacity should be placed for 2015 and beyond. Figure E-2 below shows the 2014 electric and hose plan (brown and red lines). Given new construction since 2014 (installation of temporary chiller lines from the Central Chiller Plant) access to the Utility Trench is limited, hence the need for a pumping contractor assessment to find new locations. A longer term solution suggested during the site visit by the HUB team is to excavate through the CFP floor to the air plenum below (the one that connects the utility trench to the AHU) and permanently install the emergency pumps there. The prior pump plan included:
- i. 6 each 75hp pumps in the main utility tunnel (exposed one visible from floor)
  - ii. 3 each 75hp pumps in the adjacent utility tunnel (behind the sump pump area)
  - iii. 3 each 75 hp pumps in the pit below the utility tunnel (the small air plenum below the CFP floor)
  - iv. 6 each 15hp pumps to be placed in the smaller protected sections of MEP along the walls of the overall CFP created by the AquaFence routing
  - v. 10 each 1hp pumps to place behind the 2' HESCO PDC protections north of the CFP and with the barrier HP204 MEP rooms shown in Fig D-9 and Table D-4 in Appendix D.

Picture E-1: Pumps set up for the storm season in the Utility Trench of the Central Fan Plant. PVC pipes were custom installed to place hose linkages in more rapidly assessible locations to save time during full mobilization. Note electrical cabling is pre-rigged but not live, pending full set up.



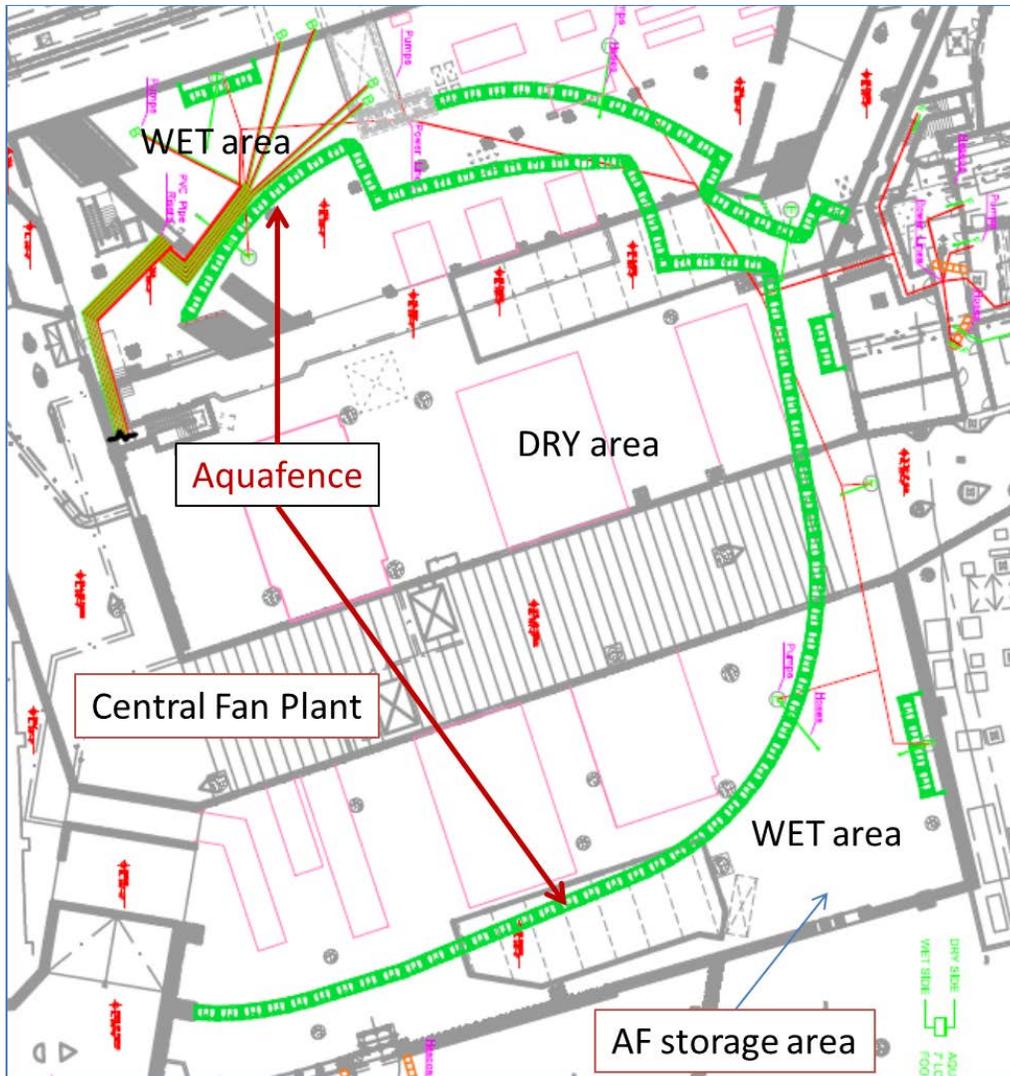


Figure E-2: AquaFence Placement to Create Reservoir in Central Fan Plant (depicted in green)

- B. 1WTC Bravo Zone Reservoir. Water is channeled from all possible sources on upper floors to the NW utility stairwell, and further to the ladder opening to the Bravo Zone Tank Room, C3-001.
  - a. Reservoir Details. The reservoir is contained by the room’s walls, with the exception of a door opening to the PATH track area. This door must be fully blocked to prevent waters that collect in this area from spilling out into the PATH track area, and potentially into the Central Fan Plant that is a level below, be it across all five tracks. This door barrier is included in the sub-grade protection plan.
  - b. Pump Plan. 2 each 75hp pumps are currently in place, but not fully installed, in the Bravo Zone. Coordination with Durst, as well as a qualified pumping contractor, is needed to determine pump serviceability status and to develop a hose and wiring plan given the additional building finishing that has occurred since the 2014 season. See Figure D-6 in Appendix 6 for the location

of these pumps.

- C. 1WTC Southeast Rooms and Corridor. Bypass water that enters 1WTC from the north and north east areas are channeled down the NE utility stairways to the open corridor that rings the C4 level. Given the elevation changes in that corridor, water will flow to the SE corner of the floor, with the lowest location being Storage Room C4-032.
- a. Reservoir Details. The primary reservoir and pump location is room C4-032, although additional pumps are placed as precautions in several other areas, as described below. The reservoir is contained by the room's walls, and if water rises above the level of this room, it will expand into the C4 level corridor ring.
  - b. Pump Plan. 2 each 75hp pumps are currently in place, but not fully installed, in room C4-032. Additional pumps are placed in the sump pit rooms, in case the existing house pumps fail to get power or get overwhelmed (all the building's floor drains end in these sumps). Another is placed in the Fuel Cell Room, with hose over to the Sump room, in the event that water somehow enters this level from the Central Chiller Plant (in 2013 there was an opening between the two – this may have been since closed but we were unable to confirm for this study), and another in a MEP room. See Figure D-7 in Appendix 6 for the location of these pumps, all of which are reportedly in place. Coordination with Durst, as well as a qualified pumping contractor, is needed to determine pump serviceability status and to develop a hose and wiring plan given the additional building finishing that has occurred since the 2014 season.
    - i. 2 each 75hp pumps room C4-032 (primary reservoir location)
    - ii. 1 each 15 hp pump in room C4-034 (Fuel Oil Tank Rooms)
    - iii. 1 each 15 hp pump in room C4-027 (Retail Mech Rm)
    - iv. 1 each 15hp pump in room C4-016 (sump)
    - v. 1 each 15hp pump in room C4-039 (sump)
    - vi. 8 each 8" hose reels stored in room C4-016
    - vii. 3 each 4" hose reels stored in room C4-016
- D. VSC Base of Spiral. With the exception of several small mechanical rooms, the Bus Parking Level is the lowest location in the VSC. The site selected for the VSC reservoir is the base of the road spiral, and is constructed with either HESCO barrier or AquaFence (if WTCR decides to invest in additional AF for this purpose) by boxing in the lower area of the ramp (barrier wall to wall), and an additional barrier between the spiral base area and the parking bay area that leads to the Memorial Loading Dock.
- a. Reservoir Details. The water containment area is formed on three sides by the HESCO barrier, and the wall that extends up to the inner wall of the spiral, and the base of the platform that leads to the Room 122 area. This platform is connected to with an additional HESCO wall that cuts across the BPL floor and ties into the outer spiral wall. This barrier doubles as a channeling device for water coming down the spiral, and the lower portion will also serve as a reservoir wall if waters raise high enough. Three vent openings at ground level in the wall, and the door to the lower area MEP rooms, 124A, at the base of the spiral must be additionally protected, in addition to the reservoir wall, to ensure protection in the event the reservoir wall seeps significantly. These protections are included in Appendix D. See figure D-1, and Barriers 20

and 26 for primary reservoir shaping, and 24 and 25 for the adjacent door and vent openings to protect. For consideration, the use of HESCO barrier for forming the reservoir walls this far subgrade, while feasible, is hardly practical. The logistics to include sand, heavy equipment, etc., as well as the time it will take to erect them, lend towards using AquaFence instead. There is no additional in-stock AF for this purpose at WTC, hence a new procurement would be required, in roughly the same lengths as designated for the HESCOs. A site visit by the AF representative is recommended to ensure the appropriate end connectors are identified and purchased.

- b. Pump Plan. The pumps for this reservoir consists of two large pumps placed just inside the reservoir lower barrier at the base of the spiral. Additional pumps are placed in several other locations as extra protection, to include in the western MEP room in the level below the BPL, accessible via Stair A. The pump in the vicinity of the Memorial Loading Dock is placed just inside the long barrier at that location. This is an area that routinely floods during heavy rains, and would likely do so during a hurricane event. It also serves as a backup reservoir should waters unexpectedly find ways to this end of the BPL other than via the spiral. None of these pumps are currently placed, and need to be reinstalled from the stocks at JFK in storage. Coordination with a qualified pumping contractor is needed to determine pump serviceability status and to develop a hose and wiring plan given the additional building finishing that has occurred since the 2014 season.
  - i. 2 each 75hp pumps at base of VSC spiral (primary reservoir pumps)
  - ii. 1 each 75hp pump in west VSC MEP Room below BPL Level
  - iii. 1 each 75hp pump vic Memorial Loading Dock
  - iv. 1 each 15hp pump in sump area, room 126A (to augment in house sump pumps)
- E. Central Chiller Plant (CCP). While all the top side stairwells directly above the CCP are above the flood protection level, there are stairs on the south end of the Plaza, and other areas where flood waters could access this part of the complex and bring water to the CCP. The utility trench in the bottom of the CCP (the same trench that will eventually connect to the utility trench in the CFP once construction is completed) is the lowest area and serves as the reservoir for this area of the building. One each 15hp is currently located in the CCP utility trench, but requires wiring and hosing to be functional.
- F. Trash Pumps. PA owns 4 each 6" diesel powered mobile trash pumps for use on the surface, or anywhere an unanticipated pumping requirement arises. The surface placed Tier 1 barrier protections, be they BPS, AquaFence, or HESCO, will have some leakage. Also, given they are placed in the lower elevation areas of the site, any surface runoff from heavy rains will build up on the dry side of the barriers. In previous years two trash pumps were planned for T1 and two for VSC. Recommended locations for 2015 include one pump on the sidewalk inside the BPS at the NW corner of T1, one on Liberty Street just inside (dry side) of Barrier #12 near the NW corner of the VSC, one pump on Liberty Street just inside (dry side) of Barrier #21 near the NE corner of the VSC, and the last pump inside Site 5 vicinity where Barrier #2 connects to the VSC (dry side). Additional fuel in five gallon cans should be positioned with these pumps as due to their locations they will not likely be accessible by fuel trucks.
- G. Emergency Power Generators. It is assumed that there may be grid power interruptions in the event of a major hurricane, so standalone emergency power generation is required to power the reservoir pumps.

PA owns three power distribution trailers that are stored at JFK. They are designed to individually control the pump arrays in the HUB (CFP), VSC and 1WTC. The pump plan power feed line assessment to be conducted by the selected pumping contractor will dictate where to position the distribution trailers, and also the emergency generator sets. In prior years the Generator sets were leased for the storm season and stored on PA property in New Jersey. For 2014 the pumping plan required 4.75MW of emergency power as follows:

1WTC	1 ea 2MW plus Distro Trailer
HUB (CFP)	1 ea 1MW plus Distro Trailer
VSC	1 ea 1MW plus Distro Trailer
CCP	1 ea 150KW
Spare	1 ea 600KW

**ATTACHMENT A  
FEDERAL TRANSIT ADMINISTRATION  
CONTRACT PROVISIONS**

**Contents**

ATTACHMENT A.....	1
FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS .....	1
1. DEFINITIONS .....	3
2. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS .....	3
3. FEDERAL CHANGES .....	4
4. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES .....	4
5. ORGANIZATIONAL CONFLICT OF INTEREST.....	5
6. LOBBYING .....	6
7. CIVIL RIGHTS REQUIREMENT .....	6
8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS .....	7
9. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS .....	8
10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT .....	14
11. VETERANS EMPLOYMENT.....	15
12. SEISMIC SAFETY .....	16
13. ENERGY CONSERVATION.....	16
14. CLEAN WATER REQUIREMENTS.....	16
15. CLEAN AIR REQUIREMENTS .....	17
16. FLY AMERICA .....	17
17. RECYCLED PRODUCTS .....	17
18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS 18	
19. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS.....	18
20. ADA ACCESS REQUIREMENTS .....	20
21. BUY AMERICA .....	20
22. TERMINATION FOR CAUSE OR CONVENIENCE.....	20
23. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION.....	21
24. NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE.....	22
25. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).....	23
26. ACCESS TO RECORDS AND REPORTS .....	23
CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352.....	24
STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES .....	26
INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES .....	27
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND	

VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS.....28  
BY SIGNATURE OF AUTHORIZED OFFICIAL .....28  
INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED  
TRANSACTIONS.....29  
END OF FTA CONTRACT PROVISIONS .....29

## **1. DEFINITIONS**

“Agreement” shall mean “Contract”. This Agreement is anticipated to be funded in whole or in part by the United States Department of Transportation’s Federal Transit Administration (FTA).

“Construction” shall mean Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, Construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

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

“Micro-Purchase” shall mean a purchase of \$3,500 or less and is exempt from FTA’s Buy America requirements but is subject to Davis-Bacon prevailing wage requirements such that even though the Port Authority uses micro-purchase procurement procedures, prevailing wage requirements apply to Construction contracts exceeding \$2,000.

“PATH” shall mean the Port Authority Trans-Hudson Corporation.

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

“Recipient” shall mean a Recipient of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts).

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

This section applies to all contracts except Micro-Purchases.

The following provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (DOT), whether or not expressly set forth in the following contract provisions. All contractual provisions required by DOT, as set forth in the FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms 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.

The Contractor shall include the above clause in every subcontract financed in whole or in part

with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

Each and every provision required by the FTA to be inserted in this Contract shall be deemed to be inserted herein, including but not limited to Title 2 of the Code of Federal Regulations, Part 200 (“2 CFR 200”), as it may be applicable 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.

### **3. FEDERAL CHANGES**

This section applies to all contracts except Micro-Purchases.

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 in the Master Agreement between the Authority and the FTA, 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 shall apply to this Contract at any particular time, unless the FTA issues a written determination otherwise. All standards or limits within this document are minimum requirements, unless modified by the FTA or any subagency thereof. The requirements of this section shall apply to each applicable changed requirement.

The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

### **4. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

This section applies to all contracts except Micro-Purchases.

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.

## 5. ORGANIZATIONAL CONFLICT OF INTEREST

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 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.

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.

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.

## 6. LOBBYING

This section applies to Construction/architectural and engineering/acquisition of rolling stock/professional service contracts/operational service contracts/turnkey contracts; and does not apply to Micro-Purchases

Byrd Anti-Lobbying Amendment, 31 USC 1352 as amended by the Lobbying Disclosure Act of 1995 —“Byrd Anti-Lobbying Amendment” (31 U.S.C. 1352) — Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, ‘‘New Restrictions on Lobbying’’ and 2 CFR 200, Appendix II (J). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

## 7. CIVIL RIGHTS REQUIREMENT

This section applies to all contracts except Micro-Purchases.

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.

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 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.

The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

## **8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

This section applies to contracts involving equipment, materials or commodities, which may be transported by ocean vessels. These requirements do not apply to Micro-Purchases, except for Construction contracts over \$2,000).

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

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.

To furnish within twenty (20) working 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 (A) above to the FTA Administrator and grantee (through the 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.

The Contractor agrees 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.

## **9. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

This section applies to Construction contracts and subcontracts exceeding \$2,000.

- (a) 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), and 2 CFR 200, Appendix II (D). '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 \$2,000.

(1) *Minimum wages.* (i) 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 is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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)(1)(iv) 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 §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 classification and wage rates conformed under paragraph (a)(1)(ii) 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.

(ii)(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:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) 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, 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)(1)(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.

(iii) 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.

(iv) 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.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) 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 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 (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 until such violations have ceased.

(3) *Payrolls and basic records.* (i) 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(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:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the 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;

(3) 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 (a)(3)(ii)(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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) 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.

(4) *Apprentices and trainees*—(i) *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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) *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.

(iii) *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.

(5) *Compliance with Copeland Act requirements*. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *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 (write in the name of the Federal agency) 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.

(7) *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.

(8) *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.

(9) *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.

(10) *Certification of eligibility.* (i) 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).

(ii) 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).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

This section 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), and 2 CFR 200, Appendix II (E) 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.

### **i. 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.

ii. 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.

iii. 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.

iv. 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. The FTA does not require the inclusion of these requirements in subcontracts.

## **11. VETERANS EMPLOYMENT**

Contractors working on a capital project funded using FTA assistance agree 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.

## **12. SEISMIC SAFETY**

Applies only to the Construction of new buildings or additions to existing buildings. These requirements do not apply to Micro-Purchases except for Construction contracts over \$2,000).

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.

## **13. ENERGY CONSERVATION**

This section applies to all contracts except Micro-Purchases.

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, and 2 CFR 200, Appendix II (H). 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 shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

## **14. CLEAN WATER REQUIREMENTS**

This section applies to each contract and subcontract which exceeds \$150,000.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, For contracts and subgrants in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C §7401-767 and the Federal Water 33 USC §1251-1387. 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.

The Contractor shall include the above clause in every subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA and shall ensure that

such provisions will be binding upon each subcontractor of any tier.

## **15. CLEAN AIR REQUIREMENTS**

This section applies to all contracts over \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). 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.

The Contractor shall include the above clause in every subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

## **16. FLY AMERICA**

This section applies to certain contracts involving international transportation of persons or property, by air when the FTA will participate in the costs of such air transportation. These requirements do not apply to micro-purchases (\$3,000 or less, except for Construction contracts over \$2,000).

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 Recipients and 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. The Contractor shall include the requirements of this section in all first tier subcontracts that may involve international air transportation and shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

## **17. RECYCLED PRODUCTS**

This section applies to all contracts for items designated by the EPA, when the Port

Authority or Contractor procures \$10,000 or more of one of these items during the fiscal year or when the cost of such items purchased during the previous fiscal year was \$10,000.

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. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

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

This section applies to all contracts except Micro-Purchases.

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

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 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable federal law to the extent the Federal Government deems appropriate.

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.

## **19. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS**

This section applies to all contracts except Micro-Purchases.

1. The Contractor agrees to comply with applicable transit employee protective requirements

as follows:

- a. General Transit Employee Protective Requirements - To the extent that FTA determines 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 non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the Recipient. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, the procedures implemented by U.S. DOL or any revision thereto.

The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be

binding upon each subcontractor of any tier.

## **20. 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.

## **21. BUY AMERICA**

This section applies to Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides 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 for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Final assembly of rolling stock must occur in the United States and rolling stock must contain the required domestic content, as set forth in the 49 USC Section 5323(j)(C)(2), as amended by Section 3011 of the Fixing America’s Surface Transportation (FAST) Act. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements. Subcontracts in any amount are subject to Buy America.

A bidder or offeror must submit to the FTA Recipient the appropriate Buy America Certification 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 non-responsive. This certification requirement does not apply to lower-tier subcontractors.

## **22. TERMINATION FOR CAUSE OR CONVENIENCE**

Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority’s best interest, pursuant to 49 C.F.R. 13.36 (i)(2) and 2 CFR 200, Appendix II (B) as set forth in the “Standard Contract Terms and Conditions,” Part II, Section 14. In the event of termination for convenience, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work

performed up to the time of termination for convenience. See the "Standard Contract Terms and Conditions," Part II, Section 14(f).

