REQUEST FOR PROPOSALS

ISSUE DATE: OCTOBER 25, 2018

TITLE: SOLAR PHOTOVOLTAIC (PV) POWER GENERATING SYSTEM ON THE ROOF OF THE PORT AUTHORITY OF NEW YORK & NEW JERSEY’S PATH MACMILLAN BLOEDEL BUILDING

RFP NO.: 55158

SUBMIT PROPOSALS NO LATER THAN THE DUE DATE AND TIME TO THE ABOVE ADDRESS

SITE INSPECTION: November 14, 2018 TIME: 10:00 A.M.

QUESTIONS DUE BY: November 28, 2018 TIME: 2:00 P.M.

PROPOSAL DUE DATE: January 16, 2019 TIME: 2:00 P.M.

CONTACTS SPECIALIST: RICHARD A. GREHL

PHONE: (212) 435-4633
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1. INFORMATION FOR PROPOSERS ON THIS REQUEST FOR PROPOSALS

A. 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 the State of New York, 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 (17) counties, in the two States. For background with respect to The Port Authority of New York and New Jersey, see www.panynj.gov. Additionally, an electronic version of the Authority’s most recent Annual Report is available at http://www.panynj.gov/corporate-information/annual-reports.html.

The Port Authority is hereby seeking proposals from qualified firms for the sale to the Port Authority of electric power generated by a solar photovoltaic (“PV”) power generating system financed, designed, built, installed, owned, operated and maintained by the Proposer on the Main Roof (lower and larger of the building’s two roofs) of the PATH MacMillan Bloedel Building located at 100 Academy Street, Jersey City, NJ 07302 (the “Premises” or “Site”) as more fully described herein.

B. Brief Summary of Scope of Work

For more detail, Proposers should refer to the Scope of Work and Specifications contained in Part II of the Port Authority’s Solar Power Purchase Agreement (“PPA” or “Contract”) that has been included as Attachment D of this Request For Proposals (“RFP”).

The solar photovoltaic (“PV”) system (collectively, the “PV System” or “System”) shall be located at the Site as designated in Exhibit 1.

Proposers are required to submit at least two (2) cost proposals, one for a 25-year term (the “25-Year Proposal”) and the second for less-than-25 years (the “Less-Than-25-Year Proposal”), that accomplish the sale of a PV system through the use of a Power Purchase Agreement. These cost proposals shall be submitted using the cost proposal forms contained in Exhibit 3 of this RFP. In addition, Proposers are invited to submit, at their option, additional PPA cost proposals and/or cost proposals that make use of delivery vehicles other than PPAs. For more detail, Proposers should refer to Section 8 of this RFP, “Proposal Submission Requirements.”

Proposals shall be based on current market conditions for solar PV equipment. If during the review period those market conditions undergo meaningful change due to Federal trade policies or any other reason, then the Port Authority may take actions that could include requesting Proposers to revise their proposals.
It is anticipated that the Contract will be awarded and construction commence in the second quarter of 2019.

C. Deadline for Receipt of Proposals

The proposal due date (“Proposal Due Date”) is the due date and time specified on the cover page.

PLEASE READ THE FOLLOWING DELIVERY REQUIREMENTS CAREFULLY. Proposers assume all responsibility for delays or problems in delivery.

Proposal submissions will be received at:

The Port Authority of NY & NJ
Attention: Proposal Custodian
Procurement Department
4 World Trade Center
150 Greenwich Street, 21st Floor
New York, NY 10007

Clearly mark the solicitation number on the outermost package.

At this address, proposals will be accepted 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 (4 WTC) 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. Individuals without valid identification will 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.

The Port Authority assumes no responsibility for delays caused by any delivery service.

D. Vendor Profile

To ensure maximum opportunities, it is vitally important that Proposers keep their Port Authority 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. Proposers may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at the following: https://www.paprocure.com.
E. **Submission of Proposals**

Every response package submitted shall contain all the information required in Section 8 of this RFP – Proposal Submission Requirements, including pricing information for the required 25-year PPA cost proposal, the required less-than-25-year PPA cost proposal and any optional cost proposals (See Exhibit 3). Proposers do NOT have to supply separate response packages for the 25-year PPA proposal, the less-than-25-year PPA proposal and any optional proposals, as it is anticipated that most of the non-pricing information required by this RFP will be the same for all cost proposals. In any case where any of the non-pricing information is not the same for the different cost proposals, Proposers must make it clear when supplying this other information what cost proposal it applies to.

Each response package shall include one reproducible original (containing original signatures and clearly designated as such), ten (10) double-sided paper copies, along with two (2) compact discs (“CDs”), and must be submitted on or before the Proposal Due Date and sent or delivered to the RFP Custodian at the address specified on the cover page. Each copy of the proposal as well as the parcel(s) used for shipping must be conspicuously marked with the Proposer’s name and address as well as the Proposer’s Vendor Number, if available. In addition, the outside of the package must clearly state the title of this RFP, the number of this RFP and the Proposal Due Date. Failure to properly label proposal submissions may cause a delay in identification, misdirection or disqualification of proposal submissions. Respondent shall submit its proposals in accordance with the instructions in Section C, above.

Consistent with environmentally preferable procurement practices, the Port Authority requests all documents submitted to be in a form that can be easily recycled (i.e., no plastic covers or binding) and to provide only supporting literature which directly relates to the proposal being submitted.

F. **Communications Regarding this RFP**

All communications, including any questions, concerning this RFP shall be directed to the attention of the Contracts Specialist who is listed on the cover page. All questions regarding this RFP shall be submitted in writing to the e-mail address listed on the cover page no later than 2:00 P.M. (EST) on November 28, 2018.

The Contracts Specialist is authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Contracts Specialist nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.
G. Proposal Acceptance or Rejection

Acceptance shall be only by mailing to or delivering at the office designated by the Proposer in its proposal, a notice in writing signed by an authorized representative on behalf of the Port Authority specifically stating that the proposal is accepted or by execution of a PPA covering the subject matter of this RFP signed by authorized representatives of the Port Authority and the Proposer. No other act of the Port Authority, its Commissioners, officers, agents, representatives, or employees shall constitute acceptance of a proposal. Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Port Authority and mailed to or delivered to the Proposer at the office designated in the proposal, or (b) omission of the Port Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Port Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

H. Acceptance of the Port Authority and Power Purchase Agreement Terms and Conditions

The Port Authority has included in this RFP its Standard Terms and Conditions as Attachment E and the Power Purchase Agreement as Attachment D. The Proposer is expected to agree to the terms and conditions as written in both the Standard Terms and Conditions and the PPA. In the event of any conflict, ambiguity or inconsistency between the terms of the Standard Terms and Conditions and the PPA, then the terms of the PPA shall take precedence and apply. However, if the Proposer has any specific exceptions, such exceptions must be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

I. Union Jurisdiction

Proposers are advised to read the paragraph entitled “Harmony” in Attachment E of this RFP, the “Standard Contract Terms and Conditions,” and 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.

J. City Payroll Tax

Proposers are advised to ascertain whether any payroll or other local taxes are imposed by the local municipality. These taxes, if applicable, are the sole responsibility of the Contractor. Proposers 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 entitled “Sales or Compensating Use Taxes”, in Attachment E of this RFP, the “Standard Contract Terms and Conditions”, does not apply to these taxes.
K. **Pre-Proposal Meeting(s)/Site Inspection(s)**

A Pre-Proposal Meeting and Site Inspection is scheduled for 10:00 A.M. EDT, November 14, 2018 at 100 Academy Street, Jersey City, NJ 07302.

A site inspection allows Proposers to tour and physically inspect the actual site(s) of work prior to the submission of proposals.

Attendance is strongly recommended. Information conveyed may be useful to Proposers in preparing their proposals and Proposers not attending assume all risks which may ensue from non-attendance. The Port Authority will provide official answers only to questions submitted in writing to the Contracts Specialist listed on the cover page.

Proposers interested in attending should RSVP to John Butterly at jbutterly@panynj.gov or 212-435-2791 no later than 12:00 P.M. EST of the business day preceding the scheduled date(s) to confirm their attendance and/or receive traveling directions.

L. **Aid to Proposers**

As an aid to Proposers, the Port Authority provides the following as attachments to this RFP:

- Exhibit 2A: MacMillan Bloedel Building Roof Information
- Exhibit 2B: MacMillan Bloedel Building Structural Information
- Exhibit 2C: Designated Staging Areas
- Exhibit 2D: Interconnection Details
- Exhibit 2E: Historic kW and KWH values

The Port Authority makes no representation, guarantees or warranties that the information provided herein are accurate or complete, and, in addition, shall not be responsible for the conclusions to be drawn therefrom.

M. **Additional Proposer Information**

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

N. **Personnel Assurance Program and 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 any subcontractors 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 may be reimbursable to the Contractor and its subcontractors as an out-of-pocket expense. Costs for staff that are rejected for a credential for any reason are not reimbursable.

Such background checks shall be performed through the Authority’s personnel assurance program provider. 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.

O. Vendor Presentations

After review of all proposal submissions, an oral presentation to a selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may receive short advance notice. Presentations will be limited to 30 minutes, and include the material contained in your proposal. The presentation will be followed by an approximately 30-minute question and answer session. Respondent’s staff performing the presentation shall be led by the Project Manager that will lead a project for the Authority, who may be supported by no more than (5) other senior staff members who would be part of the team for such a project. Notification of presentation scheduling is made by email.

P. Automated Clearing House Enrollment

The Port Authority of New York and New Jersey has transitioned to an electronic method of paying its vendors, contractors and consultants via an Automated Clearing House (“ACH”) funds transfer. It is the Port Authority’s expectation that all vendors, contractors and consultants will be paid via an ACH funds transfer. To avoid delays in payment, vendors, contractors, and consultants should enroll in ACH and complete the Port Authority’s “Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)” form, which is available at https://www.panynj.gov/business-opportunities/pdf/Vendor-ACH-auth-form.pdf. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the vendor, contractor or consultant 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 process may be directed to the Comptrollers’ Department ACH Enrollments contact line at 201 216-6002 or emailed to ACHENROLLMENT@PANYNJ.GOV.

2. SCOPE OF WORK

The full Scope of Work is set forth in detail in Attachment D, Power Purchase Agreement, Part II - Scope of Work and Technical Specifications.

All proposals must be responsive to the requirements laid out in Attachment D, Part II, Scope of Work and Technical Specifications.
3. PROPOSER PREREQUISITES

Only Proposers who can demonstrate that they comply with the following should submit proposals as only proposals from such Proposers will be considered:

A. The Proposer shall have had at least three (3) years of continuous experience immediately prior to the date of submission of its proposal in providing design and installation of solar PV systems in accordance with a solar PPA to corporate and/or government entities similar in size to the Port Authority.

B. The Proposer must demonstrate to the satisfaction of the Port Authority that it has completed a minimum of five (5) solar PV installations during the past five (5) years with a total combined capacity of at least 4,000 kW.

C. During the time period stated in (A) above, the Proposer shall have performed or be performing under at least one (1) contract for similar services of similar scope required under this RFP for design and installation of a solar PV system operating under a solar PPA.

D. In the event a proposal is submitted by a joint venture, the foregoing prerequisites will be considered with respect to such Proposal as follows:
   
   i. With respect to subparagraphs (A), (B) and (C) above, the prerequisite will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements.

   ii. If the proposal is submitted by a common law joint venture, a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this proposal. Documents signed by a common law joint venture, in connection with this proposal, shall include the names of all participants of the joint venture followed by the words "acting jointly and severally". All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites.

By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that they will be deemed qualified in connection with other proposal requirements included herein.

4. FINANCIAL INFORMATION

The Proposer shall demonstrate that it is financially capable of performing the Contract requirements resulting from this RFP. The determination of the Proposer’s financial qualifications and ability to perform under this Contract will be in the sole discretion of the Port Authority. The Proposer shall submit, with its proposal, the following:
A. Financial Statements:

i. Certified financial statements, including applicable notes, reflecting the Proposer’s assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent year or the Proposer’s most recent fiscal year.

ii. Where the certified financial statements in (i) above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.

iii. Where the statements submitted pursuant to subparagraphs (i) and (ii) above do not cover a period which includes a date not more than forty-five days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

B. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer’s work on these jobs.

C. The name and address of the Proposer’s banking institution, chief banking representative handling the Proposer’s account, the Proposer’s Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer’s Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer’s account.

D. The Proposer shall submit a business risk assessment to the Port Authority that assess the business risk in taking on the significant amount of new work that will be required under this Contract. The risk assessment plan should take into account all work currently under contract, as well as work that is under contract to companies, which the Proposer owns, controls or has an interest.

5. EVALUATION CRITERIA AND RANKING

All proposals will be reviewed by the Port Authority to determine if they adhere to the format required in this RFP, if they contain all required submissions and if the Proposer meets the prerequisites required for submission of a Proposal. For Proposals meeting such requirements, the following criteria, set forth in order of importance, will be utilized in the evaluation of proposals.

A. Cost Proposal

The combined value of all project-related cash flows as proposed on the Cost Proposal Form submitted with each proposal. All proposals will be evaluated over a 25-year period regardless of the proposed term. Proposals with terms less than 25 years shall be
evaluated by assuming the Port Authority purchases the System at the end of the term. Such proposals will be evaluated by incorporating the Port Authority’s annual costs of financing ownership and maintenance for the years of the 25-year period not covered by the proposal. Providers should refer to Section 8, Paragraph H, Section 1 of this RFP, “Proposal Submission Requirements.”

B. Business Risk

i. The extent to which the Proposer demonstrates to the Port Authority that its organization is financially capable of performing the Contract.

ii. The demonstrated level of experience the Proposer has successfully financing and completing contracts of similar nature and size to the Contract that will result from this RFP.

iii. The clarity and feasibility of the Proposer’s plans to finance each cost proposal submitted in response to this RFP.