### **23. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION**

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

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

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer (or his/her designee) to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid or Proposal and claims of a type which are barred by the provisions of this Contract) and his/her decision shall be conclusive, final and binding on the parties. His/her decision may be based on such assistance as he/she may find desirable. The effect of his/her decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract provided, however, that notwithstanding the decision reached by the Chief Engineer (or his/her designee) in a review of determinations by the Chief of Construction or Engineer of Construction or Engineer that a particular item of Work is not a Change [or Extra Work] that is subject to the provisions of

the clause hereof entitled “Changes,” the Contractor shall be compensated therefor as provided in written orders of the Chief of Construction or Engineer of Construction or Engineer expressly and unmistakably indicating his/her intention to treat Work described therein as Changes [Extra Work] issued in accordance with the Changes clause [provisions of the clause hereof entitled "Extra Work Orders"] for amounts not in excess of \$250,000.

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

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

- i. Performance During Dispute – Unless otherwise directed by the Port Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- ii. Claims for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within five (5) days after the claim arises.
- iii. Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **24. NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE**

The Contractor agrees to comply with and assures compliance with any applicable employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction

Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

**25. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

This section applies to all contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 3000. 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 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.

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 Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C and and 2 CFR 200, Appendix II (I) while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**26. ACCESS TO RECORDS AND REPORTS**

This section applies to all contracts except Micro-Purchases.

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 a major capital project, major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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 from the beginning of the Project, and through the course of the Project, until three years after the Recipient has submitted its final expenditure report and other pending matters are closed. Project closeout does not alter the record retention requirements of the FTA Master Agreement, §9.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the Contract Documents. The FTA does not require the inclusion of these requirements in subcontracts.

**CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352**  
(TO BE SUBMITTED WITH EACH BID OR OFFER EXCEEDING \$150,000)

I, the undersigned

---

(name of authorized officer) certify,  
to the best of my knowledge and belief, that:

- No federally 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, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than federally 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)(I)-(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

**STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b>  <input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b>  <input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post award</p>	<p><b>3. Report Type:</b>  <input type="checkbox"/> a. initial filing  <input type="checkbox"/> b. material change   <b>For material change only:</b> Year _____  quarter _____ Date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity:</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier  _____, if known:  <b>Congressional District, if known:</b></p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee,</b>  Enter Name and Address of Prime:   <b>Congressional District, if known:</b></p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b>  \$ _____</p>	
<p><b>10. a. Name and Address of Lobbying Registrant</b>  (if individual, last name, first name, MI):</p>	<p><b>b. Individuals Performing Services (including address if different from No. 10a)</b>  (last name, first name, MI):</p>	
<p><b>11. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$150,000 for each such failure.</b></p>	<p style="text-align: right;"><b>Print</b></p> <p>Name: _____  Title: _____  Telephone No.: _____ Date: _____</p>	
<p><b>Federal Use Only</b></p>	<p><b>Authorized for Local Reproduction  Standard Form - LLL (Rev. 7-97)</b></p>	

## **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.

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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

**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**

**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 a 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 all available remedies including suspension and/or debarment.

**END OF FTA CONTRACT PROVISIONS**

# FEDERAL EMERGENCY MANAGEMENT AGENCY REQUIREMENTS

1.	DEFINITIONS .....	1
2.	INCORPORATION OF FEDERAL EMERGENCY MANAGEMENT AGENCY TERMS .....	1
3.	FEDERAL CHANGES.....	1
4.	NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.....	1
5.	ORGANIZATIONAL CONFLICT OF INTEREST .....	2
6.	CERTIFICATION - DEBARMENT AND SUSPENSION .....	3
7.	CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000 .....	4
8.	ACCESS TO RECORDS AND REPORTS .....	11
9.	CIVIL RIGHTS .....	12
10.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000 .....	13
11.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT .....	21
12.	ENERGY CONSERVATION .....	22
13.	CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD .....	22
14.	CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD .....	23
15.	FLY AMERICA .....	23
16.	PREFERENCE FOR RECYCLED PRODUCTS .....	23
17.	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	23
18.	ADA ACCESS REQUIREMENTS .....	24
19.	TERMINATION FOR CAUSE OR CONVENIENCE – CONTRACTS EXCEEDING \$10,000 .....	24
20.	CHANGES TO THE CONTRACT .....	24
21.	FEDERAL COST PRINCIPLES.....	25
22.	REPORTING .....	25
23.	PATENTS .....	25
24.	COPYRIGHTS .....	25
25.	BUY AMERICAN REQUIREMENTS (IF APPLICABLE).....	25
	CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352 .....	26
	STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES.....	27
	INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES ..	28
	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS .....	30
	INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -LOWER TIER COVERED TRANSACTIONS .....	31

**1. DEFINITIONS**

To avoid undue repetition, the following terms, as used within these “FEDERAL EMERGENCY MANAGEMENT REQUIREMENTS,” shall be construed as follows:

“Agreement” means “Contract.”

“Simplified Acquisition Threshold” means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 C.F.R Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908.

**2. INCORPORATION OF FEDERAL EMERGENCY MANAGEMENT AGENCY TERMS**

This Agreement is anticipated to be partially funded by the Federal Emergency Management Agency (“FEMA”).

Anything to the contrary herein notwithstanding, all FEMA-mandated terms 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 FEMA terms and conditions.

All federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to those remedies set forth in Title 44 of the Code of Federal Regulations, Part 13 (“44 CFR 13”), and Title 2 of the Code of Federal Regulations, Part 200 (“2 CFR 200”), as may be applicable 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 FEMA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

**3. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures and directives, 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 FEMA issues a written determination otherwise. All standards or limits are minimum requirements, unless modified by the FEMA.

**4. 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. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**5. 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 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.

**6. CERTIFICATION - DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 3000. 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 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. Each potential Contractor, for major third party contracts, is required to 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 last paragraph of these requirements.
  
- 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.

## **FEMA Requirements**

- 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 last paragraph of these requirements 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 Chief Procurement Officer, 4 World Trade Center, 150 Greenwich Street, 21<sup>st</sup> Floor, New York, NY 10007.
- 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. 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.

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

- A. Definitions as used in this Clause:
  - 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 last paragraph of these requirements, 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

## FEMA Requirements

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 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

## FEMA Requirements

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, the "Byrd Anti-Lobbying Amendment") 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 last paragraph of these requirements, it includes the award of the associated contract.

- 2.) The prohibition does not apply as follows:
- 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.

## FEMA Requirements

- (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 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.

## FEMA Requirements

- (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 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.

## FEMA Requirements

- (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 in the form that follows these requirements, 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 in the form that follows these requirements, 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.
- 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.

**8. ACCESS TO RECORDS AND REPORTS**

Pursuant to 44 CFR 13.42 and 2 CFR 215.53, the Contractor agrees to provide the Authority, the FEMA Administrator, the Comptroller General of the United States or any of their authorized representatives access to 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 to provide the FEMA Administrator or his authorized representatives access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FEMA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books,

documents, papers and record of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the FEMA Administrator 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 FEMA 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.

## **9. 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 FEMA may issue.
  
- B. Equal Employment Opportunity - The following equal employment opportunity requirements may apply to the underlying contract and subsequent subcontracts:
  - 1.) Race, Color, Creed, National Origin, Sex - (Construction contracts awarded in excess of \$10,000) - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Department of Homeland Security regulations 6 CFR § 21 and 44 C.F.R § 7, 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 CFR 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 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 FEMA 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 FEMA 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FEMA 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.

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

The Davis-Bacon and Copeland Acts are codified at 40 U.S.C 3141, *et seq.* (as supplemented by Department of Labor Regulations (29 C.F.R Part 5)) and 18 U.S.C 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 U.S.C 3145(a), 29 CFR 5.2(h), 44 CFR 13.36(i)(5), 2 CFR 200, Appendix II (D) . The Acts apply to any construction contract over \$2,000. 40 U.S.C 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, or over \$2500 if this Contract involves the employment of mechanics or laborers.

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

## FEMA Requirements

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:
    - (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

## FEMA Requirements

- (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) (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.

- 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) (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 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 Emergency Management Agency. 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

## FEMA Requirements

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 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 Emergency Management Authority 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 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

## FEMA Requirements

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

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 Emergency Management Agency 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**

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 C.F.R Part 5). The Contract Work Hours and Safety Standards Act applies to certain grantee contracts and subcontracts under 40 U.S.C 3701(b)(1)(B)(iii) and (b)(2), 44 CFR 13.36(i)(6), 2 CFR 200, Appendix II (E) for prime contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work.”

**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**

## **FEMA Requirements**

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. 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. 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.

## **13. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD**

- 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 U.S.C §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 FEMA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding the Simplified Acquisition Threshold issued pursuant to this Contract.

**14. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C §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 FEMA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding the Simplified Acquisition Threshold, issued pursuant to this Contract.

**15. FLY AMERICA**

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

**16. 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.

**17. 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. DHS regulations, "Program Fraud Civil Remedies," 6 CFR Part 13, 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 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 in addition to any other remedies available under law 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.

**18. ADA ACCESS REQUIREMENTS**

Facilities must comply with 42 U.S.C. Sections 12101 *et seq.*.

**19. TERMINATION FOR CAUSE OR CONVENIENCE – CONTRACTS EXCEEDING \$10,000**

- A) Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority’s best interest, pursuant to 44 CFR 13.36 (i)(2), and 2 CFR 200, Appendix II (B). In the event of termination for convenience, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work performed up to the time of termination for convenience.

**20. CHANGES TO THE CONTRACT**

The Authority reserves the right to make changes to this Contract that are within the general scope of this Contract. Any such changes shall be subject to any applicable provisions of this Contract.

**21. FEDERAL COST PRINCIPLES**

All costs under this Contract are subject to audit pursuant to Federal cost principles set forth in 2 C.F.R 225 (or as may be revised).

**22. REPORTING**

Contractor shall comply with the FEMA requirements and regulations pertaining to reporting, particularly those contained in 44 C.F.R parts 13.40 and 13.41, and 2 CFR parts 200.37, 200.38, and 200.39.

**23. PATENTS**

The Contractor agrees, pursuant to 44 CFR 13.36 (i)(8), and 2 CFR Part 200, Appendix II (F), that all rights to inventions and/or discoveries that arise or are developed, in the course of or under this Agreement, shall belong to the Port Authority and be disposed of in accordance with the Port Authority policy, subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements." The Port Authority, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.

**24. COPYRIGHTS**

The Contractor agrees, pursuant to 44 CFR 13.36 (i)(9), and 2 CFR Part 200, Appendix II (F), that if this Agreement results in any copyrightable material or inventions, in accordance with 44 CFR 13.34, 2 CFR 200.315 , and any applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements," FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, for Federal Government purposes: (1) the copyright in any work developed under a grant or contract; and (2) any rights of copyright to which a grantee or a contractor purchases ownership with grant support.

**25. BUY AMERICAN REQUIREMENTS (IF APPLICABLE)**

Contractor is required to comply with the Buy American Act (41 U.S.C. 10a et seq.).

**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)(I)-(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 \_\_\_\_\_, 20\_\_\_\_\_

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

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



## FEMA 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.
-

## **FEMA 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

**FEMA 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 \_\_\_\_\_, 20\_\_\_\_\_.

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**BY SIGNATURE OF AUTHORIZED OFFICIAL**

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**NAME AND TITLE OF AUTHORIZED OFFICIAL**

## **FEMA 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 [2 CFR Part 3000]. 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 FEMA CONTRACT PROVISIONS**

**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT** **PA 3760A /1-16**

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

**BID NUMBER AND TITLE:** \_\_\_\_\_

**BIDDER:**  
Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**MBE/WBE:**  
Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Description of work to be performed by MBE/WBE: \_\_\_\_\_

Calculation (supply only): \_\_\_\_\_

The Bidder is committed to utilizing the above-named MBE/WBE 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 of MBE/WBE**

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Principal or Officer of MBE/WBE – Print Name and Title

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the PA 3760A MBE/WBE Participation Plan and Affirmation 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 of Bidder \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

**Officer of Bidder must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**PA 3760A**

**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION 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:

**EXHIBIT A**

**CONTRACTOR QUALITY PROGRAM REQUIREMENTS**

## **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 WTC Project Quality Assurance Plan and the FTA QA/QC System requirements (FTA-IT-90-5001-02.1), attached as an Appendix hereto.

### **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, document and assure 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 the organization proposed by the Contractor to assure 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 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.

At a minimum, the quality assurance/quality control program developed and submitted to the Engineer for review and approval must satisfy the requirements of the "Quality Assurance & Quality Control Guidelines" of the Federal Transit Administration / U.S. Department of Transportation (FTA-IT-90-5001-02.1), dated February 2002.

March 11, 2010

#### **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-WTCC QA), 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, WTCC Quality Assurance (MWTCCQA) 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 only be acceptable for 30 days.

2) Failure to comply with either of these submittal requirements within the prescribed times may result in the Authority issuance of an order to the Contractor to stop all work on this Project.

#### **E. Changes To The CQP**

The Contractor shall notify the Manager, WTCC QA in writing of any proposed change to the CQP. All proposed changes are subject to the approval of the Manager, WTCC 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: (Required FTA Elements Added)

<u>ELEMENT PARAGRAPH</u>	<u>PARAGRAPH SPECS</u>
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

March 11, 2010

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 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 Construction Management 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 the pre-award qualification hearing, as part of the validation of qualifications for this Project. This strategy shall identify the 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 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 assure 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.

March 11, 2010

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 worksite. The Project Manager or Corporate Quality Officer shall report to the work-site on daily basis.

If the Contractor's QC Program is not being performed to the satisfaction of the Engineer, the Engineer may direct the Contractor to assign one or more full-time additional Quality Project Manager(s) dedicated solely to this project at no additional cost or expense to the Engineer, as required to successfully implement the approved CQP.

The Quality Manager (QM) shall be a full time person assigned exclusively to this Project Final Completion. The Quality Manager's sole function shall be to manage all quality matters for the Project and have the Authority to act in all quality matters for the Contractor. The QM shall not be subordinate to the Contractor's personnel that directly perform, supervise or progress the work. The QM shall have direct access to the upper management of the Contractor. The QM shall possess at least five (5) years of Quality related experience. . The resume of the QM shall include a description of the duties, responsibilities and the QA/QC record of assignments for the preceding five-year period which establishes the candidate's experience as a Quality Manager. The QM's qualifications shall be submitted to the Manager, WTCC QA for approval. The QM shall review and revise the CQP for this Project and shall sign it prior to resubmittal.

#### **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.

March 11, 2010

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 non-conformances, corrective action, maintenance of quality records, quality audits and training.

The procedures shall contain a statement of purpose and scope and referenced to Codes, standards or 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 should be kept up-to-date. The procedures and instructions should contain formats for the quality records needed to ensure that the procedures and instructions are followed and 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 resubmittals 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, 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 and checked and coordinated to assure that the information contained on the shop drawings, product data and samples conforms with 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

March 11, 2010

the Contractor's office and are available for inspection and audit of the Engineer. Where the Engineer requires certain shop drawings and other documents required by the specifications are made available to him but which do not require his approval they will be listed in the specifications 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 provide assurance 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 the 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.

March 11, 2010

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

The Contractor shall provide written requirements to assure 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 provide 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 or 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 confirm that the material of construction is indeed the grade of material specified. PMI numbers must appear on all inspection and construction records.

#### **K. Sub-Contractor and Supplier Control. - Purchasing**

The QC program shall assure 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 insure inclusion of all applicable quality requirements. All subcontractors and suppliers shall 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, it must

be approved as meeting the requirements of this section by the Prime Contractor's Quality Personnel. The Contractor shall review the subcontractor's/supplier's 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

March 11, 2010

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 the 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 determining the scope, frequency and schedule of these audits. The scope frequency and schedule of these audits shall be as approved by the Manager, WTCC QA. The Contractor shall submit an audit schedule to the Manager, WTCC 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, WTCC QA. The Contractor shall submit the revised schedule to the Manager, WTCC QA within 30 days of the change. The Manager, WTCC QA must be notified in writing 6-weeks days in advance of the date, time and location of each audit. The Manager, WTCC 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, WTCC 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, specification paragraph containing the test requirements and 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 approved by the Engineer prior to any such inspection or test and shall include test requirements, acceptance criteria and test conditions. Procedures should, 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;

March 11, 2010

- 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 supervisors 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 assure that suitable education, experience and technical qualifications are maintained for such personnel.

The Contractor shall establish a listing of hold points as part of the inspection and testing plan for the approval of the Authority. 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, physically segregated to prevent inadvertent use and corrected before continuing.

The Contractor shall demonstrate the acceptability of the construction activities 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 should be maintained and controlled from initial receipt through installation to operation of the constructed work.

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

1) The Contractor shall assure that the work complies with the Contract Documents. 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 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.

It shall include the following:

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

2) A check to assure 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 assure 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**

- a) Daily checks shall be performed to assure continuing compliance with contract requirements and shall include the following: Control testing until the completion of the

March 11, 2010

particular feature of work Suitable maintenance of equipment used in construction to ensure continuing process capability.

b) The Contractor shall ensure that the work is performed in accordance with codes and standards that would apply if the Authority were a private corporation 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 assure proper handling, storage, care and control of measuring and testing equipment in order to maintain the required accuracy of such equipment. Material 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 interval.

3) The Contractor shall also assure that all measuring and testing equipment selected for measurements, tests, or calibration is of the proper range, type, and is controlled, adjusted, and maintained at specified intervals identified in the CQP or prior to use to assure conformance to the established requirements or predetermined accuracy. The equipment shall have some indication attesting to the current calibration status and show date (or other basis) on which inspection or recalibration is next required and by whom it was 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.

March 11, 2010

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

1) The CQP shall contain provisions for implementing preventive and corrective actions and identifying, recording, controlling and correcting nonconforming items, including provisions for the reinspection and retesting of repaired and reworked items to the original requirements. Any "Use-As-Is" determinations shall require approval by an Engineer who represents the Authority. It is the Contractor's responsibility to promptly identify, tag and segregate items detrimental to quality to prevent inadvertent use.

2) The Contractor shall investigate the cause of the nonconformance and take appropriate corrective actions to prevent recurrence. The identification, determination, justification for planned actions and actions taken shall be documented on a nonconformance report. At a minimum, dispositions for non-conformances 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 an Engineer representing the Authority 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, 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

March 11, 2010

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 audit 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 days in 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 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

March 11, 2010

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, WTCC QA within 30 days of the change. The Authority's Manager, WTCC QA must be notified in writing 10 days in advance of the date, time and location of each audit. The Authority's Manager, WTCC 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. 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 non-conformances.
- 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.

March 11, 2010

- 2) Persons performing design work shall be identified, their responsibilities defined, 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. 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.
- 5) The procedures shall include methods to identify, document and review any and all changes, revisions or modifications to the original design work prior to resubmittal for approval.

**EXHIBIT B**

**WTC – SITE SECURITY REQUIREMENTS**

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

**Access to the WTC Site**

All personnel, vehicles, and materials entering the site shall comply with the requirements described herein. The word “vehicle” as used herein shall be construed to include all self-propelled or towable vehicles or equipment whatsoever.

The requirements described herein apply to all contractors, subcontractors, vendors, suppliers and all others performing work or providing services or materials or equipment within the site. All such entities are required to coordinate and cooperate with each other and with the Authority in planning and performing the required activities. The facilities and services provided by the Authority are to be shared in common by all parties requiring access to the site. The direct costs to perform the screening and credentialing described herein shall be reimbursed by the Authority. All other costs, including but not limited to compensation for time spent by the contractors or their employees in performing any of the activities described herein, shall be borne by the contractors.

**A) Personnel Access**

All persons accessing the site shall have been background screened so as to ascertain that they satisfy the requirements set forth in the “WTC ID Process-Disqualifying Crimes” document which is attached hereto as Exhibit A. The Authority will conduct such background screening upon written request of the contractor on behalf of the individual, or an individual himself/herself. The background screening is contingent upon the following:

- Every individual requesting access to the site must agree to have a background screening.
- Every individual shall be required to fill out and sign a background screening application and consent form.
- Individuals must be citizens of the U.S., Lawful Resident Aliens, or otherwise lawfully permitted to work in the U.S.
- Every individual shall be required to complete the Secure Worker Access Consortium Application ([www.secureworker.com](http://www.secureworker.com))

The Authority shall conduct the background screening and shall report its findings in a timely manner. Successful screenings are expected to be completed within 3 business days. Individuals found to have received a “fail” classification due to any reason shall be prohibited from entering the site.

After successful background screening individuals will be required to complete a one-hour training period and to pass a test regarding the WTC Site rules and regulations. Upon successful completion a personal identification card shall be issued by the Authority to the individual. The individual’s access to the site shall be limited to the level deemed appropriate by the Authority.

As part of the individual credentialing and identification process each individual may be required to provide biometric data, which may include finger-printing, hand geometry, and/or iris mapping. Such data shall be developed and recorded by the Authority for its sole use on this particular WTC Project, and shall be invalidated when no longer needed. The individual is prohibited from the site once the data has been invalidated.

Personnel entry to and exit from the site shall be through a number of Personnel Screening Portals provided, installed, maintained, and operated by the Authority. It is expected but not guaranteed that

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

there shall be at least two such portals distributed around the perimeter of the site. The Authority shall operate, relocate, and if necessary reconfigure, the portals to accommodate the work to the greatest degree feasible.

Personnel entering the site will be required to present their individual identification cards for entry. The ID cards may contain the personal biometric data that will be used to process individuals thru a turnstile. In all cases packages and tools are subject to inspection at all times. Individuals may be randomly screened.

Personnel who have not been background screened and approved to enter the site as described above, either because the background screening process has not yet been completed or because a permanent ID card is not being sought due to the infrequency of use, may nevertheless be allowed onto the site. For this purpose the Authority will provide, install, maintain, and operate credentialing stations at or near the WTC Site. The Authority will issue a Temporary ID card to the individual upon the following conditions:

- The contractor requests the Temporary ID card on behalf of the individual. This request must be made by a permanently credentialed representative of the contractor who must accompany and vouch for the individual requiring the Temporary ID card.
- The individual presents two (2) forms of personal identification. One (1) such ID must be a government issued Photo ID such as a current driver's license or US Passport.
- The individual must be a citizen of the U.S., a lawful Resident Alien, or otherwise lawfully permitted to work in the U.S.

The Temporary ID cards will allow access to the site for a period not to exceed five (5) business days. Every Temporary ID cardholder's person shall be inspected, together with any packages, tools or equipment he/she intends to bring onto the site.

The contractor shall notify the Authority of personnel terminations or reassignments so that access credentials can be invalidated as soon as no longer needed. The Authority may, at any time for any reason, invalidate credentials allowing individuals access to the site. In all instances, where the Authority issued credentials are no longer valid, the Contractor is responsible for ensuring that they are returned to the Authority in a timely manner.

**B) Vehicle Access**

All vehicles, with their contents, entering the site shall have been screened by the Authority prior to being allowed access to the site. Such screening shall be for the purposes of validating that the vehicle requesting entry is in fact what it is stated to be, and that it contains or includes no item or material considered by the Authority to be, actually or potentially, deleterious to the site. All personnel driving, managing or accompanying the vehicles and their contents, shall be subject to the same conditions described above for all personnel, and shall not be allowed entry to the site except in conformance therewith.

The Authority shall provide, install, maintain, and operate vehicle Screening access points and adjacent off site Vehicle Screening Facilities. These Facilities shall be located at the points of entry to the site best placed" to accommodate the construction. There are expected, but not guaranteed, to be four such

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

points at all times. The Authority shall operate, relocate, and reconfigure as required, the access points to the site to accommodate the work to the greatest degree possible.

In order to maintain orderly access to the site and not impact the local streets and or the arterials the contractor, in coordination with the Authority, shall be responsible for scheduling “on time “ deliveries of all vehicles requiring access to the site to include deliveries covered by the “Trusted Vendor” program. Important: “Vehicles are not allowed to utilize the local streets or arterials for lay by or staging purposes” unless approved per NYCDOT permit. The Contractor shall notify the Authority of all deliveries a minimum of 24 hours in advance. Notification for deliveries shall be made by the contractor in writing (e mail is acceptable), in a format to be determined by the Authority. Such request shall include, at a minimum, the following information:

- Vehicle Registration and Insurance information. (Copies to be submitted to the Authority).
- Description of vehicle and manifest of its contents.
- Identity of driver and other accompanying personnel.
- Proposed time for arrival at site.
- Proposed point of entry to site.
- Description and duration of activity while on site.

Requests for screening of oversize loads are subject to the same requirements except that 72 hours notice may be required.

The contractor shall be responsible to ensure that the vehicle to be screened presents itself, together with all required documentation, at the assigned location and time. Failure to do so, and the resulting delays, that may require rescheduling of the appointment for screening, shall be the sole responsibility of the contractor. If a particular vendor, supplier, contractor, or other entity is consistently late or does not supply the required information for scheduled screenings, in the sole opinion of the Authority, the Authority may institute different requirements that it deems necessary to avoid or mitigate future delays.

It is the intent of the Authority in order to reduce on site screening time and provide flexibility in the scheduling of deliveries that the contractor will be allowed to substitute or add a critical delivery under the following conditions:

- The delivery does not conflict with other scheduled deliveries nor is disruptive to on going site activities.
- The vendor/vehicle/driver is in the “Trusted Vendor” program

It is the intent of the Authority to establish a “Trusted Vendor” program. The “Trusted Vendor” program will include the enrollment of vehicles and their drivers in order to expedite their access to the site. These types of vehicles will be primarily company owned vehicles and trucks such as concrete, tanker, haul, heavy construction equipment and other delivery trucks, which frequent the site. These vehicles shall be required as previously outlined to schedule deliveries in advance and if requested, provide sufficient time to allow the Authority adequate time to determine and provide the necessary pre-screening.

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

For “Trusted Vendor” screening the vehicle shall present itself at the assigned place within the allotted timeframe. Screening shall include:

- Verification of vehicle and personnel identity and credentials.
- Physical examination of the vehicle including the undercarriage, and its contents, as deemed necessary by the Authority.

Upon successful screening the vehicle will be allowed direct entry to the site.

For vehicle companies wishing to participate in the “Trusted Vendor program” the company will be required to provide the information as previously outlined for the vehicle – identify and have credentialed the driver or group of drivers in accordance with the credentialing requirements, assign a supervisory employee (Trusted Individual) of the firm who will over-see the loading and dispatching of the vehicles and be willing to be subject to a bi-annual audit of their procedures.

**C) Exhibits**

- A. WTC ID Process-Disqualifying Crimes June 2006

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

**EXHIBIT A**

**WTC Identification Process - Disqualifying Crimes**

**June 2006**

**Standard Level Access for Unescorted Access to Secure Access Control Areas**

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Individual must be a United States Citizen, Lawful Resident alien, or otherwise lawfully permitted to work in the United States.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

List of Disqualifying Criminal Offenses for Access to the World Trade Center Site

(a) Permanent disqualifying criminal offenses. An individual will be permanently disqualified from receiving credentials to access the World Trade Center Site if he or she is convicted, or found not guilty by reason of insanity, of any of the following crimes:

1. Violation(s) of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. 1961, et seq., or a State law that is comparable.
2. A crime listed in 18 U.S.C. Chapter 113B-Terrorism, or a State law that is comparable.
3. Espionage
4. Sedition
5. Treason
6. Unlawful, possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device, or hazardous materials.
7. Conspiracy or attempt to commit any of the above offenses.

(b) Interim disqualifying criminal offenses. The crimes listed in paragraphs (b)(1) through (b)(3) of this section are disqualifying if either of the following factors is true: the applicant was convicted or found not guilty by reason of insanity of the crime in a civilian or military jurisdiction, within the 10 years preceding the date of application; or the applicant is currently on probation or parole for the crime regardless of the date of conviction.

1. Unlawful sale, distribution, manufacture, import or export of a controlled substance that resulted in the conviction of an A Felony in the New York State Penal Law, or any comparable law in any State, or comparable Federal Law.
2. Theft, dishonesty, fraud, extortion, or misrepresentation.
3. Conspiracy or attempt to commit any of the above crimes listed in (b).

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

(c) Interim disqualifying criminal offenses. The crimes listed in paragraphs (c)(1) through (c)(2) of this section are disqualifying if either of the following factors is true: the applicant was convicted or found not guilty by reason of insanity of the crime in a civilian or military jurisdiction, within 5 years preceding the date of application; or the applicant is currently on probation or parole for the crime regardless of date of conviction.

1. Violation of Felony Offenses (as defined in the New York State Penal Law 70.02) or any comparable law in any State.
2. Conspiracy or attempt to commit any of the above crime.

NOTE: An individual will be disqualified from receiving credentials to the WTC site if he or she is wanted or under indictment in any civilian or military jurisdiction for any of the crimes listed above until the want or warrant is released. Additionally, a person will not receive credentials if he or she is on the Terrorist Watch List.

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

**EXHIBIT A**  
**WTC Identification Process - Disqualifying Crimes**  
**June 2006**

**Medium Level Access for Unescorted Access to Secure Access Control Areas**

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Individual must be a United States Citizen, Lawful Resident alien, or otherwise lawfully permitted to work in the United States.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

No convictions against below listed 49CFR 1542.209 (d) within seven (7) years preceding the date of application, except as noted\*

- (13) Murder.
- (14) Assault with intent to murder.
- (15) Espionage.
- (16) Sedition.
- (17) Kidnapping or hostage taking.
- \*(18) Treason.
- (19) Rape or aggravated sexual abuse.
- \*(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- \*\* (21) Extortion.
- \*\* (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.
- (24) Felony Arson.
- (25) Felony involving a threat.
- (26) Felony involving-
  - (i) Willful destruction of property;
  - \*\* (ii) Importation or manufacture of a controlled substance;
  - \*\* (iii) Burglary;
  - \*\* (iv) Theft;
  - \*\* (v) Dishonesty, fraud, or misrepresentation;
  - \*\* (vi) Possession or distribution stolen property;
  - (vii) Aggravated assault;
  - \*\* (viii) Bribery; or
  - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment: of more than 1 year; or
- (27) Violence at international airports;
  - (a) Terrorism.

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

- \* (b) RICO (Racketeer Influenced and Corrupt Organizations Act).
  - (c) A crime involving a severe transportation security incident.
  - (d) Felony involving-
    - (i) Smuggling;
    - (ii) Immigration violations;
  - (28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.
- 

Note \* No convictions in their lifetime since birth

Note \*\* No convictions within the past ten (10) years preceding the date of this application

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

**EXHIBIT A**  
**WTC Identification Process - Disqualifying Crimes**  
**June 2006**

**High Level Access for Unescorted Access to Secure Access Control Areas**

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Individual must be a United States Citizen or a Lawful Resident Alien.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

No convictions against below listed 49CFR 1542.209 (d) within ten (10) years preceding the date of application, except as noted\*

- (1) Forgery of certificates, false marking of aircraft, and other aircraft regulation violation;
- (2) Interference with air navigation;
- (3) Improper transportation of a hazardous material;
- (4) Aircraft piracy;
- (5) Interference with flight crewmembers or flight attendants;
- (6) Commission of certain crimes aboard aircraft in flight;
- (7) Carrying a weapon or explosive aboard aircraft;
- (8) Conveying false information and threats: (e.g., bomb threats, explosives in briefcase, etc. in security areas);
- (9) Aircraft piracy outside the special aircraft jurisdiction of the United States;
- (10) Lighting violations involving transporting controlled substances;
- (11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;
- (12) Destruction of any aircraft or aircraft facility;
- (13) Murder.
- (14) Assault with intent to murder.
- \*(15) Espionage.
- \*(16) Sedition.
- (17) Kidnapping or hostage taking.
- \*(18) Treason.
- (19) Rape or aggravated sexual abuse.
- (20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (21) Extortion.
- (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.

**Site Security Requirements**  
**World Trade Center Site**  
**New York City, NY**

- (24) Felony Arson.
- (25) Felony involving a threat.
- (26) Felony involving-
  - (i) Willful destruction of property;
  - (ii) Importation or manufacture of a controlled substance;
  - (iii) Burglary;
  - (iv) Theft;
  - (v) Dishonesty, fraud, or misrepresentation;
  - (vi) Possession or distribution stolen property;
  - (vii) Aggravated assault;
  - (viii) Bribery; or
  - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment: of more than 1 year; or
- (27) Violence at international airports:
  - \*(a) Terrorism.
  - \*(b) RICO (Racketeer Influenced and Corrupt Organizations Act).
  - (c) A crime involving a severe transportation security incident.
  - (d) Felony involving-
    - (i) Smuggling;
    - (ii) Immigration violations;
- (28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

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Note \* No convictions in their lifetime since birth



The Port Authority of New York & New Jersey

# Information Security Handbook

October 15, 2008, corrected as of November 14, 2013

**The Port Authority of New York and New Jersey**  
**Information Security Handbook**

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
CHAPTER 1	
PORT AUTHORITY INFORMATION SECURITY ORGANIZATIONAL STRUCTURE .....	2
CHAPTER 2	
CATEGORIZATION OF INFORMATION .....	4
2.1 DEFINITIONS.....	4
2.2 GENERAL PROCESS FOR CATEGORIZATION .....	5
2.3 TRAINING AND INFORMATION REVIEW.....	6
2.4 REMOVAL OF CATEGORY DESIGNATION .....	7
CHAPTER 3	
INFORMATION ACCESS .....	8
3.1 APPLICABILITY .....	8
3.2 GENERAL CRITERIA .....	8
3.3 INFORMATION ACCESS CONTROLS.....	9
3.4 ACCESS DISQUALIFICATION .....	11
3.5 NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENTS (NDAs) .....	11

3.6 UNAUTHORIZED DISCLOSURE OF INFORMATION .....	12
3.7 SECURITY CLEARANCE AND ACCESS PROHIBITIONS .....	12
3.8 BACKGROUND SCREENING .....	12
3.9 AUTHORIZED PERSONNEL CLEARANCE LIST .....	13
3.10 DEVELOPMENT OF CONFIDENTIAL INFORMATION PRACTICES AND PROCEDURES (CIPP).....	13
3.11 PROCUREMENT STRATEGIES .....	14

**CHAPTER 4**

<b>MARKING, HANDLING, STORAGE, TRANSMITTAL AND DESTRUCTION REQUIREMENTS.....</b>	<b>17</b>
4.1 MARKING OF PROTECTED INFORMATION.....	17
4.2 HANDLING PROTECTED INFORMATION.....	19
4.3 TRANSMITTAL OF PROTECTED INFORMATION .....	19
4.4 STORAGE OF PROTECTED INFORMATION .....	22
4.5 DOCUMENT ACCOUNTABILITY LOG.....	22
4.6 REPRODUCTION .....	23
4.7 DESTRUCTION OF PROTECTED INFORMATION .....	23
4.8 INFORMATION TECHNOLOGY SYSTEMS HANDLING OF ELECTRONIC INFORMATION /DATA .....	24
4.9 TRANSMISSION/EXCHANGE OF ELECTRONIC INFORMATION .....	24
4.10 ELECTRONIC STORAGE .....	25
4.11 USER ACCESS DEACTIVATION .....	26

**CHAPTER 5**

**AUDITING AND MONITORING ..... 27**

**5.1 PURPOSE..... 27**

**5.2 AUDITS AND INVESTIGATIONS..... 27**

**5.3 SELF-ASSESSMENT..... 28**

**CHAPTER 6**

**POLICY VIOLATIONS AND CONSEQUENCES ..... 29**

**6.1 RESPONSIBILITIES ..... 29**

**6.2 VIOLATIONS, INFRACTIONS, OR BREACH OF  
    INFORMATION SECURITY PROTOCOLS ..... 29**

**6.3 VIOLATION REPORTING, INVESTIGATION AND FACT  
    FINDING ..... 29**

**6.4 DISCIPLINARY ACTION..... 29**

**CHAPTER 7**

**INFORMATION SECURITY EDUCATION AND AWARENESS  
TRAINING ..... 31**

**7.1 PURPOSE..... 31**

**7.2 OVERVIEW..... 31**

**7.3 TRAINING PROGRAM ELEMENTS ..... 31**

## **APPENDICES OF HANDBOOK**

### **A - PROTECTED INFORMATION**

### **B – NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENTS**

**B-1: Non-Disclosure and Confidentiality Agreements with reference to Handbook**

**B-2: Non-Disclosure and Confidentiality Agreements without reference to Handbook**

**B-3: PA/PATH Employee Non-Disclosure and Confidentiality Agreement**

### **C – BACKGROUND SCREENING CRITERIA**

### **D – THE SECURE WORKER ACCESS CONSORTIUM (SWAC)**

### **E – COVERSHEET FOR CONFIDENTIAL PRIVILEGED INFORMATION**

### **F – TRANSMITTAL RECEIPT**

### **G –GUIDELINES FOR THE STORAGE OF PROTECTED INFORMATION**

### **H- GUIDELINES FOR THE DISPOSAL AND DESTRUCTION OF PROTECTED INFORMATION**

### **I- AUDIT PROCEDURES**

## INTRODUCTION

This *Port Authority of N.Y. & N.J. Information Security Handbook* (“Handbook”) establishes guidelines and uniform processes and procedures for the identification, handling, receipt, tracking, care, storage and destruction of Protected Information (as hereinafter defined) pursuant to The Port Authority of New York and New Jersey Information Security Policy (the “Policy”). This Handbook is intended to be the implementation guideline for that policy. It is also intended to complement the Port Authority Freedom of Information Code (Code), inasmuch as it further defines certain information that may be exempt from release under the Code. The guidelines contained in this Handbook are not intended to, in any way, be in derogation of the FOI Code adopted by the Board in March 2012. The Code continues to provide open, timely and uninhibited access to the Port Authority's (and its subsidiary corporations') public records and reflects the New York Freedom of Information Law ("FOIL") and New Jersey's Open Public Records Act ("OPRA"). . This Handbook prescribes requirements and other safeguards that are needed in order to prevent unauthorized disclosure of Protected Information and to control authorized disclosure and distribution of designated sensitive information, when it is released by The Port Authority of New York and New Jersey (the “Port Authority”) either internally or externally. A major underlying principle, on which the Handbook is premised, is that there is a limited universe of sensitive information to which it applies. There is the expectation that prudent, informed and circumscribed judgments will be made by those staff members charged with the responsibility of identifying and properly designating sensitive information, as is provided for in this Handbook. In this regard, adherence to the Handbook’s requirements will help ensure that the necessary care will be constantly and consistently undertaken in order to ensure that mis-designation, or “over marking”, of information will be avoided. Another important principle of the Handbook is that access to properly designated sensitive information is premised on a strict “need to know” basis. It is the establishment of this “need to know” that is the essential prerequisite for being granted access privileges. It must be emphasized that possession of a federal security clearance or other access rights and/or privileges to sensitive information does not *per se* establish a “need to know” for purposes of obtaining access to discrete sensitive Port Authority information. This principle is equally applicable to the Port Authority and its internal staff as it is to third party individuals and entities, which are given access privileges to sensitive Port Authority information.

This Handbook will be amended and updated from time to time as may be appropriate. When appropriate, each Port Authority department, office and/or business unit, as well as contractors/consultants, should create a “Confidential Information Practices and Procedures” (“CIPP”) document with additional guidelines for their respective businesses. This will assist staff, and third parties working with the Port Authority, in carrying out the requirements of this Handbook. A CIPP should augment, but may not deviate from, the requirements of this Handbook. The procedures, safeguards and requirements of this Handbook fully apply to all subsidiaries of the Port Authority that deal with, or create, Protected Information. Whenever the term Port Authority is referenced in this Handbook, it should be understood to include and/or cover its subsidiary entities.

The Port Authority expressly reserves the right to reject any information designation and/or to remove/add any and all markings on information that is not consistent with this Handbook.

## **CHAPTER 1 - PORT AUTHORITY INFORMATION SECURITY ORGANIZATIONAL STRUCTURE**

The Port Authority organizational structure for information security is as follows:

Chief Security Officer (CSO) – is responsible for the implementation of Port Authority policy on security matters, both physical and informational, and for the coordination of security initiatives throughout the agency in order to assure consistency in practices, procedures and processes. In particular, the CSO works in close collaboration with the Director of Technology Services Department and the Corporate Information Security Officer with regard to their respective areas of security responsibilities. The CSO acts as the Port Authority's principal liaison on security related matters with governmental, public and private entities. The CSO works closely with the Law Department, Public Safety Department and the Office of Inspector General on security initiatives, on compliance with governmental requirements on security matters, and on issues relating to compliance with the Port Authority's security policy.

Corporate Information Security Officer (CISO) – the CISO reports directly to the CSO in order to assure agency wide consistency on policy implementation. The CISO is responsible for the management, oversight and guidance of the Policy. The CISO works in conjunction with all appropriate Port Authority departments and subsidiaries to: (i) formulate practices and procedures concerning information security management issues affecting the Port Authority, its operations and facilities; (ii) review, categorize and manage all Port Authority information consistent with the Port Authority's policy and procedures under its Freedom of Information Code; and (iii) establish procedures and handling requirements for Port Authority information based upon its sensitivity designation in order to ensure that the information is used solely for authorized purposes. The CISO will report to the Secretary who in turn reports to the Executive Director.