C. Technical Expertise

i. The extent to which the Proposer and the managerial and supervisory personnel proposed to be dedicated to this project/service have experience in implementing and managing similar services in a similar environment using staff similar in size to that necessary for the services to be provided hereunder. This includes the demonstrated experience in the performance of solar PV PPAs and with the solar power industry.

ii. The amount of experience the Proposer’s managerial personnel have with the type of technology proposed, system installation plans, anticipated electrical output, and the proposed operations and maintenance plan.

iii. Experience of Proposer’s senior management team in managing employees and conducting employee management programs, including, but not limited to:

   a. Security training;
   b. OSHA safety training;
   c. Quality assurance and control programs;
   d. Disciplinary procedures;
   e. Staff planning;
   f. Payroll processing;
   g. Recruiting procedures and maintenance of a stable workforce;
   h. The extent to which the Proposer and the managerial and supervisory personnel proposed to be dedicated to this project/service have experience in utilizing technological advances in solar PV systems; and
i. The extent to which the Proposer and the managerial and supervisory personnel proposed to be dedicated to this project/service have experience in contract management (specifically solar PPAs).

D. Management Approach

i. The proposed project design and schedule, including but not limited to, design (allowing for Port Authority reviews at 50 percent and 100 percent completion), equipment delivery, installation, and implementation.

ii. The clarity and feasibility of the proposal, which shall include the Proposers’ management philosophy, principles and programs to be utilized by the chosen Proposer in performing the service, and which shall include consideration of:

   a. Proposer's proposed labor and supervisory staffing;
   b. MBE/WBE sub-contracting plan and prior compliance with MBE/WBE subcontracting plans;
   c. On-site management plans and work plan for this Contract,
   d. Proposed quality assurance/quality control program addressing how the Proposer will ensure compliance with the Contract requirements, including but not limited to insurance requirements and MBE/WBE subcontracting requirements;
   e. Compliance and/or past performance on other Contracts with the Port Authority and its subsidiaries, if any; and
   f. The Proposer's training and safe work environment plans for this Contract.

E. Background Check Plan

The Proposer must submit a Background Check plan in accordance with this document, which will be considered "pass/fail."

6. MBE/WBE SUBCONTRACTING PROVISIONS

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The successful Proposer (“Contractor”) will use good faith efforts to provide for meaningful participation by Port Authority certified MBE/WBEs as defined in this document.

MBE/WBE Good Faith Participation – The Contractor shall use every good faith effort to provide for meaningful participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Women-owned Business Enterprises
(WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including the purchase of equipment, supplies and labor services, in accordance with the section of the Standard Terms and Conditions, Attachment E of this RFP, entitled “MBE/WBE Good Faith Participation.”

The Contractor shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Contract price for Port Authority Certified MBEs and ten percent (10%) of the total Contract price for Port Authority Certified WBEs. Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

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

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

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

D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with the prompt payment provision below.

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

Proposers are directed to use form PA3760C as the recording mechanism for the MBE/WBE Participation Plan, which may be downloaded at http://www.panynj.gov/business-opportunities/become-vendor.html.

Proposers shall include their MBE/WBE Participation Plans with their Proposals, to be reviewed and approved by the Authority’s Office of Business Diversity and Civil Rights (OBDCR).

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

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

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

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

The MBE/WBE subcontractor listed on each of the MBE/WBE Participation Plans 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/sd-mwsdbe-profile.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 any of the MBE/WBE Participation Plans 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 PA3760D, which may be downloaded at [http://www.panynj.gov/business-opportunities/become-vendor.html](http://www.panynj.gov/business-opportunities/become-vendor.html). The Contractor shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subcontractors or suppliers for those named in their approved plans without the Manager’s prior written approval. Unauthorized changes or substitutions, including performing the work designated for a 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 (Form 3968), which may be downloaded at [http://www.panynj.gov/business-opportunities/become-vendor.html](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 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 Contractor agrees further to return retainage payments, if any to each subcontractor within ten (10) 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 an 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.

D. Equipment: MBE/WBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the MBE/WBE obtains equipment from the Contractor, their affiliates and other subcontractors performing Work on the Contract, the MBE/WBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses and terms quoted by other sources of equipment.

Counting MBE/WBE Participation

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor 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 an 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 an MBE/WBE. Work that an 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 an MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.
C. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer’s representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

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 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.

   i. 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.

   ii. 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 an MBE/WBE. 100% of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.

   iii. 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 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.

7. CERTIFICATION OF RECYCLED MATERIALS PROVISION

Proposers shall submit, with their proposal, Attachment C, the Certified Environmentally Preferable Products / Practices Form, attesting that the products or items offered by the Proposer 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.

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

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

B. “Post-consumer Material” shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. “Post-consumer material” is included in the broader category of “Recovered Material.”

C. “Pre-consumer Material” shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.

D. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-Consumer Material.

E. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.

F. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the
same function with a greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

8. PROPOSAL SUBMISSION REQUIREMENTS

In order to expedite the evaluation of proposals, the Proposer’s response to this RFP shall follow the format and order of items, using the same paragraph identifiers, as set forth below

A. Letter of Transmittal

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, a joint venture, or is partnering with another firm in a prime/subcontracting relationship. In all cases, information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

i. Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;

ii. Name(s), title(s) and telephone number(s) of the individual(s) who are authorized to negotiate and execute the Contract;

iii. Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;

iv. Name and address of proposed subcontractors, if any;

v. If a corporation: (a) a statement of the names and residences of its officers, and (b) a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the proposals;

vi. If a partnership: a statement of the names and residences of its principal officers, indicating which are general and which are special partners;

vii. If an individual: a statement of residence;

viii. If a joint venture: information on each of the parties consistent with the information requested above; if the Contract is awarded to a common law joint venture (a partnership of business entities), each member will be jointly and severally liable under the Contract.

B. Executive Summary

The Proposer shall submit a summary presenting the major features of its proposals and how the proposals satisfy the requirements contained in this RFP, as well as the
special competencies and expertise of the Proposer to meet the requirements of this RFP.

C. Agreement on Terms of Discussion

The Proposer shall submit a copy of the “Agreement on Terms of Discussion,” signed by an authorized representative of the Proposer. The Agreement format is included as Attachment A and shall be submitted by the Proposer without any alterations or deviations. Any Proposer who fails to sign the Port Authority’s “Agreement on Terms of Discussion” will not have its proposal reviewed. If the Proposer is a joint venture, an authorized representative of each party must sign the Agreement.

D. Certifications with Respect to the Contractor’s Integrity Provisions

The Proposer, by signing the Letter of Transmittal, makes the certifications contained in the paragraph titled “Contractor’s Integrity Provisions,” in Attachment E, “Standard Contract Terms and Conditions.” If the Proposer cannot make any such certifications, it shall enclose an explanation of that inability in its Letter of Transmittal.

E. Code of Ethics for Port Authority Vendors

The Proposer’s attention is directed to the Port Authority’s “Code of Ethics for Port Authority Vendors.” Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer shall submit an executed Compliance Certification with their proposal. The Compliance Certification, once executed, will be a material and integral part of any contract resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Port Authority’s website at https://www.panynj.gov/business-opportunities/become-vendor.html.

F. Documentation of Proposer Prerequisites

The Proposer shall submit documentation to demonstrate that it meets all prerequisites, included in Section 3, “Proposer Prerequisites.”

G. Required Financial Information

The Proposer shall provide the financial documentation listed in Section 4, “Financial Information.”

H. Proposal

The Proposer shall submit a proposal that details and clearly describes to the Port Authority, its experience and capability to perform the finance, design, installation, operation and maintenance of solar PV systems under PPAs as described in this RFP, its approach to such work and the cost of such work. At a minimum, the proposal shall address the following:
i. **Cost of Proposal**

   a. The Proposer must provide the Port Authority with at least two (2) PPA proposals and, at its option, may provide one or more additional proposals:

      (1) The 25-Year Proposal, which is the first required proposal, shall be a PPA with a Term of twenty-five (25) years.

      (2) The Less-Than-25-Year Proposal, which is the second required proposal, shall be a PPA with a Term of any length less than twenty-five (25) years with the assumption that the Port Authority will purchase the system at the end of the Term under the terms and conditions described in the executed PPA.

      Through this Less-Than-25-Year Proposal, the Port Authority is seeking a “hybrid” arrangement consisting of a shorter-term PPA followed by the Port Authority purchasing and owning the system for the remainder of the twenty-five-year period, the combination of which results in the best financial value to the Port Authority. The proposed purchase price and the Term of the PPA should be set to make it possible for the Proposer to offer lower per-kWh rates to the Port Authority.

      (3) In addition to the two required PPA proposals, Proposers are invited to provide, at their sole option, additional proposals (“Optional Proposals”) that involve selling the output of the PV system or the system itself to the Port Authority through either:

         (a) alternative Less-Than-25-Year PPA Proposals (i.e. different Term and/or Terminal Values) than the required Less-Then-25-Year Proposal; and/or

         (b) proposals involving contracting vehicles other than PPAs.

      The Port Authority places no limits on the number of Optional Proposals a Proposer may submit nor on the kinds of purchase arrangements these Optional Proposals can incorporate. Optional Proposals may also be for any Term up to a 25-year Term limit. The Authority encourages Proposers to exercise as much creativity as possible in developing these Optional Proposals. Proposers choosing to furnish non-PPA Optional Proposals must provide sufficient information about the payment terms and conditions to allow the Port Authority to identify all relevant cash flows over a 25-year period regardless of the proposed Term. The PPA included in this RFP may be inappropriate for use with a non-PPA Optional Proposal. If such a non-PPA Optional Proposal is chosen, the Port Authority will provide purchase terms and conditions appropriate to the chosen Proposal.

b. Each Cost Proposal shall, at a minimum, include the following:
(1) An estimate of the annual kilowatt (kW) capacity and kilowatt-hour (kWh) production of the system for each year of the proposed term of the PPA.

(2) A proposed cost per kilowatt-hour rate ($/kWh) (“PPA Rate”) for each year of the proposed Term of the PPA for electricity delivered to the Site, for which the Port Authority will be billed on a monthly basis.

(3) The proposed Terminal Values for each year of the Term of the Agreement. Different Cost Proposals may have different Terminal Values. For analysis of Less-Than-25-Year Proposals, the Port Authority will use the proposed Terminal Value for the final year of the Proposal as the purchase price for the System. Note: the actual purchase price will be either the Terminal Value or Fair Market Value as described in the executed PPA.

(4) For each Cost Proposal that involves the Port Authority purchasing the System prior to the end of the 25-year Term, the Proposer shall also provide an annual proposed $/kW Maintenance Cost for each year the Port Authority owns the System. Note that the Port Authority reserves the option to not accept this Maintenance Cost Proposal. This Maintenance Cost Proposal shall provide the same level of maintenance as the Proposer has described in its detailed maintenance plan required in the section titled “Management Approach” below.


(7) In the case of any non-PPA Optional Proposals, the Proposer must provide its own Cost Proposal Form listing the project-related cash flows.

(8) Each Cost Proposal shall include a plain language narrative in which the Proposer clearly describes in detail how the cost proposal will be implemented, what cash flows are involved and how this cost proposal provides value to the Port Authority.

ii. **Business Risk**

The Proposer shall submit:

a. the information required by Section 4 of this RFP;
b. documentation of the Proposer’s experience with successfully financing and completing projects of similar scope employing PPAs;

c. for each cost proposal (i.e. the two required PPA cost proposals as well as any additional optional cost proposals) a financing plan that will support the financial viability and the likelihood of completion of the proposed project under each cost proposal. In this submittal, the Proposer shall identify all funding sources, both closed and anticipated, to be utilized under this contract, including private equity, corporate debt, loans, federal, state and local grants and incentives, or tax credits; and the proposed use and value of any Renewable Energy Credits (“RECs”) or other environmental credits. The Proposer shall also provide a proposed line item budget for material and labor costs of design and installation of the proposed System.

iii. Technical Experience

a. The Proposer shall describe the relevant experience of the Proposer, each proposed subcontractor, if any, and the proposed staff in providing the services described in the Scope of Work. The descriptions shall specifically address the following:

(1) Design work shall be performed by a team that includes at least one (1) New Jersey State licensed Professional Engineer with a minimum of three (3) years recent and direct experience in solar PV system design of the type to be performed under the purpose for this RFP.

(2) Installation work shall be performed by a team with a minimum of three (3) years recent and direct experience in solar PV system installation of the type to be performed under this RFP.

(3) The proposed team shall have a New Jersey State licensed electrician with at least three (3) years recent and direct experience in solar PV system interconnection.

No substitutions in such personnel shall be permitted without the Port Authority's prior written approval.

b. The Proposer shall provide documentation of representative projects that demonstrate the Proposer's expertise in providing similar professional services for similar solar PV system design and installation consistent with the scope and nature of the services described in this RFP. The documentation should provide:

(1) Descriptions of previous projects that include each project’s scope, complexity and extent of the Proposer’s involvement.
(2) An explanation of how these projects demonstrate the Proposer’s ability to provide effective technical quality assurance.

(3) An outline of the Proposer’s management practices for tracking each project.