Departmental Information Security Officer (DISO) - each department head, and, where appropriate, office head, will designate a staff member to act as DISO in order to ensure compliance with the Policy. The DISO is responsible for management and oversight of information security issues for departmental operations and reports to the CISO on information security practices and procedures, or issues relating thereto. Additionally, the DISO may perform the Security Information Manager (SIM) functions, if a SIM has not been designated for a department, division, office, unit or project. Each DISO is also responsible for compiling an inventory of all Confidential Privileged Information and Confidential Information in their department's possession and/or providing updated listings to the CISO on a monthly basis, or on such other periodic basis as may be established by the CISO. Additionally, the DISO is responsible for approving the departmental Confidential Information Practices and Procedures ("CIPP") document and, before authorizing its use, for submitting the CIPP to the CISO for final approval and providing periodic reports to the CISO, as the CISO may require.

Security Information Manager (SIM) – Port Authority departments, offices or other business units, as well as contractors, vendors, and consultants, individuals and/or entities, where appropriate, who are involved with, or who could have exposure to, Confidential Information shall designate a SIM who is responsible for coordinating the implementation and daily oversight of the Policy for the particular Port Authority department, office, business unit, or third-party contractor, vendor, or other party. The SIM reports to the DISO and/or the Security Project Manager (SPM) for a project, where applicable. If a Port Authority department

determines that the SIM function may be carried out by the DISO, then the SIM designation may not be required, unless or until the DISO, in consultation with the CISO, determines otherwise. The functions of the SIM are further described throughout this Handbook.

Director of Technology Services Department– is the head of the Technology Services Department (TSD). The Director of TSD, or the Director's designee, works with the CSO and the CISO to coordinate the Policy efforts and to provide the Port Authority with the most current resources needed to comply with legislative and regulatory requirements, to adhere to industry standards and best business practices and procedures, and to identify and address technology issues that may affect the current and future policy. The Director of Technology Services Department is also responsible for providing technical support and training to assist staff and to meet information security management goals.

Office of Inspector General (OIG) – The OIG's responsibilities include: conducting criminal and administrative investigations of possible misconduct by Port Authority officers and employees, as well as third parties doing business with the Port Authority; reviewing agency internal controls and management practices for weaknesses that could allow losses from corruption, incompetence and/or bad decision making; making recommendations for cost effective improvements; serving as the confidential investigative arm for the Port Authority's Ethics Board; conducting educational awareness programs for all Port Authority employees pertaining to integrity and ethics; and, where appropriate, conducting background investigations of certain contractors proposing to do business with the Port Authority. The OIG's Security Inspection Division is responsible for conducting investigations, inspections, reviews, and audits pertaining to all Port Authority security programs in all departments. It should be noted that cases involving investigations are exempt from CISO approval.

Information Security Subcommittee (ISSC), chaired by the CISO, includes departmental representatives from line departments (who might also be functioning as a DISO), the Law and Public Safety Departments, the Office of Inspector General and the Director of Technology Services Department. The ISSC assesses the Policy needs and the effectiveness of the policy's implementation, as well as evaluating initiatives for its further development and refinement.

## CHAPTER 2 - CATEGORIZATION OF INFORMATION

### 2.1 Definitions

For purposes of this Handbook the following definitions shall apply:

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

(b) **“Protected Information”** means and includes collectively, Confidential Information, Confidential Privileged Information, Sensitive Security Information (SSI), Critical Infrastructure Information (CII) or Health Insurance Portability and Accountability Act (HIPAA) and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. The term Protected 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 Port Authority or a third-party, or when the Port Authority receives such information from others and agrees to treat such information as Protected.

(c) **“Confidential Privileged Information”** means and includes collectively Information that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available.” and any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws.

(d) **“Confidential Information”** means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes Information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code. It also includes sensitive financial, commercial and other business information received from third parties under Non-Disclosure and Confidential Agreements.

(e) **“Health Insurance Portability and Accountability Act (HIPAA)”** Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” or “Privacy Laws”) place restrictions on the Group Health Plans of the Port Authority and PATH (the “Plans”) ability to use and disclose Protected Health Information (“PHI”).

(f) **“Attorney Work Product”** Attorney work product and other privileged information should be protected and treated in accordance with the established rules of the legal profession and may carry the label “Privileged & Confidential” or “Attorney Work Product”. Certain attorney work product information may also fall within the definitions of Confidential Privileged and/or Confidential Information as established by the Handbook, and as such, should be marked and treated in accordance with the Handbook and the Law Department CIPP.

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

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

(i) **“Non-Disclosure and Confidentiality Agreement”** (NDA) refers to the Agreements attached hereto as Appendix “B” (which include Appendices B-1 through B-3). When approved by the Law Department, other forms of a NDA may be used for special situations or specific projects, however, a general NDA may be used in retaining consultants and contractors where the retainer involves work on various projects.

(j) **“Non-Disclosure Instructions”** (NDI) refers to the instructions attached hereto as Appendix “C.” A NDI is used when represented staff are given or have responsibilities, which involve working on sensitive and/or security related matters, and/or when such staff is being given access to Confidential Information. The NDI is given to each individual before starting such work or on being given such access. The CISO, in consultation with the Law Department, may allow the use of NDI’s in other circumstances, as may be appropriate.

## 2.2 General Process for Categorization

As defined hereinabove, the term Protected Information includes all Port Authority Information protected pursuant to this Handbook or as governed by statutory regulations. Any sensitive Information not specifically deemed Confidential Privileged Information should be categorized as Confidential Information. In addition, certain other types of Protected Information, such as HIPAA, SSI and CII, are treated separately and distinctly because they are governed by specific federal designations and must be marked and handled in accordance with federal regulations or requirements. The requirements in this Handbook apply to all Protected Information, unless otherwise specified. Where a different or additional requirement applies to a specific sub-category of Protected Information, it will be noted.

Each DISO, in consultation with the CISO, shall create a list of examples of Confidential and Confidential Privileged Information to be used as a guide by the departmental staff. This list may be included in the department's CIPP. Any employee, consultant, third-party contractor or other agency personnel may nominate Information for categorization in either of the two categories. The DISO, SIM, supervisors, managers or the CISO, as may be appropriate, should take the action needed to process the Protected Information under their control and to review it as soon as possible. It is important to understand that not every piece of material currently held should be reviewed. The review should only be of Information that is considered potential Protected Information. If management, employees, consultants, third-party contractors, or other agency personnel determine that Information under review contains Protected Information, the Protected Information should be designated with the appropriate categorization.

In order to categorize Information as Confidential Privileged Information or Confidential Information the following steps must take place:

1. Inform the DISO or SIM, where applicable, and the unit supervisor of the group/entity proposing the categorization.
2. Obtain DISO concurrence and approval.
3. Obtain CISO approval (except in the case of the PA OIG).
4. If approved, mark and label the information, and, if appropriate, apply a cover sheet (See Appendix F).

If Information has been nominated for Confidential or Confidential Privileged categorization, a final decision on the nomination shall be made within one week of its submission. During the time period between the submission and a determination regarding the categorization, the nominated Information should not be reviewed, released or distributed to any individuals, other than those individuals who possess a need to know and are currently familiar with the Information, or were previously provided access to other Confidential or Confidential Privileged Information for the same project or task.

### **2.3 Training and Information Review**

Port Authority managers, including, but not limited to, the DISO, SPM and the SIM will complete training. This enables them to conduct a continuing review of Protected Information under their control in order to identify and categorize it as Confidential or Confidential Privileged Information. Employees, consultants, third-party contractors or other agency personnel must participate in and complete the Policy training, which enables them to continue the process of review, identification, and categorization of Protected Information.

Each Department Director will determine which staff members in the respective department require Policy training and will do so on an ongoing basis. When access to Protected Information is given to third parties, a training requirement may also be a condition for granting access privileges.

## **2.4 Removal of Category Designation**

At some point, Protected Information may no longer be considered Confidential or Confidential Privileged, and should therefore have its designation removed or eliminated. This may occur as a result of any number of circumstances, including changes within the Policy, the changing nature of information security, a better understanding of particular material, and/or changes in public policy or law, among others. In order to determine whether category designations should be removed from particular materials, the CISO may establish criteria for the periodic review of all sensitive material. In any case, the category designation of any particular Protected Information may not be removed without the approval of the CISO. A record of any removal of categorization for particular information must be kept by the DISO, with a copy provided to the CISO.

## CHAPTER 3 – INFORMATION ACCESS

### 3.1 Applicability

Each employee, consultant, third-party contractor, tenant, individual and/or entity requiring, or requesting, access to Port Authority Protected Information must adhere to the requirements set forth in this Handbook.<sup>1</sup> Protected Information is intended for official business use only. Failure to abide by the procedures set forth in the Handbook can lead to a denial of access privileges to Protected Information and/or other contractual, civil, administrative or criminal action.

All employees, consultants, third-party contractors, individuals and/or entities given access privileges to Protected Information are responsible for overseeing the safeguarding and protection of Protected Information in their possession or under their control as per this Handbook's requirements. Questions concerning the safeguarding, protection, release, and/or access to Protected Information should immediately be brought to the attention of the CISO, DISO, SPM, or SIM, as may be appropriate, in the particular circumstance.

### 3.2 General Criteria

In order for access to certain Protected Information to be considered for approval, all individuals including PA staff, must meet and complete the following criteria, unless otherwise required under federal or state regulations:

- Be a citizen of the United States of America, or be an alien who has been lawfully admitted for permanent residency or employment (indicated by immigration status), as evidenced by Immigration and Naturalization Service documentation, or be a national of the United States as defined by the Immigration and Nationality Act. This requirement may be waived by the CISO with the concurrence of the OIG and/or the CSO where and when circumstances so require.
- Obtain sponsorship for a request to be given access to Protected Information through the individual's assigned chief, director, manager, or supervisor. The written request must include justification for access, level of access required, and indicate the duration for which access privileges are required. (OIG is exempt from this)
- Forward the request through the individual's supervisory chain to the CISO, "(except in the case of the PA OIG) , via the appropriate DISO, SPM, or SIM, requesting that a specific background check be undertaken, where appropriate and/or required.
- Background check required to access CP information and/or accessing a PA Facility that requires background screening."
- Complete the Port Authority Information Security Education and Awareness Training.

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<sup>1</sup> The CSO and/or the OIG in consultation with the Law Department may modify and/or waive the condition of complying with the requirements of the Handbook where such compliance is impractical, such as in the case of a governmental entity having its own information security procedures and/or protocols governing the handling and protection of sensitive information. In addition, certain sensitive information is required to be submitted to other governmental entities under applicable laws, rules or regulations, or the Port Authority may elect to submit Confidential Information to a governmental entity, such as in the case of the CII process, wherein it may elect to submit Confidential Information to the Department of Homeland Security in order to secure the protection of the CII regulatory scheme.

- Execute a Port Authority NDA (See Appendix B), or an Acknowledgement of an existing executed NDA, and, if the individual is Port Authority represented staff, have been provided with the NDI. Consultants or third party need's to designate a Security Information Manager (SIM)
- Be granted final approval of the security clearance level, in writing, by the CISO who verifies that all requirements have been met.

The individual's name must be entered on the appropriate department, or Port Authority Authorized Personnel Clearance List for access to Confidential and/or Confidential Privileged Information. See Sec. 3.9 for more information regarding this List (Note: If an individual's name does not appear on the appropriate Authorized Personnel Clearance List, access must be denied).

Individuals who meet and complete the criteria listed above are neither guaranteed, nor automatically granted, access to Protected Information, since access is conditioned on need to know criteria. The OIG may access, without approval of the CISO, DISO, SPM or SIM, all Protected Information when it is needed in connection with an OIG investigation, audit or inspection work, or any other Port Authority related work, subject to the handling requirements set forth in this Handbook.

### **3.3 Information Access Controls**

Access to all Protected Information falling within any of the Port Authority Information categories shall be undertaken in a manner that complies with and maintains all applicable state, federal and common law protections. Access to particular Information must be conditioned upon a strict need to know basis with regard to the particular, discrete Information, regardless of any federal security clearance, or other Port Authority or other organizational information access authorization. An individual's need to know is not established simply by reason of the individual possessing a recognized federal security clearance, including one that allows for access to a higher level of classified information than is otherwise required for the discrete Port Authority Information to which access is sought. All requests for access to SSI by anyone who does not possess the requisite "need to know" under SSI regulations must be reported to the Transportation Security Administration ("TSA") or, if applicable, the United States Coast Guard ("USCG") and, in certain instances, the Department of Transportation ("DOT").

#### **(a) Protected Information**

Access to Protected Information shall be on a need to know basis only, as determined by the DISO. In certain limited instance's access, privileges may be conditioned on the satisfactory completion of a background investigation(s). The background investigation, if warranted, should utilize the least stringent criminal history access disqualification criteria that is appropriate for granting access to the particular information for both Port Authority and non-Port Authority employees. Where a background investigation is a condition to granting access, a DISO may determine that periodic updates of such investigations are required as a condition to maintaining continued access privileges. Access by third parties to certain Protected Information, such as Confidential Privileged, and/or Confidential Information, requires that the parties execute a NDA or an Acknowledgment of an existing NDA if the CISO or OIG determines that a NDA and/or Acknowledgment is required.

### **(i) Confidential Information**

Access to Confidential Information shall be on a need to know basis only, as determined by the DISO. In certain instances, access privileges may be conditioned on the satisfactory completion of a background investigation(s). The background investigation should utilize the least stringent criminal history access disqualification criteria that is appropriate for granting access to the particular information for both Port Authority and non-Port Authority employees. Where a background investigation is a condition to granting access, a DISO may determine that periodic updates of such investigations are required as a condition to maintaining continued access privileges. Access by third parties to Confidential Information may require that the parties execute a NDA or an Acknowledgment of an existing NDA if the CISO or OIG determines that a NDA and/or Acknowledgment is required.

### **(ii) Confidential Privileged Information**

Individuals requiring access to Confidential Privileged Information must have a need to know consistent with the creation and preservation of the privilege attaching to the particular Information. An individual will be given access privileges to the Confidential Privileged information only to the extent that it is necessary and/or is required by the individual in order to fulfill and/or carry out his/her duties, obligations and responsibilities to the Port Authority. Access to Confidential Privileged information is subject to the satisfactory completion of a background investigation for non-Port Authority individuals and to continuing periodic checks. A list of disqualifying crimes for the different levels of background screening is attached as Appendix "D." A more stringent background investigation may be required of the individual for access to certain Confidential Privileged Information if determined by the DISO. All access to such Information must be granted and received in a manner that does not compromise or abrogate the particular privilege attaching to the Information.

Confidential Privileged Information may not be disclosed to any individual without appropriate prior approvals. Approval for disclosure of Confidential Privileged Information to third parties must be obtained from the DISO. A Port Authority employee or other individual may not waive any privilege attaching to Port Authority Information without the Port Authority's express permission as granted by the CISO, unless the Information to which the Port Authority asserts a privilege is personal to a particular employee or individual and the privilege is directly derived by reason of that circumstance. Access by third parties to Confidential Privileged Information will be conditioned on the parties' execution of a NDA or an Acknowledgment of an existing executed NDA, as may be appropriate and determined by the CISO. In the case of certain represented employees/individuals, and in some cases NDIs may be utilized in lieu of NDAs upon the approval of the CISO.

### **3.4 Access Disqualification**

Any employee, consultant, third-party contractor, or other individual and/or entity, who has been granted access to Protected Information, may be temporarily denied access while an investigation is conducted regarding any report to the CISO, OIG and the DISO that such individual misused, mishandled, or lost Protected Information, or disclosed, disseminated, or released Protected Information to an unauthorized individual or entity. Further, access to Protected Information can be denied when improper or incomplete verification checks of employees, entities, or individuals are discovered. In addition, if an individuals' SWAC has expired, or access level has changed that individual may no longer have access to Protected Information.

Where it is determined that an individual has misused, mishandled or otherwise improperly disclosed, released or disseminated Protected Information without authorization, that individual may be subject to disqualification of access privileges and may also be subject to sanctions, including formal disciplinary actions where the individual is a PA employee, with possible penalties up to and including termination of employment. The foregoing action shall be documented and provided to the individual's employer, SPM, DISO, or departmental manager, OIG, and the CISO, as may be appropriate. In the case of third parties, remedial action may include, but is not limited to, imposition of a monitor to oversee compliance with information security and general security requirements, or possible disqualification, and/or termination of present and/or future business relationships. Individuals and entities may also be subject to criminal or civil legal action, as may be appropriate. Additionally, see Chapter 6 regarding the possible consequences of violations of this Policy.

### **3.5 Non-Disclosure and Confidentiality Agreements (NDAs)**

Employees, consultants, third-party contractors, tenants, or other individual or entities, including governmental agencies where appropriate, will be required to sign NDAs or an Acknowledgment of an existing NDA, or be subject to an NDI, as a condition of being granted access to Confidential Privileged Information and, where appropriate, Confidential Information. Employees, consultants, third-party contractors, or other agency personnel who refuse to sign a NDA, in situations where it is required, will be denied access to Confidential and/or Confidential Privileged Information, except in the case of certain Port Authority employees and third parties where a NDI may be utilized in instructing and advising the Port Authority employee and/or third party of the obligations and the requirements for handling Confidential Information. In certain circumstances, a Memorandum of Understanding or Memorandum of Agreement containing approved non-disclosure and confidentiality requirements may be utilized, in which cases approvals are required from the CISO and the General Counsel, or their respective designees. The DISO is responsible for determining whether a NDA/NDI is required as a condition to being granted access privileges to certain Protected Information, other than Confidential Privileged Information. If an individual refuses to execute an individual Acknowledgment, PA Employee NDA or to receive the NDI, if it is deemed required by the DISO, CISO or OIG, access to the certain Protected Information must be denied. The SIM is also responsible for keeping proper documentation for employees and individuals subject to NDIs, including the date when the individual was given the NDI and by whom. A copy of all executed agreements and acknowledgements are to be provided to the PA DISO and Third Party SIM. Original executed NDAs shall be forwarded to the CISO, by the DISO, for filing in the official Port Authority records repository, with a copy to Law Department DISO.

### **3.6 Unauthorized Disclosure of Information**

If employees, consultants, third-party contractors, or other individuals and/or entities with authorized access to Protected Information become aware that Protected Information has been released to unauthorized persons, lost, stolen or compromised, they are required to immediately notify the DISO, CISO, the Office of Inspector General, and any other appropriate information security officer and report the discovery. In the case of SSI, the CISO must inform the TSA, DOT, or USCG and, in the case of CII, the Department of Homeland Security (“DHS”), of the breach of security. DOT, DHS, TSA and USCG rules govern the reporting of any unauthorized disclosure of SSI or CII.

### **3.7 Security Clearance and Access Prohibitions**

Access to Protected Information is not a right, privilege, or benefit of contracting with or employment by the Port Authority, rather it is based on pre-established guidance. Protected Information should not be divulged, released, turned over, or provided to any individual in any organization who does not meet the established criteria or conditions set forth herein, or who has not been approved for a security clearance issued by the Port Authority DISO, CISO or OIG. The following security clearance and access guidelines and/or prohibitions are in effect to protect Protected Information:

- Protected Information shall only be used in the performance of required job responsibilities, or in order to complete assigned tasks as determined by the SIM and DISO, with the concurrence of the CISO or OIG. No other disclosure or use of Protected Information is authorized.
- Individual access to Protected Information will be rescinded when an employee, consultant, third-party contractor, individual or entity, who had been granted access to Protected Information, is no longer employed by the Port Authority, or is no longer under contract with, or no longer has a relationship with the Port Authority, or is no longer in a position that requires access to Protected Information in order for the individual or entity to perform duties or complete tasks/projects.
  - Employees may not unilaterally sponsor themselves for background verification or enter their name on an Authorized Personnel Clearance List.
  - Group access of organizations to Protected Information should be prohibited. Each individual in a group must have security clearance to access Protected Information.
  - Persons who rarely, if ever, require access to Protected Information, (i.e., maintenance, food service, cleaning personnel, vendors and other commercial sales, or service personnel, who perform non-sensitive duties), should not be approved for a security clearance.

### **3.8 Background Screening**

In order to determine if any individual poses a potential security threat to the Port Authority or its Facilities, the Port Authority requires background screening to verify the personal identity of, and determine the criminal history of, all contactors and consultants working in secure areas at Port Authority facilities or handling security related Protected Information. As such, employees of third party contractors/consultants requiring access to certain Protected Information relating to security on a specific project must obtain clearance through a background check prior to being provided access to information unless otherwise waived in writing by the CISO or OIG. This

includes all individuals working on the project, including administrative and back-up staff that have access to and/or are handling Confidential or Confidential Privileged Information.

All background checks for third parties required under the Policy should normally be conducted through the "Secure Worker Access Consortium" (SWAC), which is presently the only Port Authority approved service provider of a background screening checks, except as otherwise required by federal law and or regulation. The Office of Emergency Management administers this provider. S.W.A.C. is accessed by an online application (<http://www.secureworker.com>) that enables the secure collection, processing, maintenance and real-time positive identity verification (PIV) of individuals. The S.W.A.C. background check is not a replacement for any federal agency (DHS, TSA, etc.) required background screening. S.W.A.C. membership is valid for three years, at the end of which the member must renew the online application. In addition, certain employees, such as those in the Public Safety Department, will have their criminal history background checked through the electronic databases maintained by federal and/or state law enforcement agencies when required as a condition of employment, or when required by federal or state laws, rules, and/or regulations, or, in certain cases, where it is legally permitted and is deemed appropriate by the CSO or OIG.

The DISO/SIM has authority to obtain the background check information from S.W.A.C. Additional information about S.W.A.C., corporate enrollment and online applications can be found at <http://www.secureworker.com>, or it may be contacted at (877) 522-7922. The S.W.A.C. application process is described in Appendix "E."

In some cases TSA's Transportation Workers Identifications Credentials (TWIC) or Security Identification Display Area (SIDA) background screening and credential may be used in lieu of the SWAC process with approval by the DISO.

### **3.9 Authorized Personnel Clearance List**

The DISO and SIM are responsible for compiling, maintaining, and updating their respective list databases on an ongoing basis and forwarding the information to the CISO for compilation into a master listing. Each DISO shall periodically review its department's/business unit's list with its SIM to ensure that the list is current and that each individual's access to Protected Information is still required. The CISO will maintain a master list database containing the names of all employees, consultants, third-party contractors, and other individuals and/or entities that have been granted a Port Authority security clearance and the specific category for which the security clearance was received, including, but limited to, for a particular project, or for specific Protected Information.

### **3.10 Development of a Confidential Information Practices and Procedures (CIPP)**

Departments, offices and/or business units may adopt an individualized, discrete CIPP tailored to their respective particular business practices for handling Protected Information. The CIPP is meant to augment the Handbook and must be consistent with it. Each CIPP must be approved by the CISO before being implemented.

### **3.11 Procurement Strategies**

#### **(a) General**

As a public agency, the Port Authority has an established procurement process based on openness, integrity, and fairness to the vendor community. The security of Protected Information must be incorporated at the beginning of the procurement process in order to establish a security benchmark that may be applied throughout the procurement process, as well as during the term of the award/contract.

#### **(b) Lifecycle Phases and Procurements**

A project may contain Protected Information in one or more of its lifecycle phases (pre-award, award, design, construction, close-out, or maintenance/service operation contracts, etc.).

Procurement and lifecycle information should be thoroughly reviewed by the originator before being submitted to the Procurement Department for processing. If Protected Information is discovered thereafter by Procurement, or any reviewing department, the originator's department manager or designee should be contacted immediately to retrieve the Protected Information and process it in accordance with the Policy and this Handbook.

#### **(c) Risk Exposure and Business Risk Strategy**

Procurement shall develop and retain, by project, a current listing of pre-screened persons or pre-qualified firms to bid on sensitive projects who agree to abide by the Policy requirements. Requirements must be included in procurement documents in order to help reduce potential disclosure of Protected Information and to provide bidders with certain security requirements in advance. They must also be included in contract awards to ensure information protection practices, procedures, and protocols are included in each project's lifecycle phase. The typical requirements are:

**(i) Non-Disclosure and Confidentiality Agreements (NDA).** Require prospective consultants, prime vendors, general contractors, or commercial enterprises to enter into a NDA with the Port Authority before obtaining a copy of a RFP. NDAs should be project and procurement specific and should be completed in a timely manner for specific types of procurements or projects. A broad or generic NDA should not normally be utilized to cover all procurements and projects under contract to a particular consultant, prime vendor, general contractor or commercial enterprise over a long period of time, however, it may be appropriate in certain situations to utilize such a NDA, if approved by the DISO with the concurrence of the CISO. Consultants, Prime Vendors, General Contractors, or Commercial Enterprises should contact the Port Authority to request authority prior to releasing RFP Protected Information to a sub-contractor. The sub-contractor may have to execute an Acknowledgement that it will comply with the terms of any NDA that the successful bidder has executed.

**(ii) Background Screening.** Require potential users seeking access to certain Protected Information to undergo background pre-screening. The pre-screening may parallel the screening requirement used by the Port Authority to grant access to Protected Information under Section 3.3. S.W.A.C.'s background screening is usually finalized within five to ten business days.

**(iii) Designation of a Security Information Manager (SIM).** Require companies involved in Protected Information procurements or projects to designate a SIM to ensure information security and Protected Information requirements are followed. A second employee may be designated as an alternate SIM. All SIM's will be required to get SWAC'd.

**(iv) Information Security Education and Awareness Training.** Require consultants, vendors, contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information.

**(v) Physical Security.** Outline the specific guidelines and requirements for the handling of Protected Information to ensure that the storage and protection of Protected Information is consistent with the requirements of Chapter 4 of this Handbook.

**(vi) Transfer or Shipping Sensitive Information.** Prohibit or place restrictions on the transfer, shipping, and mailing of Protected Information consistent with the handling procedures set forth in Chapter 4 of this Handbook.

**(vii) Website Restrictions.** Prohibit posting, modifying, copying, reproducing, republishing, uploading, downloading, transmitting, or distributing Protected Information on unauthorized 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 Confidential Information, from viewing such information.

**(viii) Destruction of Documents.** Require Protected Information to be destroyed using certain methods, measures or technology consistent with the requirements set forth in Chapter 4 of this Handbook.

**(ix) Use of Similar Agreements Between Prime Vendor and Subcontractors/Subconsultants.** Require the prime vendor, general contractor, or consultant to mandate that each of its subcontractors/sub consultants maintain the same levels of security required of the prime vendor, general contractor, or consultant under any Port Authority awarded contract.

**(x) Publication Exchanges.** Prohibit the publication, exchange or dissemination of Protected Information developed from the project or contained in reports, except between authorized vendors, subcontractors and subconsultants, without prior approval of the Port Authority. Requests for approval should be routed to and reviewed by the CISO in conjunction with the Law Department and, where appropriate, Public Affairs.

**(xi) Information Technology.** Matters involving information technology policy, or use of particular hardware or software, should require the application of specific protocols and/or software tools to support Port Authority projects. Coordination of information technology and consultation with the Director of Technology Services Department and the CISO may be required for the success of particular projects.

**(xii) Audit.** Include provisions to allow the Port Authority to conduct audits for compliance with 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.

**(xiii) Notification of Security Requirements.** Advise all consultants, third-party contractors, and other individuals and/or entities, as may be appropriate, that Port Authority security procedure requirements may be imposed throughout the duration of the project.

**(xiv) Reproduction/Copies.** Reproductions of Protected Information shall be consistent with the requirements of Chapter 4 of this Handbook.

## **CHAPTER 4 – MARKING, HANDLING, STORAGE, TRANSMITTAL AND DESTRUCTION REQUIREMENTS**

### **4.1 Marking of Certain Protected Information**

#### **(a) Confidential Privileged and Confidential Information**

All documents, drawings, and all other Information that contain Confidential Privileged, or Confidential Information must be marked with the appropriate respective protective marking: “CONFIDENTIAL PRIVILEGED” (alternatively “CONFIDENTIAL AND PRIVILEGED”) or “CONFIDENTIAL” (alternatively, where appropriate, Confidential Proprietary Information). The markings must be conspicuous and in bolded Arial with a 16 point font size or equally visible typeface.

The front page (or front and back cover, if appropriate) shall be marked at the top and bottom of the page. In addition, all interior pages within the document must also be marked at the top and the bottom of the page. Sets of documents large enough to be folded or rolled must be marked or stamped so that the marking is visible on the outside of the set when it is rolled or folded. The marking must be visible from the exterior container of the material, e.g., the spine of a binder, or compact disc container or cover.

All Confidential Privileged Information must bear the following warning sign on its front cover, back cover, and title sheet or first page. For compact discs, DVDs or other smaller materials, the warning sign may be printed on an adhesive label and affixed to the material. It should be in visible typeface and state:

"WARNING": The attached is the property of The Port Authority of New York and New Jersey (PANYNJ). It contains information requiring protection against unauthorized disclosure. The information contained in the attached document cannot be released to the public or other personnel who do not have a valid need to know without prior written approval of an authorized PANYNJ official. The attached document must be controlled, stored, handled, transmitted, distributed and disposed of according to PANYNJ Information Security Policy. Further reproduction and/or distribution outside of the PANYNJ are prohibited without the express written approval of the PANYNJ.

At a minimum, the attached will be disseminated only on a need to know basis and, when unattended, will be stored in a locked cabinet or area offering sufficient protection against theft, compromise, inadvertent access and unauthorized disclosure.

#### **(b) Sensitive Security Information Requirements**

Pursuant to the federal regulations governing SSI, Port Authority Protected Information that has been designated SSI by the Federal government must be conspicuously marked with its respective protective marking “SENSITIVE SECURITY INFORMATION” on the top and the distribution limitation statement on the bottom of each page of the document including, if applicable, the front and back covers, the title page, and on any binder cover or folder. The

protective marking must be in bolded Arial 16-point font size and the distribution limitation statement must be in an 8-point font size. All copies of SSI documents must also bear the required markings.

The distribution limitation statement is:

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the TSA or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

**(c) Critical Infrastructure Information**

Pursuant to the federal regulations governing CII, Port Authority Protected Information that has been marked PCII by the Department of Homeland Security PCII Program Manager or the manager's designee will be marked as follows:

This document contains PCII. In accordance with the provisions of 6 CFR Part 29, this document is exempt from release under the Freedom of Information Act (5 U.S.C. 552 (b)(3)) and similar laws requiring public disclosure. Unauthorized release may result in criminal and administrative penalties. This document is to be safeguarded and disseminated in accordance with the CII Act and the PCII Program requirements.

**(d) Document Control Number for Confidential Privileged Information**

Documents that have been identified as Confidential Privileged Information will be given a control number, which shall consist of the category of information followed by an acronym for the transmitting department, followed by the last 2 digits of the year, followed by a number that is sequential and, finally, followed by the copy number.

Examples:

CP – LAW – 13 – 1 – 1

CP – PMD – 07 – 10 – 2

The front page (or front and back cover, if appropriate) and all pages of Confidential Privileged Information shall be marked with the control number. The control number must also be visible from the exterior container of the material, e.g., the spine of a binder, or compact disc container or cover. If deemed necessary by the DISO or CISO, certain Confidential Information or other Protected Information may be given a control number.

## 4.2 Handling Protected Information

Handling refers to the physical possession of, and includes working on or with, Protected Information to perform job duties or complete tasks or projects. This includes, but is not limited to, reading, copying, editing, creating, or correcting the material. Protected Information in any form, including physical or electronic, must be under constant surveillance by an authorized individual to prevent it from being viewed by, or being obtained by, unauthorized persons. Protected Information is considered to be in use when it is not stored in an approved security container.

The following is a chart of the minimum-security requirements for handling Protected Information, and certain requirements that apply only to Confidential Privileged and Confidential Information:

Minimum Security Requirements for Handling	Confidential Privileged Information	Confidential Information
Must never be left unattended outside of storage location.	X	
Must be under the direct and constant supervision of an authorized person who is responsible for protecting the information from unauthorized disclosure.	X	
Must be turned face down or covered when an unauthorized person is in the vicinity. Be cognizant of others in area that can view your computer screen.	X	X
When leaving a computer unattended ensure that the screen is locked.	X	
Attach an information cover sheet when removing materials from their place of storage.	X	
Use all means to prevent unauthorized public disclosure of information.	X	X

## 4.3 Transmittal of Protected Information

Transmission refers to the sharing among individuals and/or entities, and/or the transfer or movement of Protected Information from one location to another using either physical or electronic means. The following chart sets forth the methods by which Protected Information should be transmitted. In all instances, Protected Information must at all times be safeguarded and transmitted in a manner and method designed to insure that it is not disclosed, or otherwise compromised, and it should be appropriately marked with the proper identifying marking.

In general, all Confidential Privileged Information must be signed in and out, and, in certain situations as determined by the DISO or SIM, Confidential Information may be signed in and out as well. A cover sheet must be attached to the Confidential Privileged or, in certain situations as determined by the SIM, to Confidential Information and it should be marked appropriately. With respect to Confidential Privileged Information, the coversheet attached as Appendix “F” is to be utilized to draw emphasis to the fact that a document contains Confidential Privileged Information and to limit visual exposure to unauthorized individuals in near proximity. Confidential Privileged Information and, where appropriate, Confidential Information, must be wrapped and sealed. The exterior of the wrapping should not indicate that it is sensitive material, or its category, or level.

Confidential Privileged Information may be transported using public modes of transportation, and a courier service may also be utilized; provided, however, that the sign in and sign out procedures will apply, as well as wrapping and sealing procedures. All packages must be sealed in a manner that easily identifies whether the package has been opened prior to delivery to the intended recipient. The use of a double wrapped/enveloped package or a tamper resistant envelope must be used to fulfill this requirement. Protective markings are not to be placed on the outer visible envelope. If using a double wrapped package or two envelopes, the inner wrapping or envelope should be marked in accordance with appropriate category designation. The package must be addressed to an individual who is authorized to receive it or, preferably, to the SIM. All packages must contain a specific individual’s name on the shipping label. Where appropriate any of the foregoing requirements may also be required in handling Protected Information and can be provided for generally in the department’s CIPP, or as required by the DISO and/or SIM with respect to handling such information in specific instances.

<b>Minimum Security Requirements for Transmission</b>	<b>Confidential Privileged Information</b>	<b>Confidential Information</b>
Verbally at a meeting, conference or briefing where all attendees have the appropriate security clearance	X	X
Electronic Systems: restrict to Livelink <sup>2</sup> or a similar approved secure repository	X	
Electronic Mail: restricted from using e-mail accounts to transmit.  NOTE: Confidential Information may be transmitted using encryption with express permission by the DISO/SIM, in writing	X	
Hand Carried or delivered in the personal custody of Authorized Individual: (a) request return receipt (b) place in sealed envelope, and (c) name of recipient, department, address and phone number must be written on face of envelope	X	X (b and c only)
Approved Commercial Delivery Service (e.g., DHL, FedEx, UPS): (a) request return receipt, (b) verify recipient name and mailing address, (c) place in a sealed envelope, and (d) the		

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<sup>2</sup> Livelink is a secure collaborative repository for the documents of a project.

exterior of a mailing document shall not indicate the security category of the material contained therein	X	X
Use of USPS Certified Mail: (a) request return receipt, (b) verify recipient name and mailing address, and (c) the exterior of a mailing document shall not indicate the security category of the material contained therein	X	X
Intra-agency Mail System (a) request return receipt (b) place in sealed envelope, (c) name of recipient, department, address and phone number must be written on face of envelope, and (d) the exterior of a mailing document shall not indicate the security category of the material contained therein	X	X (b, c, d only)
Telephone: restricted from using a non-land line telephone to transmit, unless expressly permitted by SIM in writing. If approved: (a) use all means to prevent unauthorized public disclosure, and (b) may not use mobile or internet devices.	X	
Fax Machine: restricted from using fax machine to transmit unless expressly permitted by the SIM in writing. If approved: (a) prior coordination with recipient required, (b) verify recipient fax number, (c) receipt of successful transmission, and (d) follow-up contact required	X	X (a,b,c only)

Steps for transmittal of a “hard copy” of all Confidential Privileged Information and, when required, for Confidential Information:

- Step 1. Make certain that documents are properly marked: “CONFIDENTIAL PRIVILEGED,” or “CONFIDENTIAL,” according to its designated category.
- Step 2. Prepare Transmittal Receipt (Appendix “F”).
- Step 3. Place document in envelope with the Transmittal Receipt, seal envelope, mark the inner envelope CONFIDENTIAL PRIVILEGED or CONFIDENTIAL, place envelope in second envelope (outer), this envelope shall not contain any protective markings.
- Step 4. Address envelope to an individual who is authorized to receive it.
- Step 5. Mail document.
- Step 6. The Transmittal Receipt shall be returned to the party who initially sent the item.

When hard copies of 8 1/2 ” X 11” multi-page documents include threat scenarios, asset criticality information, identification of security vulnerability details, risk assessments, design basis threats and concepts of operations are distributed, this information is to be bound using secure binding to prevent individual sheets from being removed from a set.

#### **4.4 Storage of Protected Information**

Steps should be taken to prevent unauthorized access to Protected Information. Certain Protected Information should be kept in a locked storage room or a locked security container, such as a drawer, cabinet or safe-type file that has a locking mechanism, and must be vandalism resistant. The DISO will periodically review the departmental storage vehicles and mechanisms and determine their appropriateness for the information being stored. Protected Information should be gathered and stored in a minimum number of office locations. Confidential Privileged Information must never be left unattended outside its storage location for long durations. A storage space or security container/receptacle may not be left open and unattended at any time. At no time should Confidential Privileged or Confidential Information be stored, except for short periods during work, in unauthorized desk drawers, file cabinets, or other unsecured locations. The CISO may require that certain information be kept in a safe in a designated central location(s).

Combinations or locks for each security container must be changed or replaced when a person having knowledge of the combination or possession of a lock key no longer requires it, leaves the project or there is reason to suspect that the combination has been tampered with, or that an unauthorized person may have acquired knowledge of the combination, or that a lock key is in the possession of an unauthorized person. Keys and combinations of locks utilized to secure certain Protected Information must be safeguarded at the same level of protection as paper documents. The "Guidelines for the Storage of Confidential Privileged, Confidential and Law Enforcement Confidential Information" attached as Appendix "H" provides further detailed information and instructions.

Confidential Privileged Information and, where appropriate Confidential Information, may not be stored at any individual's home overnight for a meeting the following day without prior written authorization of the SIM or DISO.

Downloading of any Confidential Privileged Information and Confidential Information carries with it the responsibility to protect that information in accordance with the procedures identified in this Handbook. The possessor of the electronic file assumes full responsibility for the proper handling, storage, transmittal and disposal of this Confidential Privileged and Confidential Information.

#### **4.5 Document Accountability Log**

All entities, Port Authority Departments and third-parties having Protected Information in their possession will have a system in place that will account for the material in such a manner that retrieval is easily accomplished for inspection. The accountability log with respect to Confidential Privileged and Confidential Information shall be maintained by the DISO, or the SPM, or SIM, where applicable, and include:

- The date that a document was received or created
- The identity of the sender or creator
- A brief description of the document
- The Control Number, if Confidential Privileged Information
- Number of copies

- Transmission history (sent to whom, when)
- If applicable at the time of the inspection, a Port Authority Document Destruction Certification, stating that the document has been destroyed (including, when, by whom and the method), or a Certification that the document has been returned to the Port Authority.

#### **4.6 Reproduction**

Protected Information should only be reproduced to the minimum extent necessary to carry out an individual or entity's responsibilities. However, the reproduced material must be marked and protected in the same manner and to the same extent as the original material. Authorized individuals must perform all reproduction work. Print and reproduction locations are limited to Port Authority sites, or, when appropriate, to authorized consultant and/or third-party contractor work site equipment. The CISO may require that the work site should limit reproduction of Protected Information to a particular copying machine with technological capabilities limited to copying (not scanning or storing etc.). Service providers, authorized by the responsible SIM or DISO where appropriate, may be used for this task if the information remains safeguarded throughout the process. Each reproduction of Protected Information shall contain all security markings, instructions, etc., as set forth in Section 4.1. All scraps, over-runs, and waste products resulting from reproduction shall be collected and processed for proper disposal.

#### **4.7 Destruction of Protected Information**

All Protected Information that is no longer needed shall be disposed of as soon as possible, consistent with the Port Authority's Record Retention Policy, by any method that prevents its unauthorized retrieval or reconstruction. Authorized service providers may be used for this task provided that the information remains safeguarded until the destruction is completed. Paper products must be destroyed using a cross cut shredder located in the office. As previously noted in Section 4.5, a Port Authority Document Destruction Certificate must be provided to the DISO or SIM for any document being destroyed, including original or copies thereof. In addition to the requirements in this Handbook, all Departments shall continue to comply with the Port Authority Records Program (A.P. 15-2.02). Where Protected Information is no longer needed, but the Port Authority Records Program requires retention of the original, the original Protected document shall be retained by the Departmental Records Coordinator and all copies are to be destroyed in accordance with this section. The "Guidelines for the Disposal and Destruction of Confidential Privileged Information" attached as Appendix "I" provides further detailed information and instruction.