(4) Descriptions of any systems installed by the Proposer that did not perform per contract specifications. These descriptions should include

(a) Explanations of why each system did not perform to specifications, and

(b) What steps the Proposer took to compensate for underperformance.

c. The Proposer shall submit a listing of all PPAs that were performed by or are currently being performed by the Proposer within the last five years. For each PPA listed, include:

(1) The name and address of the contracting party;
(2) The locations where the work was performed;
(3) Duration of the contract (if the contract is still active, provide a current status of the system);
(4) The approximate dollar amount of the contract;
(5) The approximate quantity of power that was produced by the installation;
(6) The areal extent of the installation;
(7) The types of technology utilized;
(8) The ability of the contractor to meet the original proposed schedule for the project;
(9) Number and type of repairs to the system that have been required, if any;
(10) An explanation of any challenges the Proposer faced in design, installation, and/or operation of the system and how they were addressed by the contractor;
(11) The annual staff hours of full and part time labor expended in the performance of the contract;
(12) A summary of the types of work performed;
(13) The names, addresses and telephone numbers of the owners; and
(14) Representatives familiar with the work that the Port Authority may contact.
d. The Proposer shall provide a statement indicating the qualifications and experience of managerial and supervisory personnel employed by the Proposer who shall be exclusively dedicated to the Contract, including:

   (1) Each person’s respective length of service with the Proposer
   (2) The anticipated function of each person on the Contract
   (3) A summary of the relevant experience of each of the personnel listed

The resumes of the individuals who are being recommended for these positions shall be included in the Proposal. Each resume submitted shall list the person's work experience to ensure their qualifications under this requirement.

e. The Proposer shall provide a complete description of all employee management programs (covering both supervisory and non-supervisory personnel), currently utilized by the Proposer, including, but not limited to:

   (1) PV installation/design related training;
   (2) Security training;
   (3) OSHA safety training;
   (4) Employee motivation and incentive programs;
   (5) Health benefits information programs for employees;
   (6) Quality Assurance/Quality Control programs;
   (7) Payroll processing;
   (8) Recruitment procedures;
   (9) Staffing retention plan; and
   (10) Disciplinary procedures, etc. (include, if available, copies of manuals or other associated documents).

f. The Proposer shall submit to the Port Authority, a detailed itemized description explaining technical expertise and past experience the Proposer has in the following areas:

   (1) Utilization of technological advances in PV installation and design and resulting benefits; and
   (2) Management of Contracts, specifically PPA for PV installations in buildings and facilities of similar size.
iv. **Management Approach**

a. The Proposer shall submit a detailed description of the proposed design for the System, including, but not limited to, an explanation of how the required engineering analysis will be completed.

b. The Proposer shall submit System technical descriptions and schematic drawings, which shall include:

   1. A description of the proposed system at the Premises, as identified herein.
   2. Preliminary drawings, array layouts, and manufacturer information.
   3. Any other information that will help the Port Authority gain an understanding of the proposed system, along with its features and benefits.
   4. A detailed description of how the Proposer will maintain the System including a discussion of any ongoing maintenance considerations and/or recommendations.

c. The Proposer shall indicate the total number of full-time (minimum thirty (30) hours/week) employees currently employed by the firm and the number employed in each of the preceding three (3) years.

d. The Proposer shall show the number of full-time and part-time employees to be utilized in providing these services, including supervisory staff. The Proposer shall submit a plan to minimize employee turnover. It is the Port Authority's preference to have the Proposers submit a staffing plan that maximizes the use of full time employees.

e. The Proposer shall provide a complete description of how it intends to implement and manage the required services hereunder, including any information that it believes would be helpful to the Port Authority in assessing its ability to provide the services described in the RFP.

f. The Proposal must include the Proposer's plan to ensure compliance with the requirements of this Contract, including, but not limited to:

   1. Insurance requirements listed in Attachment B of this RFP.
   2. The Proposer's MBE/WBE Participation Plan, in accordance with the MBE/WBE Subcontracting Provisions hereunder.
   3. The Proposer’s Certified Environmentally Preferable Products/Practices Form (see Attachment C). Proposers shall also include, in response to Section 5 of Attachment C, “Other Environmental Criteria,” the Proposer’s plan to
ensure compliance with all applicable federal, state and local environmental standards in the performance of this project.

g. The Proposer shall submit a detailed project schedule which includes, at a minimum, the following milestones:

   (1) The date of the kick-off meeting;
   (2) The date of the submittal of the proposed design package to the Port Authority;
   (3) The date of the submittal of the Port Authority Tenant Alteration Application (“TAA”) for code compliance review of the PV System design package;
   (4) The date of the submittal of final design package to the Port Authority;
   (5) The dates for major building permits received;
   (6) The dates of delivery of system components;
   (7) The date of commencement of installation;
   (8) The date of start-up and commissioning; and
   (9) The date of the Performance Test.

h. The Proposer shall provide a detailed description of the Proposer’s approach to billing as it will relate to this Contract.

i. The Proposer shall submit proposed minimum service standards (and the appropriate measurements thereof), concepts or procedures that will further its objective to provide the highest possible level of service at the Premises, as described herein, including how it will determine and maintain performance measurements.

j. The Proposer shall submit a description of the Proposer’s training and workplace safety programs for this Contract.

k. Contractor Identity Check/Background Screening Plan

The Proposer shall submit a Contractor Identity Check/Background Screening Plan, which demonstrates how the Proposer will ensure that only employees who were successfully prescreened and properly credentialed would perform the services herein. This Plan shall be applicable to all years of the Contract and shall include, but not be limited to, the following:

The length of time researched for the identity check/background screening on new hires, which shall be at a minimum of 10 years of employment history or verification of employee submitted documents for the last 10 years preceding the date of the investigation, resources
utilized to perform this, and the frequency at which it is performed on current employees.

The Proposer shall provide any other information that is related to the requirements in this Section that the Proposer believes would be helpful to the Port Authority in the evaluation of its proposal.

I. Acknowledgment of Addenda

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

If the Proposer downloaded this RFP document, it is the responsibility of the Proposer 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.

J. Acceptance of Standard Contract Terms and Conditions

The Port Authority has attached to this RFP as Attachment E, Standard Contract Terms and Conditions governing the Contract. The Proposer is expected to agree with these Standard Contract Terms and Conditions. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

K. Acceptance of Power Purchase Agreement

The Port Authority has attached its Power Purchase Agreement to this RFP as Attachment D. The Proposer is expected to agree with the terms and conditions of this PPA. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

L. MBE/WBE Plan

The Proposer shall submit an MBE/WBE Plan in accordance with the MBE/WBE Subcontracting Provisions described above in Section 6 of this RFP.
9. CONDITIONS FOR THE SUBMISSION OF A PROPOSAL

In addition to all other requirements of this RFP, the Proposer agrees to the following conditions for the submission of its proposal.

A. Changes to this RFP

At any time, in its sole discretion, the Port Authority may by written addenda, modify, correct, amend, cancel and/or reissue this RFP. If an addendum is issued prior to the Proposal Due Date, it will be posted on our website under the “Goods and Services” tab found at http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html. If an addendum is issued after proposals have been received, the addendum will be provided only to those whose proposals remain under consideration at such time.

B. Proposal Preparation Costs

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its proposal, or in any other aspect of the Proposer’s pre-contract activity. No Proposer is entitled to any compensation except under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

C. Disclosure of Proposal Contents / Use of Ideas and Materials

Proposal information is not generally considered confidential or proprietary. All information contained in the proposal is subject to the “Agreement on Terms of Discussion” attached hereto as Attachment A.

D. Ownership of Submitted Materials

All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of a Proposal shall not affect this right.

E. Subcontractors

If a Proposer intends to use subcontractor(s) the Proposer must identify in its proposal the names of the subcontractor(s) and the portions of the work the subcontractor(s) will perform.

F. Conflict of Interest

If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority’s determination regarding any questions of conflict of interest shall be final.
G. Authorized Signature

Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its proposal and this RFP.

H. References

The Port Authority may consult any reference familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of a proposal shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

I. Evaluation Procedures and Negotiation

Only Proposers which meet the prerequisites, if any, may have their proposals evaluated based on the evaluation criteria set forth in this RFP. The Port Authority may use such procedures that it deems appropriate to evaluate such proposals. The Port Authority may elect to initiate contract negotiations with one or more Proposers including negotiation of costs/price(s) and any other term or condition, including modifying any requirement of this RFP. The option of whether or not to initiate contract negotiations rests solely with the Port Authority.

J. Taxes and Costs

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). All costs associated with the Contract must reflect this exemption and be stated in U.S. currency.

K. Most Advantageous Proposal/No Obligation to Award

The Port Authority reserves the right to award the Contract to any Proposer other than the Proposer proposing the lowest price. The Contract will be awarded to the Proposer whose proposal the Port Authority believes, in its sole discretion, will be the most advantageous to the Port Authority. Neither the release of this RFP nor the acceptance of any response thereto shall compel the Port Authority to accept any proposal. The Port Authority shall not be obligated in any manner whatsoever to any Proposer until a proposal is accepted by the Port Authority in the manner provided in the Section of this RFP entitled “Proposal Acceptance or Rejection.”

L. Multiple Contract Awards

The Port Authority reserves the right to award multiple Contracts for the products, work and/or services that are the subject matter of this RFP and Proposers are hereby given notice that they may not be the Port Authority’s only contractor for such products, work and/or services.
M. Rights of the Port Authority

i. The Port Authority reserves all its rights at law and equity with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change or modify this RFP, to reject any and all proposals, to waive defects or irregularities in proposals received, to seek clarification of proposals, to request additional information, to request any or all Proposers to make a presentation, to undertake discussions and modifications with one or more Proposers, or to negotiate an agreement with any Proposer or third person who, at any time, subsequent to the deadline for submissions to this RFP, may express an interest in the subject matter hereof, to terminate further participation in the proposal process by a Proposer or to proceed with any proposal or modified proposal, which in its judgment will, under all circumstances, best serve the Port Authority’s interest. The Port Authority may, but shall not be obliged to, consider incomplete proposals or to request or accept additional material or information. The holding of any discussions with any Proposer shall not constitute acceptance of a proposal, and a proposal may be accepted with or without discussions.

ii. No Proposer shall have any rights against the Port Authority arising from the contents of this RFP, the receipt of proposals, or the incorporation in or rejection of information contained in any proposal or in any other document. The Port Authority makes no representations, warranties, or guarantees that the information contained herein, or in any addenda hereto, is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of the contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer required by this RFP or Contract and the Proposer agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.

iii. At any time and from time to time after the opening of the proposals, the Port Authority may give oral or written notice to one or more Proposers to furnish additional information relating to its proposal and/or qualifications to perform the services contained in this RFP, or to meet with designated representatives of the Port Authority. The giving of such notice shall not be construed as an acceptance of a proposal. Information shall be submitted within three (3) calendar days after the Port Authority’s request unless a shorter or longer time is specified therein.

N. No Personal Liability

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally with any liability by a
Proposer or another or held liable to a Proposer or another under any term or provision of this RFP or any statements made herein or because of the submission or attempted submission of a proposal or other response hereto or otherwise.
EXHIBIT 1 – SYSTEM LOCATION

Page 1 of 2
EXHIBIT 2A – MACMILLAN BLOEDEL ROOF DETAILS

PAGE 1 OF 9

The PATH MacMillan Bloedel building consists of the original 108,350 sf, 21-foot-high storage building built in the 1940s and a 16,800 sf, 28-foot-high two-story building that was added in the 1980s (see Exhibit 1). The original building’s main roof (Main Roof) has been replaced under contract PAT-784.164 (completed Summer 2018). The newly installed main roof system is a Johns Manville SBS Cold Applied fully adhered modified bitumen 2-ply roof system. The roof assembly is comprised of a fire-retardant fiber glass-reinforced SBS cap sheet that is fully adhered to two layers of polyester-reinforced SBS sheets over built-up tapered polyisocyanurate roof insulation. The built-up tapered insulation is sloped towards the roof drains for positive draining.

The roof of the building expansion (High Roof) is an asphalt coated fiberglass membrane with perimeter aluminum gutters and exterior leaders. The Main Roof is accessible by an internal roof hatch and an access ladder on the south elevation. The building expansion roof is accessible by an access ladder on its west façade. The Main Roof also contains HVAC equipment on steel dunnage along the west side of the building. The HVAC equipment is accessible by walkway pads from the roof’s access points.

Roof drains, gutters, roof access, and HVAC equipment shall remain accessible for maintenance and shall not be impacted by any solar panel installation.

A 30-year warranty for the Main Roof will be provided by the roofing contractor, Pravco Inc., a Johns Manville Approved Roofing Contractor per the PAT-784.164 contract upon completion. As a condition of the Guarantees, the Contractor and the Manufacturer must be notified prior to the implementation of any repair or alteration to the roof or any appurtenances, thereto. The roofing details for a photovoltaic installation shall be reviewed, approved, and inspected by the existing manufacturer prior to implementation.
The overall gross weight of the roof solar panel, support rackets and associated equipment shall not exceed more than 5 pounds per square foot. The weight of the system shall be evenly distributed through the entire roof framing (avoid heavily concentrated point load).

If panels are mounted by bracket, supports shall be positively attached to the existing steel beam, girder or column.

Based on the above criteria, the suggested solar panel placement area is indicated as the highlighted section in the Exhibit below. Actual placement area may be refined during system design.
EXHIBIT 2C – DESIGNATED STAGING AREAS

At the time of issuance of this RFP, only the space on the roof will be available to the Contractor for storage of material and assembly of the System.

Use of the roof for this storage and assembly shall be subject to the structural limitations listed elsewhere in this RFP.

The roof will be made available to the Contractor upon the commencement of its first operations at the construction site.

Any additional property, which the Contractor desires for its operations, shall be obtained by it at its own expense.

The Contractor will be permitted to use only so much of the roof as is necessary for the performance of the Contract, and it must at all times so conduct its operations as not to encroach upon or block the portions used by others.

The Port Authority may at any time make joint or exclusive assignments of particular portions of the roof or other areas, either to the Contractor or to others, and may take over and use for other purposes any portions which, in the opinion of Port Authority, are not required for the performance of the Contract.

The Contractor shall clean up the areas made available to it on a daily basis so that they are free at all times of refuse, rubbish, scrap material or debris.
EXHIBIT 2D – INTERCONNECTION DETAILS

The System shall be connected to the Site building’s electric system at 480 V.

Electrical connection shall be made to the newly installed Main Service Switch rated 1600A, 480/277V. A new Automatic Transfer Switch (ATS) should be used to interconnect the solar PV system with the PSE&G electric feed with safety interlock. Interconnection shall be performed in a manner that does not void or otherwise affect the warranty of the newly installed Main Service panel. Proposer shall coordinate with manufacturer if needed during design and installation.

The Site’s existing utility service can export a maximum of 1 MW. Proposers may propose a larger system in conjunction with any necessary upgrades and/or reinforcements to the existing service equipment. Proposers are advised that electrical infrastructure upgrades including, but not limited to, the transformer and cable may be required to support a solar PV system with a capacity greater than 1 MW.

The System shall be designed to achieve generation as close as possible to the building’s consumption, as provided in Exhibit 2E of the RFP. Systems shall not be designed to intentionally generate more energy on annual basis than the building’s load.
## EXHIBIT 2E – HISTORIC KW AND KWH DATA

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## Cost Proposal Form B - Less-Than-25-Year PPA Proposal

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<th>(iii) Proposed PPA Rate [$/kWh]</th>
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<th>(v) Proposed O&amp;M Rate [$/kW]</th>
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ATTACHMENT A - AGREEMENT ON TERMS OF DISCUSSION

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

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/. The foregoing applies to any information, whether or not given at the invitation of the Authority.