Since deleted electronic files can be recoverable by utilizing software tools, certain Protected Information stored in electronic form needs to be erased and destroyed with methods that comply with the US Department of Defense standards for file secure erasure (DoD 5220.22). Therefore, CyberScrub or a similar software shall be used to prevent discovery by a computer technician or other unauthorized person. With respect to Port Authority staff, individual staff shall contact the Technology Services Department ("TSD") to make a request that Protected Information be permanently removed from a computer. This request shall be made by providing relevant information on a TSD Service Request (TSR), found on eNet on the TSDpage.

#### **4.8 Information Technology Systems – Handling of Electronic Information/Data**

All transmission, storage and destruction of all electronic information and data must be in compliance with the Technology Services Department's (TSD) "Cyber Security Guidelines for the Port Authority of New York and New Jersey"

Information Technology (IT) Systems that are used to electronically capture, create, store, process or distribute Protected Information must be appropriately managed to protect against unauthorized disclosure of the contents. The main objectives of these electronic handling guidelines are to:

- Provide access exclusively to the authorized individuals.
- Compartmentalize Protected Information as required by a Department's CIPP.
- Complete removal of Protected Information from the system when it is no longer needed.

This section is intended to describe the processes used to control secure electronic data, and is to be implemented for the control, processing, handling, storage, and destruction of all "Protected" electronic data as generated, received, or distributed by Authority staff, consultants, contractors or third parties.

#### **4.9 Transmission/Exchange of Electronic Information**

The Authority uses Livelink (moving toward PACS) as its project and program website solution to collaborate with team members (i.e., authorized individuals) both inside and outside the Agency's firewall. Additionally, the Authority also uses secure internet websites with secure transmission to collaborate with team members outside the Agency. The use of a web-based collaboration tool has numerous benefits that result s in time and cost savings, accountability, security, and disaster recovery. For example, within the Authority, the Downtown Restoration Program (DRP), the Security Capital Program, Office of Emergency Management, and the Goethals Bridge Program, utilize Livelink website collaboration.

Access to these password-protected websites is controlled by permissions that apply to each individual user account. In this manner, users are allowed to access folders and files only when approved by the SIM, Project Manager or Program Manager directly responsible for the information.

With these measures in place, the Authority has deemed that all electronic exchange of Protected Information must be accomplished using a secure project website solution with centrally managed access control on a per individual basis and with encrypted transfer.

Although the entire Port Authority Website is secure, in order to provide better organization and auditing of files that contain Confidential Privileged or Confidential Information, special secure folders must be created and maintained specifically to house this information. Information that has been designated as Confidential Privileged Information may only reside in these secure folders in order to further compartmentalize it from other types of information.

Additional secure Protected Information folders will allow other files such as reports, presentations, etc., to be stored.

In addition to the Livelink website, certain electronic Protected Information may also be shared via secure Local Area Networks (LAN). Protected Information should be removed from the LAN as soon as the recipient has acknowledged receipt of the information. As with the website, these LANs are password protected, and access to them is only for those individuals who have signed the NDA and are provided with permission by the SIM or DISO, if required.

E-mailing of Confidential Privileged Information is not permitted, E-mailing of any other Protected Information must be encrypted as per TSD standards.

#### **4.10 Electronic Storage**

Technology advances allow increasingly larger amounts of information to be stored on increasingly smaller devices. This creates a greater risk of information security breaches due to the size and portability of these devices, which can be lost or misplaced more easily when taken outside of the office. If a situation arises whereby electronic files must be exchanged by electronic media such as flash drives, CD or DVD, all provisions within this manual for handling physical documents must be satisfied.

Possession of Protected Information in any format (hardcopy, electronic, photo, video, etc.) carries with it the responsibility to protect that information in accordance with the requirements of the Handbook. Authorized individuals in possession of electronic files containing Protected Information assume full responsibility for the proper handling, storage, transmittal, and destruction of this type of information in the same or comparable manner as hard copy requirements.

Users who possess electronic files containing Protected Information shall adhere to the following guidelines to maintain the proper protection of this material:

##### **Desktops/Laptops/CAD Machine Users**

Individuals granted access to The Port Authority Network or information systems shall secure computers from unauthorized access.

- When leaving a computer unattended, users shall apply the “Lock Workstation” feature (ctrl/alt/delete, enter).
- Unattended computers shall be secured from viewing by password protected screen savers.
- Computers shall activate the automatic screensaver feature after a period of non-use. The period of non-use is fifteen (15) minutes, or a shorter time period if required by a DISO.
- Desktop computer users shall only store Confidential Privileged and Confidential Information on a secure password protected network drive (directory on The Port Authority Network) and not the computer’s local hard drive.
- Laptop computer users shall store Confidential Information locally, when necessary, with encryption software. Users shall contact their respective DISO to request or confirm that Port Authority standard encryption technology is installed on their assigned laptop computer.
- Computer users shall not disable or alter security safeguards, such as virus detection or encryption software, installed on Port Authority computers.

## **Portable Media**

- Confidential Privileged Information shall be encrypted on portable devices, including handheld devices, if they are carried outside secure worksites.
- All Protected Information stored on portable devices shall be password protected at the document level.
- Mobile laptop computers, computer media and any other forms of removable storage (e.g., diskettes, CD ROMs, flash drives) shall be stored in a secure location or locked cabinet when not in use.

### **4.11 User Access Deactivations**

In addition to accessing the IT Systems, Port Authority, through the appropriate Systems Administrator, may deactivate a User's IT privileges, whether or not the user is suspected of any violation of this Policy, when necessary to preserve the integrity of facilities, user services, or data.

## **CHAPTER 5 – AUDITING AND MONITORING**

### **5.1 Purpose**

The ISSC, Audit and/or OIG may conduct random or scheduled examinations of business practices under the Policy in order to assess the extent of compliance with the Policy. The Policy's self-assessment and audit processes enable management to evaluate the Policy's uniformity throughout the Port Authority and of third parties' practices, in order to identify its strengths and potential exposures, and to help guide evolving policy objectives.

### **5.2 Audits and Investigations**

Audits conducted by the ISSC, Audit, and/or OIG may be scheduled in advance. The chief, department director, project manager, company liaison or contract representative of the organization being assessed should receive prior notice of the date of the assessment and also be advised as to what the assessment will consist of. A copy of the current version of the Audit Procedures guidelines, attached as Appendix "J", should be provided to the particular entity(ies) in order to allow adequate time to undertake appropriate pre-review and preparation action. The Audit Procedures guidelines should guide the ISSC and/or Audit through the assessment process. This Guideline is not all-inclusive and may be amended, as necessary. Organizations, departments, units, or third parties, preparing for an ISSC and/or Audit visit are encouraged to contact the CISO prior to the scheduled visit date in order to inquire and obtain additional information about the process.

The ISSC and/or Audit may also conduct information security assessments without prior notice and/or unannounced investigations coordinated through the Office of the General Counsel and the Office of Inspector General, as it may deem necessary and appropriate. Where appropriate, the CISO should be advised of the existence of such an investigation and, if appropriate, its nature.

The ISSC and/or Audit approach to conducting an assessment should consist of three phases (i) personnel interviews, (ii) site assistance visits, and (iii) corrective action follow-up.

#### **(i) Personnel Interviews**

The interview(s) should focus on the department, business unit, organization or third party's compliance with the Policy, how engaged the interviewee is with the Policy, and the level of education and awareness the interviewee has about the Policy. Employees, consultants, third-party contractors, and other individuals and/or entities should be included as potential interviewees. Personnel interviews should encompass a wide range of individuals who are regularly engaged with the Policy, as well as those having less involvement in it. This allows the ISSC to develop a balanced understanding regarding Policy compliance and effectiveness, as well as its impact on the organization and enable it both to identify concerns and issues regarding the Policy, and to solicit recommendations for possible improvements to the Policy.

**(ii) Site Assistance Visits**

The ISSC and/or Audit site visit should focus on a hands-on review of the following processes and procedures: document safeguards, handling protocols, transmission practices, control number usage, document marking, receipt and copying practices, and disposal of Protected Information procedures. The visit should also include compliance reviews of the security clearance access criteria, document accountability audits, conditions regarding information access, background check processes, Authorized Personnel Clearance Lists updates, Protected Information material sign out and sign in records, where appropriate, and the information security education awareness training program.

**(iii) Follow-up**

Policy compliance deficiencies noted during the assessments should be provided by the ISSC and/or Audit through the CISO to the department head, chief, project manager, consultant, third-party contractor liaison/representative, other agency staff, and the respective DISO or SIM for corrective action. The ISSC, through the CISO, may also follow-up on investigation results to determine corrective actions and Policy compliance. The ISSC may also recommend the imposition of any penalties or disciplinary action that are described in Chapter 6.

With the assistance of the respective DISO or SIM, a plan with milestones should be developed with the intention of correcting any identified deficiencies. A return site assistance visit may be scheduled in order to re-assess earlier identified deficiencies. The respective DISO, SPM, or SIM should forward a periodic corrective action progress report to the CISO as part of the milestone monitoring.

**5.3 Self-Assessment**

Department heads, chiefs, managers, supervisors, DISOs or SIMs should conduct an annual self-assessment of their unit's Policy compliance using the Audit Procedures Guidelines. The results will not be forwarded to the CISO, Audit or ISSC, but should be used as a tool to gauge compliance before regular assessments are conducted. The results should be available for inspection and any serious findings should be forwarded to the CISO.

## **CHAPTER 6 – POLICY VIOLATIONS AND CONSEQUENCES**

### **6.1 Responsibilities**

Anyone having knowledge of any infraction, violation or breach of the Policy is required to report it to the CISO, OIG, their DISO, and third party SIM, who shall in turn report the same to their supervisor/manager. The CISO shall have the final decision with respect to the violation determinations and/or the recommended course of action to be taken, consistent with Port Authority policy, practices and legal requirements referenced in this section.

All individuals who have been reported as having violated the Policy may be temporarily denied access to Protected Information and/or have their security clearance suspended until an investigation is completed.

### **6.2 Violations, Infractions, or Breach of Information Security Protocols**

Due to any number of unintended circumstances or, other conditions beyond the control of an individual, Protected Information could be subject to compromise or loss. For example, an individual may unintentionally discard Protected Information, mislabel Protected Information, sent through the internal mail routing system, or drop or inadvertently leave Protected Information in a public place. Intentional disclosure of Protected Information to unauthorized individuals for personal gain, or to otherwise make available for unauthorized public release, may also occur. Violations, infractions and breaches of the Policy will be reviewed on a case-by-case basis to determine the facts and circumstances surrounding each incident.

### **6.3 Violation Reporting, Investigation and Fact Finding**

Individuals must report alleged or suspected violations, infractions or breaches of the Policy to the DISO, CISO, OIG and to their supervisor or manager. The DISO, in consultation with the CISO and OIG, will determine whether an investigation into the allegations or other appropriate action is warranted. The CISO will consult with the OIG on these matters and the OIG will determine whether to undertake its own separate investigation into the matter. Individuals and/or entities must cooperate with all authorized investigations of any act, omission or occurrence relating to Port Authority property, information, materials, and, in the case of Port Authority employees, and if applicable, must comply with the Agency General Rules and Regulations. (See *“General Rules and Regulations for all Port Authority Employees.”* Port Authority of New York and New Jersey. April 1990.)

### **6.4 Disciplinary Action**

The following is a list of Policy violations and the possible respective disciplinary actions that may be taken against any individual and/or entity, having authorized access to Protected Information, who violates their responsibilities in handling such information:

- a) Non-deliberate violations involving negligence and/or carelessness, such as leaving Protected Information unattended.

First Offense: Verbal reprimand and security briefing.

Second Offense: Written reprimand and/or a security briefing and possible suspension or termination of access privileges, depending on the circumstances.

Third Offense - Termination of access and possible imposition of civil penalties. Where the offense involves a Port Authority employee, disciplinary action may also be taken.

- b) Non-deliberate violation involving negligence and/or carelessness such as misplacing or losing a document.

First Offense - Written reprimand and/or a security briefing, and possible suspension or termination of access privileges, depending on the circumstances, and possible imposition of a civil penalty. Where the offense involves a Port Authority employee, disciplinary action may also be taken.

Second Offense - Dismissal or termination of access privileges, and, depending on the circumstances, the imposition of a civil penalty, and possible legal action against the violator. Where the offense involves a Port Authority employee, disciplinary action may also be taken including suspension with forfeiture of up to one year's personal and vacation time allocation.

- c) For cases of deliberate disregard of security procedures or gross negligence in handling Confidential Privileged and Confidential Information.

First Offense – Suspension or termination of access privileges, termination of an agreement or contract, written reprimand, imposition of a civil penalty depending on the circumstances, and possible legal civil and/or criminal action against the violator. Where the offense involves a Port Authority employee, disciplinary action may be taken up to and including termination of employment. Termination of access privileges will be for a period of one year at minimum and may be permanent, subject to review by the CISO.

The Port Authority may also impose investigation costs and/or a monitor to oversee future compliance with its security policies and practices at the violator's expense, when the violation is by a consultant, vendor contractor or other third party. Nothing herein is construed to limit the Port Authority's right to exercise or take other legal rights and remedies including terminating agreements with a third party violator and/or refusing to enter into future business relationships with the violator and/or seeking such legal action, as it may deem appropriate, including injunctive, civil actions for monetary damages and/or seeking criminal prosecution of the violator(s).

In addition, any violation relating to SSI or CII will be reported to the TSA, the OIG, and/or, if applicable, DOT, USCG or DHS. Penalties and other enforcement or corrective action may be taken as set forth in relevant statutes, rules and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and directions to cease future unauthorized disclosure. Applicable Federal Regulations, including, without limitation, 49 C.F.R. § 15.17 and 1520.17 and 6 CFR Part 29, provide that any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action being taken by the DOT, TSA and/or DHS.

## **CHAPTER 7 – INFORMATION SECURITY EDUCATION AND AWARENESS TRAINING**

### **7.1 Purpose**

Information Security Education and Awareness training ensures that all personnel requiring access to Protected Information, regardless of position or grade level, have an appropriate understanding of the need to adhere to security procedures in order to secure Protected Information. The goal of the training program is basically to provide that all such employees, consultants, third-party contractors, other individuals, entities and/or, where appropriate, third parties develop essential security habits and thereby ensure that all personnel accessing Protected Information understand and carry out the proper handling protocols for those materials.

### **7.2 Overview**

The CISO is responsible for implementing the Information Security Education and Awareness Training Program (the “Training Program”). The Training Program, with assistance from the Office of Inspector General, DISO and SIM, should be provided to all employees, consultants, third-party contractors, and other agency personnel requiring access to Protected Information. These individuals, regardless of rank or position in a particular organization, must complete initial indoctrination and refresher training. The CISO, with the concurrence of the Law Department, may waive this requirement for certain individuals. A current list containing the names of all persons who completed training will be developed and retained by the CISO. The CISO shall ensure that all employees have complied with the requisite Training Program.

### **7.3 Training Program Elements**

The Training Program consists of three interconnected elements: (a) indoctrination training, (b) orientation training, and (c) refresher training, recommended every three years. Each element provides employees, consultants, third-party contractors, and other agency personnel with a baseline of knowledge, as well as periodic updates, about the existing and current Policy. Each element of the Training Program contributes another level of information to the individual. At a minimum, all individuals must receive the indoctrination training, and the refresher training, if warranted.

#### **(a) Indoctrination Training**

Indoctrination Training provides personnel with the fundamentals of the Training Program. It should be completed when beginning employment or assignment to a project for the Port Authority, but no later than sixty (60) days after initial hire, or after commencing work on a project. It may be combined with other types of new employee indoctrination programs. Individuals completing this level of training should understand the basic organization of the Policy, the Policy definitions, what materials are defined as Protected Information under the Policy, how to identify Protected Information (security category levels and markings), the general criteria and conditions required in order to be granted a security clearance, procedures for categorizing documents, the obligation to report suspected and alleged policy violations, and the penalties for non-compliance with the policy and for unauthorized disclosure of Protected Information.

**(b) Orientation Training**

Orientation Training focuses on the more specific protocols, practices and procedures for individuals whose roles and responsibilities involve reading, using, safeguarding, handling, and disposing of Protected Information. Individuals assigned such responsibilities should complete this level of training. Orientation training should be conducted prior to assignment to a department, project, task, or other special assignment, where the individual is expected to become involved with receiving and handling Protected Information. Individuals completing this level of training should be introduced to the DISO or SIM, understand the organizational elements of the Policy, know how to process Protected Information, know the different security categories under their control or within their assigned work environment, know how to identify proper safeguarding protocols, including hardware needs, and understand the differences between general access privileges and the need to know requirement for access to particular information. Individuals should also read and acknowledge their understanding of the requirements.

**(c) Refresher Training**

Within a three (3) year time period during the anniversary month of the individual's start date on a project, or initial access to Protected Information, all employees, consultants, third-party contractors, and other individuals and/or entities, who continue to have access to sensitive materials, should receive an information security education and awareness training refresher briefing to enhance their information security awareness. At a minimum, the refresher training should include indoctrination and orientation topic training, as well as key training on recent Policy changes or other appropriate information. Also, this milestone may be used to reaffirm the individual's need for a security clearance or to determine whether the individual requires a periodic update of their background check.

**(d) Other Circumstances and Special Briefings**

If a Port Authority employee, consultant, third-party contractor, or other individual and/or entity transfers to another department, is promoted within his or her department, or changes employers on the same project without a break in service, and can provide a record of completion of indoctrination training within the previous twelve months, only annual refresher training may be required. All other situations demand that an individual requiring access to Protected Information fulfill the conditions for information security education and awareness training under this Policy.

In addition to reading and signing a NDA or an Acknowledgment of an existing NDA, or, alternatively, being subject to a NDI, temporary or one-time access individuals should be fully briefed on the limitations on access to Protected Information and the penalties associated with the unauthorized disclosure, before being granted access to such information.

Special briefings may be provided on a case-by-case basis, as circumstances may require.

**APPENDIX A**  
**PROTECTED INFORMATION**

**Confidential Privileged Information**

- Information that reveals security risks, threats, vulnerabilities, built –in or potential to Port Authority facilities and/or assets
- Documentation that identifies specific physical or system security vulnerabilities, when referring to specific security or terrorist threats and/or the specific capabilities in-place to counter a threat
- Documentation revealing specific security vulnerabilities at a new or existing PANYNJ facility, if specific weaknesses are reflected or maximum tolerances are provided
- Information revealing details of defeating a security system(s) or revealing the system in its entirety
- Drawings or documents that reveal specific security design criteria or ratings with regard to security performance
- Information identifying the basis for implementing an operational or technical security solution
- Details related to emergency response protocols, egress plans, flow paths, egress capacities, security systems, etc., not publicly available (diagrams, codes, standards)

Information includes, but is not limited to:

1. Security Risk and Threat Assessments (SRA);
2. Design Basis Threat Analysis (DBT);
3. Facility Security Programs/Plans (to the extent such Programs/Plans are not designated as SSI or CII );
4. Continuity of Operations Plans;
5. Security White Papers;
6. Blast Protection Design Requirements; Blast Analysis; Vector Analysis (Security Barriers, Bollards, etc.);
7. Structural plans, details and specifications if site specific information involves details regarding the capability or vulnerability of security system(s) or additional protection to a critical structure(s);
8. Drawings and/or documents with specific forced entry ratings;
9. Security System(s) designs when high technology data, which was developed by or for the Port Authority, is site specific or concerns core area system;
10. Critical element of security or life safety system; such as master controls, overrides, backup power sources when such elements would not be readily observable by the public;
11. Security system(s) command and control operating instructions and supporting countermeasures when referring to a specific site or project location;
12. Design data revealing engineering, construction of a Communication or Data Center electrical system, network connections, or facility support system with signal cable (e.g., intercom, telephone);

## Confidential Information

- Specific security system/hardware model number installed at specific locations
- Details concerning overall security system(s) or individual sub systems(s), including design engineering, construction, fabrication and rollout schedule when data is site specific or concerns core area systems
- Structural plans and details if site-specific information involves details of security system(s) of protection
- Design data revealing engineering, construction, or fabrication details of primary and emergency electrical power systems supporting security, communications or life safety systems
- Documents identifying protective measures around Operations & Control Centers
- Documents identifying the location of Police and Emergency Communication Lines
- Security budget information
- Security Capital Plan
- Security personnel information

Information includes, but is not limited to:

1. Methods utilized to mitigate vulnerabilities and threats, such as identity, location, design, construction, schedule, and fabrication of security systems;
2. Details concerning overall security system(s) or individual subsystem(s), including design, engineering, construction, fabrication and rollout schedule when data is site specific or concerns core area systems;
3. Concept of Operations (CONOPS) documents;
4. Structural plans and details if site-specific information involves details of security system(s) or protection;
5. Documents identifying protective measures around Operation Control and Data Centers;
6. Documents identifying the location of Police, Emergency Communication and Network Lines;
7. Security White Papers
8. Secure Identification Display Area (SIDA) Badge Application (Aviation)
9. Selected Environmental Documents – Condition Surveys containing information on contaminated sites;
10. Emergency Operations Plan (to be shared with other Agencies);
11. Guidance for Managing Multi-Agency Response to WMD/CBREN Incidents;
12. Security system logs and reports, system operators and users including all related personal and company data;
13. System information used to construct and protect security systems;
14. Information/documents compiled for law enforcement or official investigatory purposes;
15. Sensitive financial, commercial and other business information received from third parties under Non-Disclosure and Confidentiality Agreements:
16. Security Project Management budget Information;
17. Security Project Management Capital Plan;
18. Property Lease Agreements (Negotiations);
19. Legal Settlement agreements (when specified in the final settlement agreement);
20. Financial Analysis relating to ongoing litigation;
21. 5-year Capital Security Plan.
22. Law Enforcement investigatory material based upon the sensitive or confidential nature of the information

## **Health Insurance Portability and Accountability Act (HIPAA)**

Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must also refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” or “Privacy Laws”) place restrictions on the Group Health Plans of the Port Authority and PATH (the “Plans”) ability to use and disclose Protected Health Information (“PHI”).

To protect the privacy and confidentiality of PHI and to comply with HIPAA, all members of Employee Benefits, including the Customer Service Representatives, and any others who have access to PHI, must comply with the policies and procedures set forth in this manual (the “Policies and Procedures”). The purpose of this manual is to establish how the Privacy Laws are to be implemented by the Plans and Employee Benefits in particular. This document maintained by the Employee Benefits Division of HRD, addresses Privacy Law Concerns related to the Health Insurance Portability and Accountability Act (HIPAA).

HIPAA defines **Protected Health Information (PHI)** as all individually identifiable health information that is transmitted or maintained by the benefit plans in any medium – electronic, oral or written. The Port Authority receives this information in its employer capacity and, therefore, it is not considered to be PHI:

- An individual’s name, address, birth date, marital status, dependent information and Social Security number;
- An individual’s choice of health plan;

## **Attorney Work Product**

Attorney work product and other privileged information should be protected and treated in accordance with the established rules of the profession and may carry the marking “Privileged & Confidential”. Certain work product information may also fall within the definitions of Confidential Privileged and/or Confidential Information as established by the Handbook, and as such, should be marked and treated in accordance with the Handbook and the Law Department CIPP.

## **Federal Designations:**

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

1. Facility Security Programs/Plans (Aviation and Port Facilities fall under SSI);
2. Exclusive Area Agreements (Aviation and Ports – An agreement between PA and tenant that has a security program, which permits the tenant to assume responsibility for security within the affected area(s). SSI);
3. TAS Security Directives (SSI);
4. SEA LINK Database and corresponding applications (Ports - SSI/Privacy Act Information).
5. Security Directives issued by the TSA

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

<b>PROTECTED INFORMATION (CONFIDENTIAL INFORMATION)</b>	
<b>Handbook Marking</b> <ul style="list-style-type: none"><li>• Confidential Privileged</li><li>• Confidential</li><li>• CII &amp; SSI</li></ul>	<b>Outside Handbook Marking Protocols</b> <ul style="list-style-type: none"><li>• HIPAA</li><li>• Litigation/Law</li><li>• Law Enforcement Investigatory Material</li><li>• Active Negotiations</li><li>• RFP Proposals under evaluation</li></ul>

## **APPENDIX B**

### **Non-Disclosure and Confidentiality Agreements**

**B-1**  
**Non-Disclosure and Confidentiality Agreement**  
**with reference to Handbook**

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
BETWEEN**

---

**AND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **“Protected Information”** means and includes collectively, Confidential Information, Confidential Privileged Information, Sensitive Security Information (SSI), Critical Infrastructure Information (CII) or Health Insurance Portability and Accountability Act (HIPPA) Information and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. The term Protected Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others, or when the Port Authority receives such information from others and agrees to treat such information as Protected. The following Information shall not constitute Protected Information for the purpose of this Agreement:

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

(d) **“Confidential Information”** means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code.

(e) **“Confidential Privileged Information”** means and includes collectively, (i) Information that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available.” and any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws, and (ii) certain Critical Infrastructure Information.

(f) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of

Protected Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.

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

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

(i) "**Health Insurance Portability and Accountability Act**" (HIPAA) Information Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA" or "Privacy Laws") place restrictions on the Group Health Plans of the Port Authority and PATH (the "Plans") ability to use and disclose Protected Health Information ("PHI").

(j) "**Port Authority Handbook**" means The Port Authority of New York and New Jersey. Information Security Handbook, as may be amended by the Port Authority, from time to time.

(k) "**Project Purposes**" means the use of Protected Information strictly and only for purposes related to Recipient's and its Related Parties' participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.

(l) "**Related Party**" and "**Related Parties**" means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient's outside consultants, attorneys, advisors, accountants, architects, engineers or subcontractors or sub-consultants (and their respective directors, employees, officers, partners or members) to whom any Protected Information is disclosed or made available.

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

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

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

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

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

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

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

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

(g) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of

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

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

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

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

continues to abide by the requirements of this Agreement with respect to the protection of such Protected Information.

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

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

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

15. **No Liability.** Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any

liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

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

**RECIPIENT:**

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

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

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

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

**EXHIBIT A**

**ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL**

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

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

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

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

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

**EXHIBIT B**

**ACKNOWLEDGMENT BY RELATED PARTY ENTITY**

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

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

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

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

**B-2**  
**Non-Disclosure and Confidentiality Agreement**  
**without reference to Handbook**

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
BETWEEN**

---

**AND**

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

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

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

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

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

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

WHEREAS, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement

Port Authority Non-Handbook NDA 103113

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could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

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

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

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

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

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

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

(c) **“Protected Information”** means and includes collectively, Confidential Information, Confidential Privileged Information, Sensitive Security Information (SSI), Critical Infrastructure Information (CII) or Health Insurance Portability and Accountability Act (HIPPA) Information and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. The term Protected Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others, or when the Port Authority receives such information from others and agrees to treat such information as Protected. The following Information shall not constitute Protected Information for the purpose of this Agreement:

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

(d) **“Confidential Information”** means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code.

(e) **“Confidential Privileged Information”** means and includes collectively, (i) Information that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available.” and any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws, and (ii) certain Critical Infrastructure Information.

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

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

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

(i) **"Health Insurance Portability and Accountability Act"** (HIPAA) Information Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA" or "Privacy Laws") place restrictions on the Group Health Plans of the Port Authority and PATH (the "Plans") ability to use and disclose Protected Health Information ("PHI").

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

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

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

(a) All Protected Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, and applicable legal requirements. Protected Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

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

may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) Recipient and each Related Party covenants to the Port Authority that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Protected Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Protected Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Protected Information is compartmentalized, such that all Protected Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. To assist Recipient in its determination of the adequacy of its Confidentiality Control Procedures, Recipient has been provided with a copy of the Port Authority's Information Security Handbook.

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

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

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

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

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

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

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

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

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

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

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

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

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

Original to the Port Authority:

The Port Authority of New York and New Jersey

with a copy to:

The Port Authority of New York and New Jersey  
225 Park Avenue South - 14<sup>th</sup> Floor  
New York, NY 10003

If to the Recipient:

Attn: General Counsel's Office c/o Caroline Ioannou, Law DISO

with a copy to:

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

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

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

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

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

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

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

**RECIPIENT:**

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

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

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

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

EXHIBIT A

ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL

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

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

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

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

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

**EXHIBIT B**

**ACKNOWLEDGMENT BY RELATED PARTY ENTITY**

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

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

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

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

**B-3**  
**PA/PATH Non-Disclosure and**  
**Confidentiality Agreement**

**PA EMPLOYEE NON-DISCLOSURE  
AND CONFIDENTIALITY AGREEMENT**

**THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**, a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and its related entities, including, but not limited to, Port Authority Trans-Hudson Corporation (collectively referred to as the “**Port Authority**”) and having an office and place of business at 225 Park Avenue South, New York, New York, 10003, and \_\_\_\_\_ of \_\_\_\_\_ Department, an employee of the Port Authority (“**Employee**”), having the Port Authority Employee Number: \_\_\_\_\_.

**WHEREAS**, security is of critical importance to the Port Authority in carrying out its mission and in providing a safe and secure environment for its patrons and employees, as well as properly protecting its properties, facilities and operations; and

**WHEREAS**, the safeguarding of protected, confidential and sensitive information is an essential factor in the Port Authority’s ability to carry out its responsibilities; and

**WHEREAS**, the Port Authority recognizes the need for providing its employees with access to certain information which may contain or include protected, confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, on a need to know and/or an as-needed basis; and

**WHEREAS**, every employee having access to Protected Information (as hereinafter defined) has the obligation and the responsibility to properly safeguard such information and prevent its unauthorized disclosure or release.

**NOW THEREFORE**, Employee hereby agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:
  - a. “**Protected Information**” means and includes collectively, Confidential Information, Confidential Privileged Information, Critical Infrastructure Information (CII), Sensitive Security Information (SSI), or Health Insurance Portability and Accountability Act (HIPPA) Information and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. The term Protected Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others, or when the Port Authority receives such information from others and agrees to treat such information as Protected.

Port Authority Employee NDA 103113

- b. **“Confidential Information”** means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code.
- c. **“Confidential Privileged Information”** means and includes collectively, (i) Information that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available.” and any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws, and (ii) certain Critical Infrastructure Information.
- d. **“Information”** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.
- e. **“Critical Infrastructure Information”** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations.
- f. **“Sensitive Security Information”** (SSI) has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).
- g. **“Health Insurance Portability and Accountability Act”** (HIPAA) Information Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” or

“Privacy Laws”) place restrictions on the Group Health Plans of the Port Authority and PATH (the “Plans”) ability to use and disclose Protected Health Information (“PHI”).

- h. **“Port Authority Handbook”** means The Port Authority of New York and New Jersey Information Security Handbook, as may be amended by the Port Authority, from time to time.
- 2. **Compliance with the Port Authority Handbook.** All Protected Information is to be handled by the Employee with the utmost care and in a manner designed to prevent its disclosure to unauthorized third parties consistent with Port Authority security policy, practices and procedures, as set forth in the Port Authority Handbook. Employee must maintain and dispose of Protected Information in a manner consistent with this Agreement and in conformity with the Port Authority Handbook.
- 3. **Use of Protected Information.** Protected Information provided to or obtained by Employee may only be used in the performance of duly authorized activities relating to the Employee’s job duties, and may not be used for any other purpose, unless expressly authorized by this Agreement, or as expressly directed in writing by the Port Authority.
- 4. **Disclosure of Information.** Until such time as the Information is no longer considered Protected by the Port Authority, and that fact is communicated to the Employee in writing, the Information must be held and treated in the strictest confidence and may not, except in accordance with Paragraph 5, below, be disclosed to any person who has not agreed to be bound by a Non-Disclosure and Confidentiality Agreement. When disclosure of such Information is permitted under these circumstances, it will only be provided to such individuals to the extent that it is necessary for that person to perform his/her duly authorized activities at or in connection with their job responsibilities and may only be provided on a need-to-know-basis. Copies of documents or materials in any form, format or medium, which contain disclosures of such Information, may only be made pursuant to the procedures established in the Port Authority Handbook.
- 5. **Disclosures and Discovery Requests.** If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law is received by the Employee seeking disclosure of Protected Information, the Employee must immediately notify his/her Supervisor and Departmental Information Security Officer in order to permit the Port Authority to seek to quash the subpoena, seek a protective order, or take such other action regarding the request as it deems appropriate, and the Employee will fully cooperate in the Port Authority’s efforts in this regard. If at any time Protected Information is disclosed in violation of this Agreement, the employee will immediately report that fact and the circumstances regarding such disclosure to his/her Supervisor and Departmental Information Security Officer.
- 6. **Unauthorized Disclosure and Disciplinary Actions.** The unauthorized disclosure or improper handling of Protected Information could have an adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its operations,

its facilities, its patrons and the general public. Because of this, the obligations of confidence required hereunder are extraordinary and unique, and are vital to the security and well being of the Port Authority. Any failure to comply with, or any violation of, this Agreement, may result in legal action and/or disciplinary action against Employee.

7. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual, or until such time as the Protected Information is no longer considered protected, confidential and/or privileged by the Port Authority, and that fact is communicated in writing to Employee.

**EMPLOYEE:**

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

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

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



## APPENDIX C

### Background Screening Criteria



#### **CONTENTS:**

- Background Screening Specifications
- High Access Level Criteria
- Medium Access Level Criteria
- Standard Access Level Criteria

Criminal History  
Background Screening Specifications

Social Security Number — Positive Identity Verification (PIV)  
Federal District Court Search (each district of residence and employment)\*  
National Criminal Search\*  
Statewide Criminal Check (each state of residence and employment)\*  
County Criminal Search (each county of residence and employment)\*  
Sexual Offender Search (each resident state)\*  
Alien Immigrant Search  
Immigration Violation Check  
Fake Identification Convictions  
State Driving Record  
Check for material false statement or omission on application form  
National Terrorist Watch List Search (OFAC-SDN)

**Note\*** Within ten (10), seven (7), or five (5) years preceding date of application as noted on the HIGH, MEDIUM, and STANDARD Level of Clearance forms.

## Level of Clearance

### HIGH Secure Access Control Areas and CONFIDENTIAL PRIVILEGED INFORMATION

- I. No convictions ever in your lifetime:** an individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following criminal offenses:
- (1) Terrorism—A crime listed in 18 U.S.C. Chapter 113B—or a State law that is comparable.
  - (2) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et. seq., or a State law that is comparable.
  - (3) A crime involving a severe transportation security incident.
  - (4) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
  - (5) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a state law that is comparable;
  - (6) Murder.
  - (7) Espionage.
  - (8) Sedition.
  - (9) Treason.
  - (10) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device.
  - (11) Conspiracy or attempt to commit any of the criminal acts listed in paragraph I.
- II.** An individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, within the **past ten (10) years** from completion of sentence preceding the date of the application, of the following offenses:
- (1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation;
  - (2) Interference with air navigation;
  - (3) Aircraft piracy;
  - (4) Interference with flight crewmembers or flight attendants;
  - (5) Commission of certain crimes aboard aircraft in flight;
  - (6) Carrying a weapon or explosive aboard aircraft;
  - (7) Conveying false information and threats; (e.g., bomb threats, explosives in briefcase, etc. in security areas)
  - (8) Aircraft piracy outside the special aircraft jurisdiction of the United States;
  - (9) Lighting violations involving transporting controlled substances;
  - (10) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;
  - (11) Destruction of an aircraft or aircraft facility;
  - (12) Assault with intent to murder.
  - (13) Kidnapping or hostage taking.
  - (14) Rape or aggravated sexual abuse.
  - (15) Extortion.
  - (16) Armed or felony unarmed robbery.

- (17) Distribution of, possession with intent to distribute, or importation of a controlled substance.
- (18) Felony arson.
- (19) Felony involving a threat.
- (20) Felony involving—
  - (i) Willful destruction of property;
  - (ii) Importation or manufacture of a controlled substance;
  - (iii) Burglary or Robbery
  - (iv) Theft;
  - (v) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering;
  - (vi) Possession or distribution of stolen property;
  - (vii) Aggravated assault;
  - (viii) Bribery; or
  - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year;
  - (x) Smuggling;
  - (xi) Immigration violations; or
- (21) Violence at international airports;
- (22) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
- (23) Conspiracy or attempt to commit any of the criminal acts listed in paragraph II.

Under want, warrant, or indictment. An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in section II, is disqualified until the want or warrant is released or the indictment is dismissed.

## Level of Clearance

### Up To MEDIUM Secure Access Control Areas and CONFIDENTIAL INFORMATION

- I. No convictions ever in your lifetime:** an individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following criminal offenses:
- (1) Terrorism—A crime listed in 18 U.S.C. Chapter 113B—or a State law that is comparable.
  - (2) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et. seq., or a State law that is comparable.
  - (3) A crime involving a severe transportation security incident.
  - (4) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility. (3) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a state law that is comparable;
  - (5) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a state law that is comparable;
  - (6) Murder.
  - (7) Espionage.
  - (8) Sedition.
  - (9) Treason.
  - (10) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device.
  - (11) Conspiracy or attempt to commit any of the criminal acts listed in paragraph I.
- II.** An individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction for the following offenses, within the **past ten (10) years** from completion of sentence for the offense preceding the date of the application:
- (1) Extortion.
  - (2) Armed or felony unarmed robbery.
  - (3) Felony involving—
    - (i) Importation or manufacture of a controlled substance;
    - (ii) Burglary or Robbery;
    - (iii) Theft;
    - (iv) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering;
    - (v) Possession or distribution of stolen property;
    - (vi) Bribery; or
  - (4) Conspiracy or attempt to commit any of the criminal acts listed in paragraph II.

Under want, warrant, or indictment. An applicant who is wanted, or under indictment in any

civilian or military jurisdiction for a felony listed in section II, is disqualified until the want or warrant is released or the indictment is dismissed.

**III.** An individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction for the following offenses, within the **past seven (7) years** from completion of sentence for the offense preceding the date of the application:

- (1) Assault with intent to murder.
- (2) Kidnapping or hostage taking.
- (3) Rape or aggravated sexual abuse.
- (4) Distribution of, possession with intent to distribute, or importation of a controlled substance.
- (5) Felony arson.
- (6) Felony involving a threat.
- (7) Felony involving—
  - (i) Willful destruction of property;
  - (ii) Aggravated assault;
  - (iii) Smuggling;
  - (iv) Immigration violations;
- (8) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et. seq., or a State law that is comparable, other than the violations listed in paragraph (b) of Section I.
- (9) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
- (10) Conspiracy or attempt to commit any of the criminal acts listed in paragraph III.

Under want, warrant, or indictment. An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in section III, is disqualified until the want or warrant is released or the indictment is dismissed.

## Level of Clearance

### **Up To STANDARD Secure Access Control Areas**

**I. No convictions ever in your lifetime:** an individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following criminal offenses:

- (1) Terrorism —A crime listed in 18 U.S.C. Chapter 113B—or a State law that is comparable.
- (2) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et. seq., or a State law that is comparable.
- (3) Espionage.
- (4) Sedition.
- (5) Treason.
- (6) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device.
- (7) Conspiracy or attempt to commit any of the criminal acts listed in paragraph I.

**II.** An individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction for the following offenses, within the **past ten (10) years** from completion of sentence for the offense preceding the date of the application:

- (1) Extortion.
- (2) Felony involving—
  - (i) Theft;
  - (ii) Dishonesty, fraud or misrepresentation, including identity fraud and money laundering;
  - (iii) Unlawful sale, distribution, manufacture, import or export of a controlled substance that resulted in the conviction of an A Felony in the New York State Penal Law, or any comparable law in any State, or comparable Federal law.
- (3) Conspiracy or attempt to commit any of the criminal acts listed in paragraph II.

**III.** An individual has a disqualifying criminal offense if the individual was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction for the following offenses, within the **past five (5) years** from completion of sentence for the offense preceding the date of the application:

- (1) Violent Felony Offenses (as defined in the New York State Penal Law §70.02) or any comparable law in any State.
- (2) Conspiracy or attempt to commit any criminal act listed in paragraph III.

## **APPENDIX D**

### **Secure Worker Access Consortium (SWAC)**

Secure Worker Access Consortium (SWAC) is accessed by an online application that enables the secure collection, processing, maintenance and real-time positive identity verification (PIV) of individuals. As of January 29, 2007, SWAC is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and or regulation. Additional information about S.W.A.C., corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or SWAC Customer Service may be contacted at (212) 608-0855.

#### **o Consultants / Contractors**

- o Step 1: - A firm representative completes the Corporate Membership Application Form online at [www.secureworker.com](http://www.secureworker.com). Firms are encouraged to establish a Corporate Membership Account through which their workers will be processed.
- o Step 1a: Employees & Workers of Contractors — Individual completes the Individual Membership Application Form online. (A company administrator may complete this form on someone's behalf.)
- o Step 2: The applicant is photographed, provides a digital signature and presents the required identification documents at an operational SWAC Processing Center.
- o Step 3: SWAC ID Card is available for pickup. The typical length of the process is one week. To verify that an ID Card is ready for pickup, call (212) 608-0855.

#### **o Individuals**

- o Step 1: Individual completes the Individual Membership Application Form online. <http://www.secureworker.com>
- o Step 2: Individual immediately takes the required government issued identity documents to a SWAC Processing Center to complete the second and final step of the SWAC application process. **NOTE:** This step is required before your background screening is initiated.