________________________
(Company)

________________________
(Signature)

________________________
(Title)

________________________
(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.
DO NOT RETYPE.
ATTACHMENT B - PROVIDER INSURANCE REQUIREMENTS

I. Insurance Procured by Contractor: CITS#5844

The Contractor and its sub-contractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the Contract and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Contractor under this Contract including but not limited to premise-operations, products and completed operations, and independent Contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract.

**Commercial General Liability Insurance** - $5,000,000 (Five Million) per occurrence for bodily injury and property damage liability; Products Liability Coverage or equivalent endorsement under CGL – of not less than as required; or, no exclusion for products liability. Coverage for damage to or caused by, the product resulting from the product’s failure; due to deficiency in design, plan, or specifications of the indicated scope.

**Automobile Liability Insurance** – Commercial Automobile Liability Insurance covering “any” vehicle(s) on the broadest commercially available form, with Combined Single Limit ("CSL") per each accident for bodily injury and property damage liability of not less than $2,000,000 (Two Million dollars) per each accident/per occurrence.

**Commercial Property Insurance** covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverage, on all improvements protecting the Port Authority against loss of or damage to the Premises by fire and all other risks of physical loss or damage, under extended coverage and an “All Risk” endorsement in the broadest form available and shall not exclude damage caused by water intrusion.

**Environmental/Pollution Legal Liability** not less than $5,000,000 (Five Million) providing coverage for bodily injury and property damage, including loss of use of damaged property.

If during the performance of any construction, restoration or alteration work;

**Builder’s Risk - “All Risk” completed value form** covering the perils insured under the ISO special causes of loss form extended coverage is required.

**Professional Liability/Technology Errors and Omissions Insurance** - If providing professional services, Contractor shall maintain, or if subcontracting professional services shall certify that subcontractor maintain, Professional Liability/Errors and Omissions liability insurance with coverage of not less than $5,000,000 (Five Million) per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting judgments and court costs;

a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this contract and may not exclude or be limited to the rendering or failure to render technology based products; failure of Contractor’s products to perform the function or serve the purpose as intended;
loss, theft, unauthorized dissemination of non-public third party information in Contractor’s care, custody, and control; and unauthorized access of computer networks, denial of service attacks and transmission of malicious code. Including but not limited to opinions, nonperformance, negligent oversell, fraud, breach of contract, allegations of copyright infringement and intellectual property infringement, advertising injury, vicarious liability and personal injury.

b. If coverage is written on a claims-made policy, Contractor warrants that any applicable retroactive date precedes the effective date of this contract; and that continuous coverage will be maintained, or an extended period exercised for not less than 3 years;

The insurance shall be written, where applicable and as indicated, on an occurrence basis for Commercial General Liability and Automobile Liability, as distinguished from a “claims made” basis for the Professional/Technology Error and Omissions insurance policies. Coverage shall be minimally arranged to encompass at least the following terms:
- Contractual Liability to cover liability assumed under the Contract;
- Independent Contractor’s Coverage;
- Premise-Operations, Products and Completed Operations Liability Insurance;
- If applicable, coverage for work within fifty feet (50’) of railroad;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policy;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or provisions, such language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law.

The Contractor and its subcontractor(s) shall also take out, maintain, and pay premiums on Workers’ Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer’s Liability Insurance with limits of not less than $1,000,000 (One Million) per accident; in accordance with the requirements of law in the state(s) where work will take place; and a waiver of subrogation issued in favor of the Port Authority, when loss or damage is caused by Contractor.
In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work), or their equivalent and endorsed to and shall name The Port Authority of New York & New Jersey, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns, and The New York State Dept. of Transportation as Additional Insured.” The “Additional Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as Additional Insured under the liability policies, including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between the parties. The liability policy(ies) and certificates of insurance shall contain separation of insured and severability of interests’ clauses for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Contractor is responsible for all deductibles and losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Contractor is subject to the review and approval of the General Manager, Risk Finance. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

If any of the Work is to be done on or at Port Authority facilities by subcontractors and, if the Contractor requires its subcontractors to procure and maintain such insurance in the name of the Contractor, then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this section known as “Insurance Procured by the Contractor”.

All insurance coverage shall be provided by the Contractor and/or by or for any of its subcontractors at no additional expense to the Port Authority and its related entities. A copy of this section titled “Insurance Procured by the Contractor” shall be given to your insurance agent and subcontractors and shall form a part of the covered contract or subcontract for insurance purposes in furtherance of the insurance requirements under this Contract.

Further, it is the Contractor’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all subcontractors are accurate, adequate and in compliance with the Port Authority requirements; and the Contractor is to retain a copy of its subcontractors’ certificates of insurance. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, including subcontractors’ work, and upon completion of the Contract.

*The Contractor, its subcontractors, and its insurers(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.*
Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days’ prior written notice to the Port Authority At: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense. Submit proof of insurance by (a) e-mail: certificates-portauthority@riskworks.com and (b) to Certificate Holder: Port Authority of New York and New Jersey c/o EXIGIS Insurance Compliance Services P.O. Box 4668 - ECM #35050 New York, NY 10163-4668.

Within five (5) days after the award of this Contract and prior to the start of work, the Contractor must submit an original certificate of insurance to the Facility Contract Administrator, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), including, but not limited to, the cancellation notice endorsement and stating the contract number prior to the start of work. The Contractor is also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors or assigns. The General Manager, Risk Finance must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Finance, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Contractor and all subcontractors shall suspend performance of the Contract at the premises until a satisfactory insurance policy (ies) and certificate of insurance is provided to and approved by Risk Finance, unless the Facility or Project Manager directs the Contractor, in writing, to continue to performing work under the Contract. If the Contract is so suspended, no extension of time shall be due on account thereof.

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

Failure by the Contractor to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Contract without limitation, shall be deemed a material breach of contract and may be a basis for termination of this Contract by the Port Authority.

The requirements for insurance procured by the Contractor and subcontractor(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract. CITS#5844
Contractor should note that any event resulting in the transfer of ownership of the System to the Port Authority will require another insurance assessment before such transfer can take place.
ATTACHMENT C - CERTIFIED ENVIRONMENTALLY PREFERABLE PRODUCTS/PRACTICES

Certified Environmentally Preferable Products/Practices

Proposer Name: _____________________ Date: _____________________

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

1. Packaging

Has the Proposer implemented any of the following environmental initiatives? (A checkmark indicates “Yes”)

_____ Use of corrugated materials that exceed the EPA recommended post-consumer recycled content

_____ Use of other packaging materials that contain recycled content and are recyclable in most local programs

_____ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return

_____ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives

_____ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals

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

2. Business Practices / Operations / Manufacturing

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

_____ Recycles materials in the warehouse or other operations

_____ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes

_____ Use of energy efficient office equipment or signage or the incorporation of green building design elements
Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials

Other sustainable initiative

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

3. Training and Education

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

☑ Yes ☐ No If yes, Proposer must attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications

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

☐ ISO 14000 or adopted some other equivalent environmental management system

☐ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards

☐ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

If yes, Proposers must attach copies of the certificates obtained.

5. Other Environmental Criteria

Proposers are encouraged to respond to criteria specifically indicated in this RFP as “Management Approach” (and attach the appropriate documentation) to receive consideration in the evaluation.

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

____________________  ________________ Name

____________________  ________________ Date
ATTACHMENT D - POWER PURCHASE AGREEMENT

[ SEE ATTACHED]
ATTACHMENT E - STANDARD CONTRACT TERMS AND CONDITIONS

[ SEE ATTACHED]
# POWER PURCHASE AGREEMENT

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POWER PURCHASE AGREEMENT

PART I – CONTRACT SPECIFIC TERMS AND CONDITIONS

GENERAL

This Solar Power Purchase Agreement (“Agreement,” “PPA,” or “Contract”) is made and entered into as of MONTH DAY, YEAR (“Effective Date”) between PROVIDER NAME, PROVIDER STREET, CITY, STATE ZIP, (“Provider” or “Contractor”) and The Port Authority of New York and New Jersey (“Port Authority,” “Authority” or “Host”), a body corporate and politic created by a Compact between the States of New York and New Jersey with the consent of the Congress of the United States (together with Provider, each, a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, on MONTH DAY, YEAR, Host issued a Request for Proposals (“RFP”), Number ________, (the “Solicitation”) soliciting proposals for the installation of a solar photovoltaic system on the lower roof (the “Main Roof”) of the PATH MacMillan Bloedel Building, located at 100 Academy Street, Jersey City, NJ, via a power purchase agreement; and

WHEREAS, on MONTH DAY, YEAR, Provider submitted a response to the Solicitation; and

WHEREAS, on MONTH DAY, YEAR, Host awarded Provider a contract to perform the services requested in the Solicitation; and

WHEREAS, Provider intends to furnish, install, finance, own, operate and maintain a photovoltaic solar power electric generation system at the Premises, as described below, for the purpose of providing electric energy output from the System (“Solar Services”) to Host as more particularly described in Part II – Scope of Work and Specifications (the “Project,” “Scope of Work” or “Work”), and subject to the terms and conditions provided herein and in the Solar Facility License (“License”), attached hereto as Exhibit B; and

WHEREAS, Provider desires to sell to Host, and Host desires to purchase from Provider, all of the Solar Services generated by the System during the Term in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, the following words and phrases shall be defined as follows:
(a) “Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

(b) “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

(c) “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

(d) “Assignment” has the meaning set forth in Section 13.

(e) “Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

(f) “BES” means Host’s existing building electrical systems that are owned, operated, maintained or controlled by the Host, including the interconnection of these systems with the Local Electric Utility.
(g) “Business Day” means any day other than Saturday, Sunday or any other holiday on which the Port Authority is closed for business pursuant to the Section titled “Holidays” of the Standard Contract Terms and Conditions.

(h) “Commercial Operation Date” has the meaning set forth in Section 3.3(b).

(i) “Commercial Operation Deadline” means the date which is three hundred and sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event, breach of the Agreement by Host, or other action or inaction on the part of Host or any other third party occurring after the Effective Date and prior to the Commercial Operation Date.

(l) “Confidential Information” has the meaning set forth in Section 15.1.

(j) “Consent and Agreement” means a consent and agreement as will be provided by the Host.

(k) “Contractor” shall be synonymous with “Provider.”

(l) “Dispute” has the meaning set forth in Section 18.5.

(m) “Disruption Period” has the meaning set forth in Section 4.3(b).

(n) “Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term but does not include the Purchase Date, as defined herein.

(o) “Effective Date” has the meaning set forth in the introductory paragraph of this PPA.

(p) “Environmental Financial Attributes” shall mean, without limitation, each of the following financial rebates and incentives created under state, local or federal law that are in effect as of the Effective Date or may come into effect in the future: (i) renewable energy credits including, but not limited to, the New York State Energy Research and Development Authority incentives, and accelerated depreciation (collectively, “Allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of energy generated by the System; and (ii) all reporting rights with respect to such Allowances.
“Estimated Annual Production” means the estimated number of kWh produced during the applicable year of the Term as set forth by the Provider in the Schedule 3 Cost Proposal Form.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration, cancellation or termination.

“Fair Market Value” has the meaning set forth in Section 2.4.

“Financing Party” means, as applicable, (i) any Person (or his agent) from whom Provider (or an Affiliate of Provider) leases the System or (ii) any Person (or his agent) who has made or will make a loan to or otherwise provide capital to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bi-state agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Host” has the meaning set forth in the introductory paragraph of this PPA. “Host” shall be synonymous with the “Port Authority.”

“Host Default” has the meaning set forth in Section 11.2(a).

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate (base)” means the price per kWh set forth in Schedule 3.

“Liens” has the meaning set forth in Section 7.1(e).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Premises.
(ff) “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

(gg) “Meter” has the meaning set forth in Section 4.2.

(hh) “Option Price” has the meaning set forth in Section 2.3.

(ii) “Party” or “Parties” has the meaning set forth in the introductory paragraph of this PPA.

(jj) “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

(kk) “Point of Delivery” means the physical location, as set forth on Schedule 1, attached hereto, where the System connects to the BES grid, at which point custody and control of electricity is transferred from Provider to Host.

(ll) “Premises” or “Site” means the premises described in Part II. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Part II.

(mm) “Provider” has the meaning set forth in the introductory paragraph of this PPA. “Provider” shall be synonymous with “Contractor.”

(nn) “Provider Default” has the meaning set forth in Section 11.1(a).

(oo) “Public Records Access Policy” the Port Authority’s policy for access to public records, which can be found at: http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/.

(pp) “Purchase Date” means the last day of the Term.

(qq) “Purchase Option” has the meaning set forth in Section 2.3.

(rr) “Renewable Energy Credits” means all certificates (including Tradable Renewable Certificates), Green-e tags, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the output during the Term created under a renewable
energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date, are certificates issued by Green-e in accordance with the Green-e Renewable Energy Standard for Canada and the United States, Version 3.2, administered by the Center for Resource Solutions) or for which a market may exist at a future time.

(ss) “Renewal Term” any additional term, which shall extend the Initial Term, to the extent agreed upon by the Parties as set forth in Section 2.1.

(tt) “Reporting Rights” means the right of Provider to report to any federal state or local agency, authority or other party or under any present or future domestic, international or foreign emissions trading program, that Provider owns the Environmental Financial Attributes and Renewable Energy Credits associated with the Solar Services and the System.

(uu) “Security Interest” has the meaning set forth in Section 8.2.

(vv) “Solar Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

(ww) “Solar Services” means the supply of electrical energy output from the System.

(xx) “Solar Services Payment” has the meaning set forth in Section 6.1.

(yy) “Specifications” has the meaning set forth in Section 3.1.

(zz) “Standard Contract Terms and Conditions” means those general terms and conditions attached as Attachment E of the RFP.

(aaa) “Stated Rate” means a rate per annum equal to the lesser of (a) six percent (6%) per annum and (b) the maximum rate allowed by Applicable Law.

(bbb) “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring used in the operation and maintenance of a PV solar power electric generation system, more specifically described in Schedule 2.

ccc) “System Loss” means loss, theft, damage or destruction of the System, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty or condemnation or Force Majeure) other than (i) Provider’s gross negligence or intentional misconduct, (ii) Provider’s
breach of maintenance obligations under the Agreement, or (iii) normal wear and tear of the System.

(ddd) “System Operations” means Provider’s operation, maintenance and repair of the System performed in accordance with the requirements set forth herein.

(eee) “Term” has the meaning set forth in Section 2.1.

(fff) “Terminal Value(s)” means the value or values, as applicable, set forth in Schedule 3 payable under the circumstances described in Section 2.2, Section 4.3(a), Section 6.1, Section 11.2.

2. TERM AND TERMINATION

2.1 Term. The term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall continue for ________________ (__) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for one additional five (5) year term (“Renewal Term”), if written notice of renewal is given by the Host to the Provider at least six (6) months prior to the expiration of the Term. The Initial Term and any subsequent Renewal Term(s) combined shall be referred to collectively as the “Term.” During the Renewal Term, if any, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred eighty (180) days’ prior written notice to the other Party. The annual price-per-kWh and the Estimated Annual Production for any Renewal Term shall be mutually agreed to by the Parties on or before the first day of any such Renewal Term.

2.2 Early Termination. The Host may terminate the Agreement at any time and for any reason upon ninety (90) days’ prior written notice. If this Agreement is terminated as provided in Section 4.3(a), Section 6.1, Section 11.2, or Section 13.3, except to the extent specified otherwise in this Agreement, Host shall pay to Provider the greater of (i) the Fair Market Value of the System as of the date of notice of termination or (ii) the applicable Terminal Value as contained in Schedule 3 herein, and Provider shall cause the System to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days of the notice of termination from Host, Provider shall remove the System and shall remediate and restore the Premises to the condition of the Premises prior to the installation of the System as set forth in Section 2.5, ordinary wear and tear excepted. Upon Host’s payment of the Terminal Value, the Agreement shall terminate automatically.

2.3 Purchase Option. On the Purchase Date, so long as a Host Default shall not have occurred and be continuing, Host has the option to purchase the System (the “Purchase Option”) for a purchase price (the “Option Price”) equal to the lesser of (i) the Fair Market Value of the System as of the Purchase Date or (ii) the applicable
Terminal Value as contained in Schedule 3 herein. To exercise the Purchase Option, Host shall, not less than one hundred eighty (180) days prior to the Purchase Date, provide written notice to Provider of Host’s intent to exercise the Purchase Option on the Purchase Date. Within thirty (30) days of receipt of Host’s written notice, Provider shall notify Host in writing of the Option Price. Host shall have a period of thirty (30) days after such notification to confirm in writing or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System by written notification to Provider. In the event Host does not dispute the Fair Market Value and confirms its exercise of the Purchase Option in writing to the Provider (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Host on the Purchase Date, free and clear of any Liens and/or a Financing Party’s security interest, and (B) assign all vendor warranties for the System to the Host, and (ii) the Host shall pay the Option Price to Provider on the Purchase Date, in accordance with any previous written instructions delivered to Host by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement. Upon such execution of documents and payment of the Option Price, the Agreement shall terminate automatically and Host shall own the System and all Environmental Financial Attributes relating to the System. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments described in Section 2.2 accruing from and after the Purchase Date. In the event Host does not either: (a) confirm, or retract, its exercise of the Purchase Option in writing within thirty (30) days after receipt of Provider’s written notice of the Option Price, or (b) dispute the determination of the Fair Market Value of the System by written notification to Provider, the provisions of the Agreement shall be applicable as if Host had not exercised the Purchase Option, and Host shall promptly reimburse Provider for any costs and expenses incurred by Provider in connection with such retracted exercise of the Purchase Option, up to a maximum aggregate amount of $1,500. Subject to the assignment of any vendor warranties as provided above, enforcement of which by Host shall be solely against the issuer of such warranty, Host’s purchase of the System from Provider shall be on an as-is, where-is basis, and shall be without any warranty of any kind from Provider.

### 2.4 Determination of Fair Market Value

If the Option Price indicated by Provider in accordance with Section 2.3 is disputed by Host, within thirty (30) days of receipt of Host’s notice of dispute by Provider, the Parties shall each retain the services of a professional appraiser to value the System. Each Party shall bear its own costs for its respective appraiser. The two appraisers selected by the Parties shall mutually select a third appraiser, whose services shall be paid for in equal shares by the Parties. The three appraisers shall evaluate and determine the price of the System that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction (the “Fair Market Value”) within sixty (60) days of the date upon which Host provides notice of the dispute, by
submitting their reports to both Parties. The appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers’ valuations shall be deemed to be the Fair Market Value, which shall be binding upon the Parties. Provider shall be obligated to sell and Host shall be obligated to purchase the System at the value resulting from such determination of the Fair Market Value. Upon Host’s payment of the Option Price to Provider for the System, Provider shall furnish the System, including all components thereof, to Host. All applicable warranty documents and warranties for the System shall be transferred to Host within thirty (30) days of Host’s payment to Provider. Provider shall complete all documentation required to transfer complete title to the System (free of Liens or claims) and any warranties to Host.

2.5 Removal of System at Expiration/Termination. Subject to the Host’s exercise of the Purchase Option and payment of the Option Price to Provider, or upon cancellation or termination of the Agreement or expiration of the Term, Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises and restore the Premises to its original condition, ordinary wear and tear excepted, on a mutually convenient date or dates, but in no case later than one hundred eighty (180) calendar days after the Expiration Date. For purposes of Provider’s removal of the System, the covenants of Host set forth in Section 7.2 shall remain in effect until the final date of removal of the System. Upon removing the System, Provider shall leave the Premises in broom-clean condition. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date or dates, Host shall have the right, at its option, to either (i) remove the System to a public warehouse and restore the Premises to its original condition, ordinary wear and tear excepted, at Provider’s cost or (ii) leave the System in place and receive electricity from the System, but without any payment obligation to Provider, notwithstanding any provision to the contrary herein. To the extent the Agreement is terminated as a result of any Host Default, Host shall be obligated to pay for Provider’s actual costs of removal of the Systems and restoration of the Site.

2.6 Provider Conditions of the Agreement. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, but no later than the Commercial Operation Deadline, then Provider may terminate the Agreement, in which case neither Party shall have any liability to the other Party:

(a) Provider determines that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.
(c) There is a material adverse change in the Environmental Financial Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors, including any Financing Party.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.

(e) Provider has not received a fully executed (i) release or acknowledgement from any mortgagee of the Premises and the Consent and Agreement, if required by Provider’s Financing Party, to establish the priority of its security interest in the System, or (ii) such other documentation reasonably requested by Provider to evidence Host’s ability to meet its obligations under Section 7.2(d) to ensure that Provider will have access to the Premises throughout the Term.

(f) The Parties mutually agree that there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the System on the Premises.

(g) Provider has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

(h) Provider has determined that there are easements, or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(i) There has been a material adverse change in Host’s credit-worthiness.

(j) Due to such cause or action outside of its control (i.e. a Force Majeure Event), Provider has not received all required environmental approvals or permits from applicable Governmental Authorities in a manner timely enough to allow Provider to begin construction and satisfy the Commercial Operation Deadline.

2.7 Host Conditions of the Agreement. In the event that the Commercial Operation Date has not occurred on or before the Commercial Operation Deadline, through no fault of Host, Host may (at its sole discretion and no later than the Commercial Operation Deadline) terminate the Agreement, in which case neither Party shall have any liability to the other.

2.8 Environmental Compliance. Immediately following the Effective Date, Host shall commence the process for complying with the applicable requirements of any
environmental laws applicable to the process of performing the Installation Work at the Premises and operating and maintaining the System subsequent to the Commercial Operation Date. Provider shall cooperate with Host in connection with complying with any such environmental laws, as may be applicable. Host shall bear its own costs incurred as the lead entity and for review of environmental compliance.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, furnished, installed and constructed substantially in accordance with Part II: “Specifications” and Applicable Law, including but not limited to, the payment of prevailing wages, if legally required. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Provider or by independent contractors with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and duly licensed under the laws of the State of New Jersey including any license required for the construction of the System, pursuant to written contracts with such independent contractors. Provider must obtain Host’s written approval, which shall not be unreasonably withheld, of the System’s designs, contract drawings and specifications prior to undertaking construction of the System. Host shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Provider is adhering to the Specifications. Except in the case of an emergency, Provider shall perform the Installation Work at the Premises between the hours of 7:00am and 5:00pm, Monday through Friday, or at such other times as may be permitted by the Authority, and in a manner that minimizes inconvenience to and interference with Host’s use of properties adjacent to the Premises, to the extent practicable.

3.2 Approvals; Permits. Host shall reasonably cooperate with Provider in obtaining all necessary approvals and permits for the Installation Work, including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required. Host shall bear no liability for Provider’s failure to obtain any such permit or approval.

3.3 System Acceptance Testing.

(a) Provider shall deliver written notice to the Host that the system is ready for operation and that necessary testing and commissioning of the System has been conducted in accordance with such practices, methods, acts, guidelines, standards and criteria reasonably accepted or followed by the majority of photovoltaic system integrators in the United States as well as in accordance with Exhibit A hereto. Host shall accept delivery of test energy, prior to the Commercial Operation Date.
3.4 **Connection.** Provider shall furnish and install all necessary wiring from the System to the Point of Delivery. Provider is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment.

4. **SYSTEM OPERATIONS.**

4.1 **Provider as Owner and Operator.** Provider and/or Provider’s Financing Parties shall be the legal and beneficial owner(s) of the System at all times, except as otherwise provided in this Agreement. The System is personal property and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Host’s gross negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed to Provider by Host.

4.2 **Metering.** Provider shall install and maintain a utility grade kilowatt-hour (“kWh”) meter for the measurement of electrical energy provided by the System (the “Meter”). Provider shall ensure the initial accuracy of this meter by performing setup and testing procedures on this meter according to the meter manufacturer’s setup and testing instructions and standard industry practices. Provider shall provide the Host with documentation of both the setup and testing procedures performed and the results obtained. Provider may, at its election and cost, install a utility grade kWh meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(a) **Meter Reading.** Readings of the Meter shall be conclusive as to the amount of output; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(c)(iv), or registers inaccurately, measurement of output shall be determined by estimating by reference to quantities measured during periods of similar conditions when the Meter was registering accurately. Provider shall read the Meter at the end of each calendar month, and shall record the output delivered to Host. The Meter shall be used as the basis for calculating the Solar Services Payments due under the Agreement.

(b) **Testing and Correction.** The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(b) Written notice confirming the readiness of the System shall be provided to the Host no less than three Business Days following the testing and commissioning of the System as detailed above in 3.3(a) and Exhibit A hereto. If the results of such testing are approved by the Port Authority (such approval not to be unreasonably withheld), the date of such approval by the Port Authority shall be the “Commercial Operation Date.”
(i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) Business Days after receiving such notice from the disputing Party, advise the disputing Party in writing as to the non-disputing Party’s position concerning the accuracy of the Meter and the non-disputing Party’s reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the Meter.

(iv) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (x) Provider shall promptly cause any such Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (y) the Parties shall estimate the correct amounts of Solar Services delivered for no more than the preceding six (6) months and Provider shall either invoice or credit Host for the difference between the amounts previously paid and the amounts that would have been paid based on the correct amounts of Solar Services delivered, and (z) Provider shall bear the cost of inspecting and correcting the Meter.

4.3 System Disruptions.

(a) **Substitution of Premises.** If, for reasons other than Provider’s breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date then Host shall provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation as soon as is practicable after the cessation of Provider’s access rights to the Premises. Host shall provide at least one hundred eighty (180) days’ written notice prior to the date on which it desires to effect any such substitution. In connection with such substitution, Host and Provider shall amend the Agreement to specify the substitute premises. Host shall also provide to Provider any new owner, lessor, or mortgagee consents or releases, executed by the applicable Person, as required by Provider’s Financing Party in connection with the substitute premises. In connection with any substitution of premises, Host shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with
removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider’s Financing Parties in the System. If the substitute premises have inferior Solar Insolation or other conditions or characteristics that negatively impact System performance as compared to the original Premises, Provider shall have the right to make an adjustment to the kWh Rate such that Host’s payments to Provider are the same as if the System were located on the original Premises. In connection with any substitution of premises, Host shall continue to make all Solar Services Payments, and Host shall reimburse Provider for any lost revenue in connection with the substitution of premises, including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits. For the purpose of calculating Solar Services Payments and lost revenue, Solar Services shall be deemed to have been produced at the average rate of the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation, adjusted for seasonal variations in Solar Insolation at the Premises). If (i) Host is unable to obtain such consents and releases for a substitute premises or (ii) Host otherwise does not, as soon as is practicable, provide Provider with a mutually agreeable substitute premises, Provider shall have the right to terminate the Agreement and Host shall promptly pay to Provider the applicable value in accordance with Section 2.2. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned by the Provider, and at no cost to the Host, to its original condition, except for incidental hardware or other support structures and ordinary wear and tear.

(b) **System Disruptions.** If the Term of the Agreement is in excess of twenty (20) years, the Parties agree and expect that Host may require that the System be temporarily shut-down, including but not limited to, for the purposes of Host repairing or replacing the BES. As such, the Parties agree that during the Term of the Agreement, Host shall be afforded two periods of twenty (20) consecutive days (the “Allowed Disruption Time”) during which the System shall be rendered non-operational as safety may so require. Host shall pay to Provider reasonable costs to disassemble, store, and reassemble the System, if any, but Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Financial
Attributes and any reduced Renewable Energy Credits. In the event that (x) Host requires more time beyond the Allowed Disruption Time or (y) any act of gross negligence or omission of Host or Host’s employees, Affiliates, agents or subcontractors (collectively, a “Host Act”) results in a disruption or outage in System production, then, Host shall (i) continue to pay Provider reasonable costs to disassemble, store, and reassemble the System, if any, and (ii) pay to Provider all Solar Services Payments during such period of System disruption (the “Disruption Period”), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). Except in the case of an emergency, Host shall take all reasonable actions to perform any such repairs or replacement between October 1 and March 31 of any calendar year to help mitigate lost production and possible tax implications for Provider and Provider’s Financing Parties. Host shall take all reasonable actions to minimize any disruptions of the System.

(c) Increase and Decrease in Sites. Host shall have the right, at any time and from time to time in its sole discretion, to increase or decrease and/or add sites not described herein in the specifications or remove sites or parts of sites described herein. In the event the Host decides to change any sites, such change shall be by written notice not less than thirty (30) days before said change is to be effective upon the date specified in said notice. In the case of an increase in site(s), the Provider and the Host shall draft an amendment to this Agreement to show the additional site(s) and the negotiated price of electricity generated at each added site. In the event of a decrease after the start of construction, the Provider and the Host shall draft an amendment to this Agreement to show the additional costs, if any, incurred by Provider due to such change and Host shall pay Provider such costs. The Provider shall not be entitled to compensation for work not performed.