- **SWAC Processing Centers** - check the SWAC website to verify the locations, and days and times of operation of the Processing Centers.

George Washington Bridge Port  
Authority Administration Building, Main  
Lobby  
220 Bruce Reynolds Boulevard  
Bridge Plaza South  
Fort Lee, NJ 07024  
Tuesdays, 6:00 AM to 12:00PM

John F. Kennedy International Airport  
Building #14  
RE's Office Conference Room  
Jamaica, NY  
Fridays, 6:00AM to 12:00PM

Port Authority Bus Terminal  
625 Eighth Avenue (at 40th Street)  
South Wing, 2nd Floor  
New York, NY 10018  
Tuesdays & Fridays, 6:30AM to  
12:30PM

LaGuardia Airport (LGA)  
Port Authority Administration Building  
Hanger #7S, 2nd Floor  
Flushing, NY 11371  
Wednesdays, 6:00AM to 12:00PM

Newark Liberty International Airport  
(EWR)  
70 Brewster Road  
Building #70 Lobby  
Newark, NJ 07114  
Mondays & Thursdays, 7:30AM to  
3:30PM

World Trade Center  
65 Trinity Place  
(corner of Exchange Alley, across from  
SYMS clothing store)  
New York, NY 10006  
Monday through Friday, 6:00 AM to  
12:00 PM

## APPENDIX E

[insert department name] DEPARTMENT

PORT AUTHORITY OF NY & NJ

CONFIDENTIAL PRIVILEGED INFORMATION

**"WARNING":** The attached is the property of The Port Authority of New York and New Jersey (PANYNJ). It contains information requiring protection against unauthorized disclosure. The information contained in the attached document cannot be released to the public or other personnel who do not have a valid need to know without prior written approval of an authorized PANYNJ official. The attached document must be controlled, stored, handled, transmitted, distributed and disposed of according to PANYNJ Information Security Policy. Further reproduction and/or distribution outside of the PANYNJ are prohibited without the express written approval of the PANYNJ.

At a minimum, the attached will be disseminated only on a need to know basis and when unattended, will be stored in a locked cabinet or area offering sufficient protection against theft, compromise, inadvertent access and unauthorized disclosure.

Document Control Number: CP-[insert dept acronym]- [insert year]-[insert sequential number] – [insert copy number]

## APPENDIX F

[Insert address of Recipient]

Date:

From:

The [insert department, division or project name] is providing a copy of the following items to (insert recipient's name and address).

Description	Date	Copy Number
Describe item	00/00/00	CP-[dept abbreviation]- XX-XX-XX

Upon receipt, the items listed above must be safeguarded in accordance with the procedures identified in the "The Port Authority of New York & New Jersey Information Security Handbook " dated October 15, 2008.

PLEASE SIGN AND RETURN TO:

Document Control  
[insert Port Authority department, division or unit]  
Attn: [SIM or SPM}  
[Address]

I acknowledge receipt of the above items listed above and accept full responsibility for the safe handling, storage and transmittal elsewhere of these items.

Name (PRINT): \_\_\_\_\_

Organization: \_\_\_\_\_

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

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

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



## **APPENDIX G**

### **GUIDELINES FOR THE STORAGE OF PROTECTED INFORMATION**

#### **I. GENERAL**

This section describes the **preferred methods** for the physical protection of Protected Information in the custody of PANYNJ personnel and their contractors, consultants, architects, engineers, et al. Where these requirements are not appropriate for protecting specific types or forms of such material, compensatory provisions shall be developed and approved by the Chief Information Security Officer (CISO). Nothing in this guideline shall be construed to contradict or inhibit compliance with any applicable law, statute or code. Cognizant Security Information Managers (SIM) shall work to meet appropriate security needs according to the intent of this guideline and at acceptable cost.

#### **II. PROTECTED INFORMATION STORAGE**

##### **A. Approved Containers**

The following storage containers are approved for storage of PANYNJ Protected Information:

1. A safe or safe-type steel file container that has a built-in three- position dial combination lock or electronic combination lock.
2. Any steel file cabinet that has four sides and a top and bottom (all permanently attached by welding, rivets or peened bolts so the contents cannot be removed without leaving visible evidence of entry) and is secured by a rigid metal lock bar and an approved key operated or combination padlock. The keepers of the rigid metal lock bar shall be secured to the cabinet by welding, rivets, or bolts so they cannot be removed and replaced without leaving evidence of the entry. The drawers of the container shall be held securely so their contents cannot be removed without forcing open the drawer.





## **B. Approved Locks and Locking Devices**

The following locks and locking devices are examples of types approved for storage of PANYNJ Protected Information, but not limited to these locks:

1. Any restricted keyway 7-pin tumbler lock or equivalent pick resistant lock.
2. A combination padlock such as a Sesame four-position dial padlock. See photo at right.

For Port Authority facilities, locks and locking devices available from Port Authority stock room or approved vendor will meet this requirement.

## **C. Combinations to Security Containers, Cabinets, and Vaults**

If required, only a minimum number of authorized persons shall have knowledge of combinations to authorized storage containers. Containers shall bear no external markings indicating the level of material authorized for storage therein.

1. A record of the names of persons having knowledge of the combination shall be maintained.
2. Security containers, vaults, cabinets, and other authorized storage containers shall be kept locked when not under the direct supervision of an authorized person entrusted with the contents.
3. The combination shall be safeguarded in accordance with the same protection requirements as the Confidential Information contained within.
4. If a record is made of a combination, the record shall be marked with the category of material authorized for storage in the container, i.e. CP or SSI.

#### **D. Changing Combinations**

Combinations shall be changed by a person authorized access to the contents of the container, or by the SIM or his or her designee. Combinations shall be changed as follows:

1. The initial use of an approved container or lock for the protection of Confidential Information.
2. The termination of employment of any person having knowledge of the combination, or when the Protected Information access granted to any such person has been withdrawn, suspended, or revoked.
3. The compromise or suspected compromise of a container or its combination, or discovery of a container left unlocked and unattended.
4. At other times when considered necessary by the SIM or CISO.

#### **E. Supervision of Keys and Padlocks**

Use of key-operated padlocks are subject to the following requirements:

1. A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of Protected Information.
2. A key and lock control register shall be maintained to identify keys for each lock and their current location and custody.
3. Keys shall be inventoried with each change of custody.
4. Keys and spare locks shall be protected equivalent to the level of classified material involved.
5. Locks shall be replaced after loss or compromise of their operable keys.
6. Making master keys is prohibited.

#### **F. Document Retention Areas**

Due to the volume of the Protected Information in possession, or for operational necessity, it may be necessary to construct Document Retention Areas for storage because approved containers or safes are unsuitable or impractical. Access to Document Retention Areas must be controlled to preclude unauthorized access. During hours of operation this may be accomplished through the use of a cleared person or by an approved access



control device or system. Access shall be limited to authorized persons who have an NDA on file, received appropriate training on the protection of information and have a bonafide need-to-know for the Protected Information material/information within the area. All other persons (i.e. visitors, maintenance, janitorial, etc.) requiring access shall be escorted at all times by an authorized person where inadvertent or unauthorized exposure to Protected Information cannot otherwise be effectively prevented. During non-working hours and during working hours when the area is unattended, admittance to the area shall be controlled by locked entrances and exits secured by either an approved built-in combination lock, an automated access control system or an approved key-operated lock. Doors secured from the inside with an emergency panic bar will not require additional locking devices.

## **G. Construction Requirements for Document Retention Areas**

This paragraph specifies the minimum safeguards and standards required for the construction of Document Retention Areas that are approved for use for safeguarding Protected Information. These criteria and standards apply to all new construction and reconstruction, alterations, modifications, and repairs of existing areas. They will also be used for evaluating the adequacy of existing areas.

1. **Hardware:** Only heavy-gauge hardware shall be used in construction. Hardware accessible from outside the area shall be peened, pinned, brazed, or spot welded to preclude removal.
2. **Walls:** Construction may be of material offering resistance to, and evidence of, unauthorized entry into the area. If insert-type panels are used, a method shall be devised to prevent the removal of such panels without leaving visual evidence of tampering.
3. **Windows:** During nonworking hours, the windows shall be closed and securely fastened to preclude surreptitious entry.
4. **Doors:** Doors shall be constructed of material offering resistance to and detection of unauthorized entry. When doors are used in pairs, an astragal (overlapping molding) shall be installed where the doors meet.
5. **Ceilings:** Where surrounding walls do not extend to the true ceiling, the ceiling shall either be hard capped with the same construction materials as the surrounding walls or removable tiles shall be clipped in place such that they cannot be removed without destroying tiles and providing evidence of intrusion.

## **APPENDIX H**

### **GUIDELINES FOR THE DISPOSAL AND DESTRUCTION OF PROTECTED INFORMATION.**

#### **I. GENERAL**

This section describes the preferred methods for the disposal and destruction of Protected Information in the custody of PANYNJ personnel and their contractors, consultants, architects, engineers, et al. Where these requirements are not appropriate for disposal or destruction of specific types or forms of such material, compensatory provisions shall be developed and approved by the Chief Information Security Officer (CISO). Cognizant Security Information Managers (SIM) shall work to meet appropriate security needs according to the intent of this guideline and at acceptable cost.

Protected Information no longer needed shall be processed for appropriate archiving or disposal. Protected Information approved for destruction shall be destroyed in accordance with this section. The method of destruction must preclude recognition or reconstruction of the Protected Information or material.

All persons in possession of Protected materials shall establish procedures for review of their Protected holdings on a recurring basis to reduce these inventories to the minimum necessary for effective and efficient operations. Multiple copies, obsolete material, and Protected waste shall be destroyed as soon as practical after it has served its purpose. Any appropriate downgrading actions shall be taken on a timely basis to reduce the volume and to lower the level of Protected material being retained.

**Original records must be retained in accordance with the Agency's Records Management Policy and Retention Schedules.**

#### **II. DISPOSAL AND DESTRUCTION**

##### **A. Destruction Requirements**

All persons in possession of Protected materials shall destroy this material in their possession as soon as possible after it has served the purpose for which it was released, developed or prepared, or as soon as possible after its designated retention period has expired.





## **B. Methods of Destruction**

1. Generally, Protected material shall be destroyed by commercial grade cross cut shredders located conveniently throughout the workplace for use by authorized individuals.
2. Additionally, Confidential material may be destroyed by burning, pulping, melting, mutilation, chemical decomposition, or pulverizing (for example, hammer mills, choppers, and hybridized disintegration equipment) where shredding may not be appropriate. Whatever method is employed must preclude recognition or reconstruction of the Confidential Information or material.
3. Confidential material in microform, that is: microfilm, microfiche, or similar high data density material, may be destroyed by burning or chemical decomposition, or other methods as approved by the CISO.
4. Commercial destruction facilities may be used only with the approval of, and under conditions prescribed by, the SIM. When commercial destruction facilities are utilized, they shall conform to all appropriate sub-contracting requirements to include appointment of a SIM, adherence to the requirements of the PANYNJ Information Security Handbook, receiving required security training and properly executing a Non-Disclosure and Confidentiality Agreement (NDA).
5. Electronically Stored Protected Information must be deleted from all computer hard drives, tapes, CD's, DVD's, memory, and/or magnetic, analog, or digital media used to store or transport digital files. The device used to store or transport any Protected file will require a bit-by-bit overwrite of the storage area used by the file. This will protect against having the deleted file recovered using data recovery tools. Commercial tools are available to automate this process.



### **C. Witness to Destruction**

Protected material shall only be destroyed by authorized personnel, whether in-house or contracted, who meet all of the PANYNJ criteria for awarding access authorization, have met all training requirements, have a properly executed NDA on file and have a full understanding of their responsibilities to ensure proper control of the materials while in their possession and complete destruction thereof.

### **D. Destruction Records**

Protected Information is accountable and therefore any disposal in approved waste containers or destruction via convenience shredders must be reported to the issuing SIM, or his/her document control representative, indicating which documents were disposed/destroyed and the date of such action.

Protected waste shall be destroyed as soon as practical. This applies to all waste material containing Protected Information. Pending destruction, Protected waste shall be appropriately safeguarded. (See also Appendix G - Guidelines for the Storage of Protected Information.)

## **III. PROTECTED WASTE**

### **A. Approved Receptacles**

1. Receptacles utilized to accumulate Protected waste shall be constructed of substantial materials that would provide evidence of tampering. Hinges and lids shall not be removable while the container is secured without leaving evidence thereof.
2. All such receptacles shall be clearly identified as containing Protected material.
3. Slots shall be provided in such receptacles that allow for easy deposit of materials for destruction but preclude removal of deposited waste by insertion of a person's hand or tool.



4. Locks, and the control thereof, on all Protected waste receptacles shall meet or exceed the requirements of the PANYNJ Guideline for Storage of Confidential Information.

**B. Oversize Waste Materials**

PANYNJ projects often involve large drawings and other materials associated with construction projects, which cannot be conveniently disposed of via office shredders or placed in typical slots on secure trash receptacles. In no cases shall such material be permitted to be placed or accumulate adjacent to secure receptacles while awaiting destruction. Oversize materials awaiting destruction may be stored as follows:

1. Within an approved Document Retention Area.
2. Within a specially constructed secure waste receptacle where disposal slots have been specifically designed for accepting rolled drawings or other oversize materials and preclude the removal there from.
3. Within a standard secure waste receptacle where the receptacle has been opened by an authorized individual to allow placement of the oversized item(s) into the container and it has been secured thereafter.



## **APPENDIX I**

### **Audit Procedures**

#### **COMPANY / ORGANIZATION**

- Is the Company Non-Disclosure and Confidentiality Agreement properly executed and maintained in current status?
- Has a senior management official been designated as Security Information Manager (SIM), as required by the Handbook for Protecting Security Information? Has a deputy SIM been identified?

#### **ACCESS AUTHORIZATIONS**

- Has a Non-Disclosure Agreement been executed by each employee who has been afforded access?
- Is a current record maintained of all employees authorized access to Confidential Information at the firm?
- Does the contractor provide a roster of all cleared employees to the PA as required? Is it current?

#### **SECURITY EDUCATION**

- Does the contractor provide that all employees who have access to Protected Information with security training and briefings commensurate with their involvement with the information?
- Are contractors who employ persons at other locations ensuring the required security training?
- Are the Non-Disclosure Agreements executed by employees prior to accessing the sensitive information?
- Do initial security briefings contain the minimum required information?
- Does the contractor's security education program include refresher security briefings?
- Are employees debriefed at the time of a termination, reassignment or project's completion regarding the requirements for continued safeguarding of Protected



Information?

- Has the contractor established internal procedures that ensure authorized awareness of their responsibilities for reporting pertinent information to the SIM?
- Has the contractor established a graduated scale of administrative disciplinary action to be applied against employees who violate the Handbook?
- Are employees aware of Emergency Procedures?
- Does management support the program for safeguarding Port Authority Confidential and Privileged Security Information?

## **STANDARD PRACTICE PROCEDURES**

- Is the Confidential Information Practice and Procedures (“CIPP”) document current and does it adequately implement the requirements of the Handbook?
- A CIPP only needs to be prepared when the Departmental Information Security Officer (“DISO”) believes it necessary for the proper safeguarding of Confidential Information.

## **SUBCONTRACTING**

- Have all Subcontractors properly executed the Non-Disclosure and Confidentiality Agreement?
- Has a Non-Disclosure Agreement been executed by each of the Subcontractor's employees who has been afforded access?
- Is a current roster maintained of all Subcontractor employees authorized access to Confidential Information at the firm?
- Does the Subcontractor provide this roster to the Prime Contractor's SIM as required? Is it current? Does it include the date that the agreement was signed? Is it included in the Prime Contractor's Team Roster?
- Does the contractor complete all actions required in the Handbook prior to release or disclosure of Port Authority Protected Information to subcontractors? Has the Subcontractor been provided a Handbook?
- Has a senior management official of the Subcontractor been designated as the Security Information Manager (SIM), if required by a CIPP?



- Has a deputy SIM been identified?
- Is the safeguarding capability of all subcontractors determined as required?
- Is the requirement to abide by security procedures identified in the Handbook incorporated into each subcontract?
- Does the Subcontractor have an adequate understanding of the Handbook's requirements and the types of information that require safeguarding?

## **VISIT CONTROL**

- Are procedures established to ensure positive identification of visitors prior to disclosure of Protected Information?

## **CLASSIFICATION**

- Does the contractor have adequate procedures for evaluating Protected material being created, extracted, or summarized?
- Is contractor-developed Protected Information appropriately marked, and protected?

## **PUBLIC RELEASE**

- Does the contractor obtain the approval of the Port Authority prior to public disclosure of *ANY* information pertaining to a security program contract?

## **STORAGE**

- Has the contractor established a system of security checks at the close of each working day to ensure that sensitive material is secured?
- How would the Protected material be safeguarding during an emergency?
- Is a record of the names of persons having knowledge of the combinations to security containers maintained?
- When combinations to containers are placed in written form, are they stored appropriately?
- Do authorized persons, when required, change combinations to security



containers?

## **MARKINGS**

- Is all Protected material, regardless of its physical form, marked properly?
- Is all Protected material marked to show the name and address of the facility responsible for its preparation and the date of preparation?
- Are overall markings marked conspicuously as required?
- Are protective markings applied to Protected compilations if required?

## **TRANSMISSION**

- Is Protected Information properly prepared for transmission outside the facility?
- Are Transmittal Receipts included with Protected Information if required?
- Is a suspense system established to track transmitted documents until the signed receipt is returned?
- Are authorized methods used to transmit Protected material outside the facility?
- Is the NDA of the receiving facility determined prior to transmission of Protected Information?

## **PROTECTED INFORMATION CONTROLS**

- Do contractor employees understand their safeguarding responsibilities?
- Is the contractor's accountability system capable of facilitating the retrieval and disposition of Protected material as required?
- Are external receipts and dispatch records maintained as required?
- Is all Protected material received at the contractor facility and delivered directly to designated personnel?
- Do contractor employees promptly report the loss, compromise, or suspected

compromise of Protected Information to the SIM?

## **DISPOSITION**

- Is a program established to review Protected retention on a recurring basis for the purpose of reduction?
- Is Protected material destroyed as soon as possible after it has served its purpose?
- Does the contractor employ an effective method of destruction?
- Is Protected material destroyed by the appropriate employees?
- Is Protected waste properly safeguarded until its timely destruction?

## **REPRODUCTION**

- Does the facility's reproduction control system keep reproduction of Protected material to a minimum?
- Is the reproduction of Protected Information accomplished only by properly authorized, and knowledgeable employees?
- Is reproduction authorization obtained as required?
- Are reproductions of Protected material reviewed to ensure that the markings are proper and legible?

## **AUTOMATED INFORMATION SYSTEMS (AIS)**

- Are appropriate physical controls being exercised over approved AIS?
- Are AIS media containing Protected Information handled in a manner consistent with the handling of Confidential documents?
- Are all AIS storage media, internal memory, and equipment, that contain Protected Information, properly sanitized prior to removal from protection?

### **Suggested Questions When Interviewing Employees NOT Authorized Access to Confidential Information:**

- What is Protected Information?
- Have you ever seen Protected Information?
- If you found Protected Information unprotected, what would you do?

### **Suggested Questions When Interviewing Employees Authorized Access to Protected Information:**

- What is your job title/responsibility?
- Which contract or program requires you to access this information?
- How do you access the information?
- How long have you been authorized access?
- When was your last access to Protected Information?
- Have you ever had access to Protected Information outside of this facility?
- Did anyone else from the facility accompany you?
- Did you take any Confidential notes or Protected Information back to the facility?
- What procedures were followed to protect this information?
- Where is this information now?
- Have you ever provided access to Protected Information to visitors?
- How did you determine their need-to-know?
- Have you ever been approached by anyone requesting Protected Information?
- Do you ever work overtime and access Protected Information?
- When was the last time that you had a security briefing?
- What can you recall from this briefing?
- Have you ever been cited for a security violation?
- What would YOU do if YOU committed a security violation or discovered one?
- Do you have the combination to any storage containers?
- Who other than yourself has access to these containers?

- Is a record maintained of the safe combination? If so, where?
- Do you reproduce or generate Protected Information?
- Where do you typically work when you generate Protected Information?
- What procedures do you follow to protect Protected Information while working on it?
- Do you ever use a computer to generate Protected Information? How do you mark this Information?
- Please produce the guidance that you used. Is it accurate?
- What procedures do you employ when hand carrying Protected material?
- Have you reproduced Protected Information? Describe the procedures.
- Have you destroyed Protected Information? What procedures were used?
- Do you have any questions regarding security?