(d) Emergency Interruption. Notwithstanding anything to the contrary herein, Provider shall have the right in the event of an emergency to interrupt, reduce or discontinue the delivery of Solar Services for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Solar Services, or at the direction of an authorized Governmental
Authority or Local Electric Utility without liability to either Party. Any such emergency shall be considered a Force Majeure Event.

5. **DELIVERY OF SOLAR SERVICES.**

5.1 **Purchase Requirement.** Provider shall deliver electricity to the Point of Delivery, and Host shall accept delivery of the electricity at the Point of Delivery, beginning on the Commercial Operation Date until the end of the Term. Title to and risk of loss of the electricity shall pass from Provider to Host at the Point of Delivery. Host agrees to purchase, irrespective of Host’s actual consumption, all of the Solar Services during the Term. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 3, they represent a package of services and benefits.

5.2 **Estimated Annual Production.** The Estimated Annual Production for each year of the Initial Term is as set forth in Schedule 3. Host acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the System is guaranteed in amount or time of delivery except as that provided for herein. Host further acknowledges that it must retain a primary source of power from the Local Electric Utility. Beginning on the Commercial Operation Date, the System shall produce not less than 75% of the applicable Estimated Annual Production (the “Minimum Output Requirement”) under standard insolation conditions at the Premises as of the Effective Date during the Initial Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Minimum Output Requirement is due to (a) System failure, damage or downtime attributable to third parties; (b) inverter failure and delayed repair of an inverter due to the claims process with the inverter manufacturer; (c) resulting from general utility outages or any failure of any electrical grid; (d) usage of the Premises, or buildings at or near the Premises, which may affect building permits, site permits and related requirements for the operation of the System, or that impact insolation striking the System; (e) a Force Majeure Event; or (f) acts or omissions of Host of any of its obligations hereunder. Subject to that proviso, if as of any anniversary of the Commercial Operation Date beginning on the third anniversary of such date, the actual output of the System for the prior three years (the “Actual System Output”) does not equal or exceed the Minimum Output Requirement for such three-year period, in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for commercially available, Local Electric Utility-provided energy in the applicable market during such three-year period minus the applicable kWh Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such three-year period and the Minimum Output Requirement for such three-year period. For the avoidance of all doubt, provided that Provider credits Host pursuant to the procedure set forth in this Section, in the event that the Actual
System Output does not equal or exceed the Minimum Output Requirement such shortfall shall not constitute a Provider Default.

5.3 **Environmental Financial Attributes and Renewable Energy Credits.** Host’s purchase of Solar Services does not include Environmental Financial Attributes, Renewable Energy Credits or Reporting Rights, each of which shall be owned by Provider or Provider’s Financing Parties for the duration of the Term of this Agreement. For the duration of the Term of this Agreement, Host disclaims any right to Environmental Financial Attributes, Renewable Energy Credits or Reporting Rights associated with the Solar Services and/or the installation and/or operation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section. Provider shall have the exclusive right to claim that: (a) the Solar Services were generated by the System; (b) Provider is responsible for the delivery of the Solar Services to the Point of Delivery; (c) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Solar Services and the delivery thereof to the Point of Delivery; and (d) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing; provided, however, that Host may state that it is purchasing renewable energy from the System to offset its electricity demand and/or that Provider’s System is located at Host’s Site. Following notice by Provider of actions or omissions which could impair or jeopardize either the sale of Renewable Energy Credits or the production of the Solar Services hereunder, except as required by the Federal Aviation Administration (“FAA”) or as required for air navigation purposes, if applicable, Host shall not take any such action or suffer any such omission. To the fullest extent Host is able to comply, Host shall take such action or suffer such omission as necessary to assist Provider in qualifying for receipt of Renewable Energy Credit payments. Without limiting Provider’s other rights hereunder, in the event that Host breaches its obligations under this Section other than due to Host’s obligations with respect to the Host’s Public Records Access Policy or other freedom of information laws under Applicable Law and, as a result thereof, the quantity or value of the Environmental Financial Attributes generated by the System is reduced, Host shall pay to Provider the value of such reduction.

5.4 **Title to System.** Throughout the duration of the Agreement and prior to any purchase of the System by Host pursuant to Section 2.3 hereof, Provider or Provider’s Financing Parties shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property and the legal responsibility of Provider or Provider’s Financing Party and shall not attach to, or be deemed a part of, or a fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all parties having an interest in the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the
Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Host shall provide, at Provider’s request, a disclaimer or release from such lien holder. Host shall obtain consent from the fee owner of the Premises to the filing by Provider, on behalf of the fee owner, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.

6. **PRICE AND PAYMENT.**

6.1 **Consideration.** Commencing on the Commercial Operation Date, Host shall pay to Provider a monthly payment (the “Solar Services Payment”) for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. As a Governmental Authority, if sufficient funds to provide for payment(s) owed by Host under the Agreement are not appropriated, Host may terminate the Agreement upon notice in writing to Provider and payment of the applicable Terminal Value to Provider.

6.2 **Invoice.** Provider shall invoice Host on or about the first day of each month that Solar Services are provided hereunder (each, an “Invoice Date”), for the Solar Services Payment in respect of the immediately preceding month, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address provided by Host by regular first class mail postage prepaid.

6.3 **Time of Payment.** Host shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 **Method of Payment.** Host shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate.

6.5 **Disputed Payments.** If a *bona fide* dispute arises with respect to any invoice, Host shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Host is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.6 **Extra Work Orders.** Except as provided for in Section 4.3(c), should the Port Authority direct any modification or addition to the Project or Solar Services covered by this Agreement, the Parties shall execute a mutually acceptable written
Extra Work Order for same. The Extra Work Order may also increase the time within which the Project is to be completed. Any Extra Work Order shall be incorporated in, and become a part of, the Agreement. For purposes of illustration only, the following items may, if directed or caused by the Port Authority, give rise to Extra Work Orders: Addition to or deviation from the specifications described herein; temporary protection of the building at the Site not originally included in the Project description; premature notice to start work causing Provider unnecessary trips; trips back to the Site to repair issues created after the Commercial Operation Date; damage to Provider’s work by the Port Authority; and/or any labor required to be done outside of normal business hours. All Extra Work Orders shall be subject to any required Port Authority approval.

7. GENERAL COVENANTS.

7.1 Provider’s Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Host if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System and (y) immediately notify Host if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall exercise commercially reasonable efforts to ensure that the System is capable of providing continuous Solar Services.

(c) Governmental Approvals. While providing the Installation Work, Solar Services and System Operations, Provider shall obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured by Provider to enable Provider to perform hereunder.

(d) Health and Safety/Security. Provider shall take all necessary and reasonable safety precautions with respect to furnishing and installing the Installation Work and performing Solar Services and System Operations. Provider shall be responsible for ensuring the security of the System.

(e) Liens. Other than a Financing Party’s security interest in or ownership of Provider’s personal property, such as the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider’s performance or non-
performance of its obligations hereunder. If Provider breaches its obligations under this Section 7.1(e), it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend and indemnify Host against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(f) **Applicable Law.** Provider shall comply with any and all applicable provisions of Applicable Law related to Provider’s performance of its obligations hereunder.

(g) **Interconnection Agreement.** Provider shall comply with the terms and conditions of any and all interconnection agreements or any other agreements which are entered into by and between Provider and the Local Electric Utility or Provider, Host and Local Electric Utility for the System.

### 7.2 Host’s Covenants.

Host covenants and agrees as follows:

(a) **Notice of Damage, Emergency or Reduction in Power.** Host shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System, (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises and (iii) promptly notify Provider if it becomes aware of any interruption or material alteration of the energy supply to the Premises from the System.

(b) **Consents and Approvals.** Host shall ensure that any authorizations required of Host under the Agreement are provided in a timely manner. To the extent that only Host is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Host shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(c) **Access to Premises, Security.** Subject to Section 2.6(j), the Solar Facility License and Host’s reasonable operational needs, Host hereby covenants that (i) Provider shall have access to the Premises and System during the Term of the Agreement and for a reasonable and mutually-agreed-upon time period after expiration or termination of the Agreement to remove the System and restore the Premises, ordinary wear and tear excepted, pursuant to the Agreement, and (ii) except in the event of an emergency and then only to the extent necessary to protect property and life, Host will not, and will not knowingly permit any third party to, interfere with or handle any Provider equipment or the System without prior written authorization from Provider; provided, however, that Host shall at all times have access to and
the right to observe the Installation Work and System removal. In the event Host must access the System in the event of an emergency, Host shall as soon as possible notify Provider of such necessity as well as actions taken and shall take only such actions as are necessary to protect property and life.

(d) **Temporary storage space during installation or removal.** Host shall, if available during the construction phase, accommodate Provider’s request for sufficient space at the Premises for the temporary storage and staging of tools, lay-down areas, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary (“Temporary Installation/Removal Areas”) during the Installation Work, System Operations or System removal, and access for rigging and material handling. Such Temporary Installation/Removal Areas are further delineated and described in the Specifications.

(e) **Site Sunlight Access.** Host will not permit other buildings, structures or flora on the Premises to overshadow or otherwise block access of sunlight to the System. Host will take all reasonable actions as necessary to prevent buildings, structures or flora on property of third parties from overshadowing or otherwise blocking access of sunlight to the System. In the event that any such obstruction is nonetheless installed or erected, Host and Provider agree to collaboratively work to identify an alternative site for relocating the System pursuant to Section 4.3(a) above, and if no such alternative site is mutually agreed upon by the Parties within thirty (30) days, the Provider shall have the right to terminate the Agreement.

8. **REPRESENTATIONS & WARRANTIES.**

8.1 **Representations and Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization,
moratorium, and other similar laws now or hereafter in effect relating to creditors’ rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Host has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the “Security Interest”) in the System to one or more Financing Parties. In connection therewith, Host to the best of its knowledge represents and warrants as follows:

(a) The granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) There is no existing lease, mortgage, security interest or other interest in or lien or encumbrance of any kind upon the Premises that could attach to the System as an interest adverse to or senior to Provider’s Financing Parties’ Security Interest therein.

(c) Host is unaware of any event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under the Agreement. Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 Other Representations and Warranties of Host In addition to any other representations and warranties contained in the Agreement, Host represents and warrants to Provider that:

(a) Host is an entity with the legal capacity to sue and to be sued.

(b) Host owns or leases the Premises; that it or its lessor has fee simple title to the Premises; and that Host has the right to authorize Provider to enter the Premises, install the System, and perform its other obligations under this
Agreement. Subject to its termination rights set forth in Section 2.7, Host represents that it has the right to authorize Provider to enter the Premises, install the System and perform Provider’s other obligations under the Agreement pursuant to the terms and conditions of the License and the Agreement.

(c) Host has all the rights required to enter into the Agreement and the License and perform its obligations hereunder and thereunder without the consent of any third party, except for such third party consents that have already been obtained and that are in full force and effect.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Host Obligations. Host shall reimburse and pay for any documented sales taxes, fees or charges imposed or authorized by any Governmental Authority assessed against Provider due to Provider’s sale of the Solar Services to Host, other than income taxes imposed upon Provider and any other taxes from which Host is exempt under federal, state or municipality laws, codes or regulations. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host’s overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist
acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party’s failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement, provided that such Governmental Action is not the result of the fault or negligence of the affected Party; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Governmental Approval. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 **Excused Performance.** Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.

10.3 **Termination in Consequence of Force Majeure Event.** If a Force Majeure Event shall have occurred that has prevented Provider from performing all of its material obligations hereunder and that has continued for a continuous period of three hundred sixty-five (365) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days’ prior written notice to the other Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable. If at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Agreement shall remain in full force and effect, and Host’s notice shall be deemed to have been withdrawn.

11. **DEFAULT.**

11.1 **Provider Defaults and Host Remedies.**
(a) **Provider Defaults.** The following events shall be defaults with respect to Provider (each, a “Provider Default”):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Host any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Host of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Host’s written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) **Host’s Remedies.** If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to all rights and remedies expressly provided herein, and subject to Section 12, Host may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until: (1) in the event of a monetary Provider Default, written notice of Provider Default and Host’s intent to exercise its remedies and specifying the nature of the default or event giving rise to such right and the amount due has been delivered by Host to the Provider or each Financing Party, and such Provider Default has not been cured within sixty (60) days of delivery of such notice; or (2) in the event of a non-monetary Provider Default, written notice of Provider Default and Host’s intent to exercise its remedies and specifying the nature of the default or event giving rise to such right has been delivered by Host to the Provider or each Financing Party, and such Provider Default has not been cured within sixty (60) days of delivery of such notice or such longer period as is required so long as appropriate action to cure such Provider Default has commenced and is being diligently pursued. If a Financing Party is prohibited from curing any non-monetary Provider Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the time period specified herein for curing a Provider Default shall be extended for the period of such prohibition. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1.

(c) **No Early Termination Fee.** Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Host pursuant to this Section 11.1.
11.2 **Host Defaults and Provider’s Remedies.**

(a) **Host Default.** The following events shall be defaults with respect to Host (each, a “Host Default”):

(i) Host fails to pay Provider any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Provider of such past due amount;

(ii) Host breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider’s notice of such breach and Host fails to so cure, or (B) Host fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;

(iii) If the representations and warranties and other statements made by Host hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Provider and (b) the discovery or determination by Host of the misrepresentation; provided, that if Host commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days; and

(iv) The License is terminated as a result of Host’s default thereunder.

(b) **Provider’s Remedies.** If a Host Default described in Section 11.2(a) has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Provider pursuant to this Agreement, and subject to Section 12, Provider may terminate the Agreement and upon such termination, Provider shall be entitled to receive from Host the applicable Terminal Value pursuant to Section 2.2.

11.3 **Removal of System.** Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, unless the Parties otherwise mutually agree in writing to leave the System in place.

12. **LIMITATIONS OF LIABILITY.**

Except as expressly provided herein, neither Party shall be liable to the other Party or its officers, directors, employees, agents, affiliates and representatives for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the
agreement. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Provider with any liability, or held personally liable to the Provider 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. In the event that, as a result of any breach of the Agreement by Host, Provider shall recapture any investment tax credits, treasury grants in lieu of investment tax credits, new markets tax credits or other federal or state tax or financial incentive, which shall be deemed to be direct and not indirect or consequential damages. Provider’s direct damages shall include compensation, on an after-tax basis, for any such lost or recaptured credit or incentive, to the extent that such damages are not already represented in the applicable Terminal Value required to be made by Host to Provider as may be applicable.

13. ASSIGNMENT.

13.1 Assignment by Provider. The Provider shall not sell, transfer, mortgage, pledge, subcontract or assign this Agreement or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent contractor, without the prior written approval of the Host, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Host.

13.2 Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 4, or in a subsequent notice to Host, then Host hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee, or otherwise, shall be entitled to exercise any and all rights of lenders generally with respect to Provider’s interests in the Agreement;

(c) agrees to execute and comply with the Consent and Agreement in substantially the form provided by the Host; and

(d) acknowledges that it has been advised that Provider has granted a Security Interest in the System to one or more Financing Parties and that such Financing Parties have relied upon the characterization of the System as personal property, as agreed in the Agreement in accepting such Security Interest as collateral for its financing of the System. Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.
13.3 **Assignment by Host.** Host shall not assign the Agreement or any interest therein, without Provider’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignee assumes in writing the obligations of Host hereunder. Any assignment by Host without the prior written consent of Provider shall not release Host of its obligations hereunder. In the event that Host sells or otherwise transfers the Premises and opts not to relocate the System, Host may either (1) terminate the Agreement and pay Provider the applicable Terminal Value pursuant to Section 2.2 of the Agreement or (2) shall require the purchaser or transferee, as the case may be, to assume Host’s obligations under the Agreement and the License pursuant to an assumption agreement reasonably acceptable to Provider; provided that such purchaser or transferee has delivered documentation satisfactory to Provider and the Financing Parties evidencing creditworthiness equal to or greater than the Host.

14. **NOTICES.**

14.1 **Notice Addresses.** All notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5, or at such other address as may be designated in writing to the other Party from time to time. Copies of any notices provided to Provider under the Agreement shall be promptly delivered by the notifying party to each Financing Party. Any Financing Party shall be an intended third-party beneficiary of this Section 14.

14.2 **Notice.** Unless otherwise provided herein, any notice provided for in the Agreement shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 **Financing Notices.** Provider shall keep Host informed of financing plans for the System, including informing Host of the identity of any Financing Party and any changes made with regards to any Financing Party or any additional or changed terms. In the event of any default by Provider with regards to the financing of the System, Provider shall provide Host notice of such default within ten (10) days of the date Provider becomes aware of such default; provided, however, that if Provider is able to cure such default within such ten (10) day period, Provider shall not be required to provide notice to Host of such cured default. In the event Provider cures such a default after such ten (10) day period, Provider shall provide Host notice of such cure within ten (10) days of such cure.

15. **CONFIDENTIALITY.**
15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Host’s business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall, subject to the requirements of freedom of information laws under Applicable Law, including Host’s Public Records Access Policy, (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, representatives and consultants, and Affiliates, and to its and its Affiliates’ lenders, prospective lenders, equity investors and prospective equity investors, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, “Permitted Recipients”), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 15.1, except as set forth in Section 15.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or
(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 **Goodwill and Publicity.** Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at Host’s sole discretion, take photographs of the installation process of the System and the completed System, and Provider may be permitted to use such images in its marketing efforts, including use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information or refer to the Host or to the services performed in connection with this Agreement, unless it first obtains the written approval from the Host. This approval may be withheld if for any reason the Host believes that the publication of the information would be harmful to the public interest or is in any way undesirable.

16. **INDEMNITY.**

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

16.2 **If so directed,** the Provider shall at its own expense defend any suit based upon any claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.
17. **INSURANCE.**

17.1 Provider shall maintain insurance in accordance with the requirements specified in Attachment B of the RFP also found in Exhibit C of this Agreement.

18. **MISCELLANEOUS.**

18.1 **Integration; Exhibits.** The Agreement, together with the Exhibits, Schedules, Appendices attached thereto and hereto and the Authority’s Standard Contract Terms and Conditions, constitutes the entire agreement and understanding between Provider and Host with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits, Schedules, and Appendices, if any, attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

18.2 **Incorporation of Port Authority’s “Standard Contract Terms and Conditions.”** Notwithstanding any other provision of this Agreement, the Port Authority’s “Standard Contract Terms and Conditions,” included as Attachment E of the RFP, are hereby incorporated by reference. In the event of any conflict or inconsistency between the Standard Contract Terms and Conditions and this Agreement, the provisions of this Agreement shall govern. In addition, in the event that Sections 6, 14A, 14B, 14C, 14 D, and 14F of the Standard Contract Terms and Conditions are not specifically superseded by the terms of this Agreement, they shall nonetheless be deemed not to apply to this Agreement.

18.3 **Amendments.** The Agreement may be amended, modified or supplemented only by an instrument in writing executed by duly authorized representatives of Provider and Host.

18.4 **Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 **Disputes.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party except to the extent that the Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under the Agreement.

18.6 **Limited Effect of Waiver.** The failure of Provider or Host to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
18.7 **Governing Law.** The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the State of New Jersey.

18.8 **Relation of the Parties.** The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.9 **Successors and Assigns.** The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective successors and permitted assigns.

18.10 **Counterparts.** The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.11 **Survival.** The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider’s Covenant), Sections 7.2 (d), (e), and (f) (Host’s Covenants), Section 9 (Taxes and Governmental Fees), Section 12 (Limitation of Liability), Section 14 (Notices), Section 18 (Miscellaneous), shall survive the expiration or termination of the Agreement for any reason.

18.12 **Facsimile Delivery.** The Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, “pdf” delivery of the signature page of a counterpart to the other Party.

18.13 **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
IN WITNESS WHEREOF AND IN CONFIRMATION OF THEIR CONSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND INTENDING TO BE LEGALLY BOUND HEREBY, PROVIDER AND HOST HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST SET FORTH ABOVE.

PROVIDER: __________________________________________

BY:

NAME: 

TITLE: 

HOST: PORT AUTHORITY OF NEW YORK AND NEW JERSEY

BY:

NAME: 

TITLE: 
POWER PURCHASE AGREEMENT

PART II – SCOPE OF WORK AND SPECIFICATIONS

The solar installation is to occur on the Main Roof of the PATH MacMillan Bloedel Building located at 100 Academy Street, Jersey City, NJ 07302, (the “Premises” or “Site”).

The scope of work shall include, but not be limited to, the design, installation, operation and maintenance of a solar photovoltaic (“PV”) system to be located at the Site as illustrated in Exhibit 1 of the associated RFP.

The System shall be capable of producing a minimum of 250 kW-DC Standard Test Conditions (“STC”) of electricity, which shall be provided and purchased under a Power Purchase Agreement.

The maximum amount of electricity the System may produce will be determined by the Provider’s final design which may be influenced by factors including, but not limited to, the maximum weight per square foot the existing or reinforced structure can support and/or the maximum power transfer capability of the Site’s existing or reinforced utility service.

Description of the Site’s existing structural limitations are included in Exhibit 2B of the associated RFP. Provider may design and install a System that exceeds these limits so long as the design includes all necessary reinforcements to the structural elements of the Site. Provider’s design must be reviewed and approved by the Port Authority prior to installation of the System.

A description of the existing electrical interconnection is included in Exhibit 2D of the associated RFP. The Site’s existing utility service can export a maximum of 1.0 MVA-AC. Provider may design and install a larger system in conjunction with any necessary upgrades and/or reinforcements to the existing service equipment. In addition to being approved by the Port Authority, Provider’s design will have to also have to be approved by the local electric utility. Provider is responsible for obtaining any approvals, applications and/or permits required by the local electric utility.

A description of the area(s) where Provider can park vehicles and temporarily store and/or stage materials is included in Exhibit 2C of the associated RFP.

The PV System shall be connected to the Site’s BES as described in Exhibit 2D of the associated RFP.

The System shall conform to NEC-690 and to any applicable local codes and utility requirements.

The System shall consist of solar arrays mounted at the Site as described below.

The System shall adhere, but not be limited, to the following requirements:

i. The System will only be installed on the Main Roof of the MacMillan Bloedel Building. The suggested solar panel placement area and structural considerations for Providers are indicated in Exhibit 2B of the associated RFP.
ii. The overall gross weight of the solar panels, support rackets and associated equipment shall not exceed more than 5 pounds per square foot. The weight of the system shall be evenly distributed through the entire roof framing (avoid heavily concentrated point load).

iii. If the System design requires roof-penetrating supports, those supports shall be positively attached to the existing steel beams, girders or columns. Roof penetrations must be designed such that they have no detrimental effect on any roof warranties and/or guarantees and must be approved in advance by the warranty provider.

iv. If the System design requires solar panel racking arrangements which utilize weights to hold the racking components on the roof (“ballasted racks”) such design will have to adhere to the structural limitations in (ii) above or provide any required reinforcement of the structure.

v. The design of any ballasted racks shall also be such that the ballast material is always contained within the racking components and no ballast material is allowed to make direct contact with the roof should the ballast material deteriorate over time.

vi. Electrical connection shall be made to the newly installed Main Service Switch rated 1600A, 480/277V. A new Automatic Transfer Switch (ATS) should be used to interconnect the solar PV system with the PSE&G electric feed with safety interlock.

vii. RGS conduit shall be used for carrying electric cable.

viii. The mounting system must be installed to allow sufficient spacing between the rows of panels to accommodate the maintenance of the solar equipment and any other equipment installed on the roof.

ix. The PV system must be installed in a manner that allows routine inspection and maintenance of components of the roof and building including expansion joints, roof drains and any other components requiring periodic inspections and maintenance.

x. A new roof has been installed on the Main Roof at the Site. Provider shall be responsible for ensuring that no actions of the System installation, operation or maintenance have any negative impact on the performance of the new roof nor on the 30-year warranty. Provider shall coordinate with the appropriate parties, including, but may not be limited to, the roofing installation contractor, the roofing manufacturer and/or the warranty provider, to assure compliance with the conditions of any and all guarantees. The roofing details for the System installation shall be reviewed, approved, and inspected by the appropriate parties prior to implementation. Details of the new roof and its warranty are included in Exhibit 2A of the associated RFP.

xi. System requirements not specifically listed above can be found in the Port Authority Construction Standards and Specifications, which are available at http://www.panynj.gov/business-opportunities/engineering-documents.html.

The Provider shall provide the Port Authority with a detailed design package including all required drawings and specifications necessary to install, operate, and maintain the Solar PV system. The design package shall be submitted as a Port Authority Tenant Alteration Application (TAA) by a State of New Jersey licensed Professional Engineer.
1. SITE SURVEY

Prior to beginning design, the Provider shall perform a Site Survey at the proposed PV installation location. The survey shall include, at a minimum, an electrical engineering review, that includes an assessment of the proposed interconnection along with the building's electrical distribution system to ensure that the proposed System may be interconnected safely and in accordance with all applicable codes. The Provider shall assume that the System installation will interconnect to the Site’s electric distribution network at 480 V.

2. SYSTEM DESIGN

The System shall be designed for normally unattended operation and shall account for structural and electrical design requirements. The design shall not interfere with area drainage and shall not inhibit access to components of the roof such as drains, vents, stacks and joints or other roof mounted equipment on the Site. The PV system shall not adversely impact the Authority's electrical distribution system. All components of the PV system shall be constructed of corrosion-proof and UV-resistant materials.

The System shall be designed to achieve the most efficient voltage for the affected area and shall minimize loss and maximize usable system electrical output. The design shall ensure that System failure does not affect the quality of supply of electricity at the Site.

The System shall be designed to achieve generation as close as possible to the building’s consumption, as provided in Exhibit 2E of the RFP. System shall not be designed to intentionally generate more energy on annual basis than the building’s load.

The System design shall include installation of a Data Acquisition System (DAS). The DAS shall be a tool, accessible by both Parties, that will record and display measurement of ambient temperature, wind speed, plane or array of solar irradiation, and DC and AC system power output. The DAS shall be capable of storing up to one year of data from the PV system and shall be accessible to users through an internet website with username and password protection. The DAS shall also have the capability to securely export data at regular intervals to the Port Authority’s central meter data management system.

The Provider shall be responsible for identifying and obtaining all required permits, completing necessary submittals, and paying associated fees required by applicable local, state and federal governmental departments which can include, but are not limited to, local building departments and, especially, local utilities.
A New Jersey state licensed Professional Engineer with a minimum of five (5) years recent and
direct experience in PV system design which includes at least two (2) PV systems of the type to
be proposed shall prepare the System design package.

The System design must be approved by the Authority and possibly other federal and state
agencies.

At a minimum, the System design must be submitted to the Port Authority’s Tenant Construction
and Alteration Process (TCAP) for approval before being considered final. TCAP approval may
require modification to the System design. More information on the TCAP process can be found at:

The design package shall include, at a minimum, the following:

a) A written overview describing the System design and expected generation capacity. The
overview shall contain manufacturer data sheets for the following: PV panels, inverters,
AC and DC disconnect switches, lightning arrestors, surge suppressors, combiner boxes,
circuit breakers, electrical panels, mounting systems/platforms, DAS, computer(s), and
other system components as appropriate. Note: All components must be UL Listed, not
just UL Recognized. The overview shall detail the location of equipment installations.

b) General array layout with shading diagrams, to include a dimensional drawing of the
layout of the System as it is to be installed on the Site. The drawing shall include, but not
be limited to, the following:
   i) System component locations;
   ii) Size and type of conduit;
   iii) Major Site features such as buildings, structures, retaining walls, landscaping features,
       drainage and other underground structures, etc.;
   iv) Presence of environmentally sensitive areas; and
   v) Site personnel access, access to System components identified above.

c) Single-line diagrams.

d) Series and parallel string wiring diagrams.

e) Three-line diagrams to include, but not be limited to, the following:
   i) Make, model, AC kW rating, and UL I741 listing of inverter(s);
   ii) Make, model, DC kW rating, and UL 1703 listing of solar panels;
   iii) Make, model, voltage, current and interrupt ratings of all AC and DC disconnect
       switches;
   iv) Make and model of all lightning arrestors and surge suppression equipment;
   v) Make, model and UL I741 listing of combiner boxes;
   vi) Make, model, manufacturer part number and rating of combiner box fuses, as
       necessary;
vii) Make, model and rating of all circuit breakers and electrical panels;

viii) Size, insulation rating and temperature rating of system wiring and nominal voltage present on each line; and

ix) Complete electrical circuit back to site's utility meter. All site electrical panels related to the System will be shown. Such panels will be labeled with the make, model, bus rating and facility designation. The main circuit breaker will also be labeled with the make and rating (if applicable).

f) Ampacity report detailing the calculations used to determine the wire gauge(s) and circuit breakers selected for the System.

g) Installation details – including mounting method and location of transformers, inverters and other equipment.

h) Equipment cut sheets and shop drawings indicating fabrication details, dimensions, weights, loads, required clearance, method of assembly, design calculations, and mounting details for components.

i) Product data, including features, components, ratings, and performance criteria.

j) Factory test reports indicating performance at Standard Test Conditions.

k) Project schedule.

l) Equipment staging plan.

m) A start-up, testing and commissioning plan.

n) An operations and maintenance (O&M) manual shall be provided for each PV system to be installed. Each O&M manual shall include, but not be limited to, basic written description of PV systems and components; one-line schematic of system; Three-line diagram of system; start-up and shut down procedures incorporating site-specific photos of all components involved (AC and DC disconnects, inverters, circuit breakers, etc.); and safety provisions.

As part of the PPA, the Provider will retain all responsibilities for operations, maintenance, and repairs, as needed, of the System. The Provider shall submit quarterly production reports to the Authority for review.

3. SYSTEM INSTALLATION AND INSPECTION

All construction to be completed under this PPA shall be in accordance with and meet or exceed Port Authority Construction Standards and Specifications, which are available at http://www.panynj.gov/business-opportunities/engineering-documents.html.

Prior to commencement of construction, the Contractor shall submit a Health & Safety Plan to the Port Authority for review. The Contractor shall observe all safety practices required by
Occupational Safety and Health Administration (OSHA) for performing construction work of this type.

Prior to installation, the Contractor shall verify that each PV module has been individually factory tested and certified. PV module strings shall be matched at the factory for optimal current performance.

The Contractor shall install all PV systems in compliance with all applicable laws, rules, regulations, codes and standards and shall complete all required inspections. The Contractor shall have a licensed electrician with at least three (3) years recent and direct experience in PV system interconnection.

The Contractor shall arrange for an electrical inspection by the local authority or authorities having jurisdiction and inspection by a nationally recognized testing laboratory when installation is complete.

The Contractor shall notify the Authority, in writing, that installation and inspection has been completed and that the System is available for grid parallel operation. The Contractor shall include a copy of the certificate of electrical inspection with the written notification.

4. OPERATION AND MAINTENANCE

The Contractor shall ensure that designated Authority staff are familiarized with the basic operation and troubleshooting of the System in case of an emergency. The Contractor shall respond to an emergency within twelve (12) hours of any notification. However, if the System poses a direct threat to life, health, and safety, the Authority reserves the right to take appropriate action without liability, which may include, but not be limited to, shutting off the System. The Contractor shall perform all maintenance procedures including, but not limited to, cleaning and preventative maintenance.

The Contractor shall review all of the System’s O&M manuals with designated Authority staff immediately following start-up so that they may be able to troubleshoot in the case of an emergency. However, Authority staff will have no responsibility in operating, maintaining, and/or disconnecting the PV system.

5. TESTING AND COMMISSIONING

Prior to commencement of the initial monthly billing period, the Contractor shall conduct testing on the System as outlined in this Section, to ensure compliance with all requirements of the scope of services. These tests shall be conducted after the complete System has been installed and all electrical and mechanical connections have been made. The Contractor shall document and archive results of all tests for future reference.
a) Pre-Start-Up Approvals, Inspections, Verifications, and Tests

i) Pre-Start-Up Approvals

Prior to turning on the System, the Contractor shall request approval from the Authority in writing to turn on the System. The Authority will indicate its approval or denial of the request in writing. The System may not be turned on without the receipt of written approval from the Authority.

ii) Installation Inspections and Verifications

A. The Contractor shall conduct an in-depth inspection to ensure that the System is installed in a professional manner that is consistent with industry practice and operational requirements; make a photo record of the installation and major components including modules, inverters, transformers, and source circuit combiners; and show connections within all the Contractor-installed enclosures. The Contractor shall include a copy of the photo record in the O&M Manual described above.

B. The Contractor shall ensure that all components are new and properly installed.

C. The Contractor shall ensure that all outdoor components are weather-proof and capable of surviving under the Site's environmental conditions for the duration of the Contract. The Contractor shall be responsible for the following: ensuring that all outdoor enclosures are equipped to alleviate condensation, and ensuring that all doors, covers, panels, and cable exits are gasketed or otherwise designed to limit the infiltration of dirt and moisture.

D. The Contractor shall ensure that all wiring is new, copper and continuous for each wiring run. The Contractor shall be responsible for the following: ensuring that all wiring is well supported and the proper strain relief is correctly installed; ensuring that all exposed wiring is of the correct type, is suitably sunlight- and weather-resistant, and is factory marked or stamped as such; inspecting that all wires have identifying labels or markings on both ends; affixing permanent and durable labels or markings in accordance with American National Standard Institute (ANSI) Standard Z535.4; and ensuring that wiring is bundled, laced and otherwise laid in an orderly manner. Labels or markings on exposed wiring shall be of the type that is rated for withstanding the Site's outdoor environmental conditions.

E. The Contractor shall ensure that all non-current-carrying metal parts are solidly grounded and all equipment and PV system grounding is installed and functional.

F. The Contractor shall ensure that all lightning and surge suppressors are new and properly installed and wired.
iii) Array Tests

A. The Contractor shall test each source circuit for open circuit voltage (VOC) and short circuit current (ISC). The module manufacturer will provide source circuit testing instructions and tables of expected values for measurement of individual source circuit VOC and ISC. The Contractor shall follow the instructions and refer to these tables when testing source circuits. Each source circuit shall be tested for VOC and ISC under good, clear weather conditions. Ambient temperature and solar irradiance in the plane of the array shall be measured and recorded. The measurements shall be recorded and compared to the values in the tables. The instructions will provide a guide of suggested actions in the event the measurements are out of the expected ranges in the table. A copy of the measurements shall be provided to the Authority after testing and shall be included in the O&M Manual described herein.

B. The Contractor shall test each source circuit for positive and negative current to the ground. Source circuits with a current higher than 0.1 mA to ground shall be considered defective under the terms of the warranty and shall be repaired by the Contractor at no additional expense to the Authority.

C. The Contractor shall test each source circuit for resistance to ground with a meg-ohm meter. Source circuits with an insulation resistance that are below 1MΩ at 1000 Vdc or which fall below 1 MΩ at 1000 Vdc during the warranty period shall be considered defective under the terms of the warranty and shall be repaired by the Contractor at no additional expense to the Agency.

b) Start-Up, with Inverter Operational Test

i. Start-Up

A. Prior to start-up tests, all other testing described in the previous subsections shall have been satisfactorily completed.

B. The Contractor shall ensure that for inverters with an ON switch, all System disconnects are in the CLOSED position prior to turning on the inverter. For inverters that do not incorporate an ON switch, the System shall be turned on when all System disconnects are in the CLOSED position.

C. The Contractor shall ensure that there is written approval from the local utility for interconnection of the System.

ii. Inverter Operational Test

In addition to the following test sequence, the Contractor shall perform all tests required by the manufacturer. The steps in the inverter operational test will include, but not be limited to, the following:

A. Ensuring that the inverter is switched off before proceeding;
B. Testing and recording the AC line voltage at the inverter to insure that it is within the proper limits as stated by the manufacturer;
C. Testing that the phase sequencing is correct, if applicable;
D. Checking the continuity of all fuses;
E. Ensuring that the DC open-circuit voltage is within the manufacturer's recommended range at the DC disconnect;
F. If the DC voltage is correct, closing the inverter cover and closing the DC and AC disconnect switches;
G. After the manufacturer's specified start-up time, confirming that the inverter is operating by recording the DC operating voltage and string currents, AC phase voltages and phase currents and inverter power;
H. Closing all open equipment enclosures; and
I. Listening for, finding the cause, and remedying any unusual sounds from the System or components.

The Contractor shall turn on the System and ensure that the System is working as specified. The Contractor shall witness and record proper operation under three modes of operation after manual start-up: automatic start-up, full power operation, and automatic nighttime shutdown. The Contractor shall record all operating parameters of the PV system during this period.

c) Final System Acceptance Testing and Commissioning

i. Acceptance Test and Commissioning Report

The System shall operate for thirty (30) days and shall perform optimally without an unscheduled maintenance incident. Within three (3) Business Days of the completion of this thirty (30) day, incident-free period, the Contractor shall submit a written report (the “Acceptance Test Report”) summarizing the first thirty (30) days of data including electricity generated on a daily basis and performance to the Port Authority. The Acceptance Test Report shall identify the expected output of the System and compare its results with actual data collected.

The Authority shall review and provide written approval or denial of the Contractor's Acceptance Test Report as soon as practicable. Upon approval, the Contractor shall bill the Authority for the electricity generated during the Acceptance Test Report testing period.

The Contractor shall not bill the Authority for periods subsequent to the period covered by the Acceptance Test Report until the Contractor receives the Authority's written approval of the Acceptance Test Report.
ii. Electrical Code Test

A nationally recognized testing lab, such as UL or Intertek Testing Services NA (ITSNA), shall test the PV system at each site. The Contractor shall submit copies of the nationally recognized testing lab's documentation to the Authority within three (3) Business Days of the testing.

6. REMOVAL OR PURCHASE OF EQUIPMENT AT END OF CONTRACT TERM

Any purchase or removal of the System at the end of the Term shall be governed by Section 2 of this Agreement.

7. WARRANTY

a) The Contractor shall provide a minimum twenty-five (25) year manufactured part warranty through the manufacturer(s) for all System components, exclusive of inverters. The warranty shall include but not be limited to, mounting systems, hardware, wires, and panels.

b) The PV panels shall be guaranteed by the manufacturer to provide a minimum of 80% of their rated electrical output for a minimum of twenty-five (25) years.

c) The inverters shall be guaranteed free from defects in materials and workmanship for a minimum of five (5) years.

d) The Contractor shall provide post-installation troubleshooting, maintenance, repair and replacement services ("Post-Installation Services") for the term of the Contract, which shall include all items installed by the Contractor, including, but not limited to PV panels, inverters, conduit, PV rack, etc.

e) The Contractor may attempt to troubleshoot problems remotely.

f) The Contractor shall report to the Site for troubleshooting within ten (10) business days if the problem has not been remotely resolved.

g) In all cases, the Contractor shall return the System to service within twenty (20) business days of any need for Post-Installation Services.

h) The Contractor shall issue a written summary report to the Authority within ten (10) business days of the completion of any Post-Installation Services.

All Post-Installation Services performed and all components replaced shall be at no additional cost to the Authority.
POWER PURCHASE AGREEMENT

PART III – SCHEDULES and ATTACHMENTS

SCHEDULE 1: POINT OF DELIVERY
(Developed from system design provided by Proposer)

SCHEDULE 2: SYSTEM
(Developed from system design provided by Proposer)

SCHEDULE 3: COST PROPOSAL FORM
(From Proposal)

SCHEDULE 4: FINANCING PARTIES
(From Proposal)

SCHEDULE 5: NOTICES
(From Proposal)
EXHIBIT A: SYSTEM ACCEPTANCE AND TESTING

(Documentation of Testing Requirements Contained in Section 5 of this PPA)
EXHIBIT B – EXAMPLE SOLAR FACILITY LICENSE

SOLAR FACILITIES LICENSE

The Port Authority of New York and New Jersey (“Host”) hereby grants to ___________________________ and to its representatives, contractors, subcontractors, servants, agents, employees, contractors and subcontractors (collectively, “Provider”) a non-exclusive license (“License”) to enter upon, use and occupy the Premises for the purpose of the construction, installation, maintenance, improvements, and operation of a photovoltaic solar power electric generation system (“System”) on the Main Roof of PATH MacMillan Bloedel Building (“Site”). Such License shall be in effect until the end of the Term under this Agreement.

______________________________ (“Provider”)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY (“Host”)

Re: Proposed Solar Power Installation on the roof of the PATH MacMillan Bloedel Building located at 100 Academy Street, Jersey City, NJ.

Host hereby grants to Provider and its representatives, contractors, subcontractors, servants, agents, employees, contractors and subcontractors (collectively, the “Provider”) a non-exclusive license (the “License”) to enter upon, use and occupy the Premises for the purpose of the construction, installation, maintenance, improvements and operation of the System on the Site.

The License shall be effective for the same term as the Term of the Agreement and shall be irrevocable during the Term and any extensions thereof. In addition, the License shall remain in effect for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days after the Term, for the sole purpose of removing the System and restoring the Premises pursuant to the Agreement.

The License shall be for the sole purposes of constructing, installing, operating, improving and maintaining the System, including reasonable access to, on, over, under and across the Site during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises, consistent with operational needs of the Premises, as set forth in Section 7.2(c) in Part I of the Agreement.

Provider shall contract directly with appropriate providers for utility services, if necessary, for the operation of the System.

Provider shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter to be enacted or promulgated. Provider shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, government rules, regulations, or requirements relating to the Provider’s use or occupancy of the Premises. Provider acknowledges that, except as otherwise provided for in the Agreement, Host has made no representations or
warranties concerning the Premises and Provider shall be deemed to have inspected the Premises and accepted it in “as is” condition.

The Provider shall not sell, transfer, mortgage, pledge, subcontract or assign this License or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by any independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.

Any attempt by Provider to assign the License in violation of this provision shall automatically terminate the License.

Provider and Host further acknowledge and agree that:

1. The System is the personal property of Provider, and shall not be considered the property (personal or otherwise) of Host upon installation of the System at the Premises. The System is more particularly described in the Specifications. Notwithstanding the above, the System would become the property of the Host upon purchase of the System by the Host, as set forth in the Agreement.

2. Provider or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under the Agreement. Host will not charge Provider any rent for such right to access the Premises.

3. Host will not take any action inconsistent with the foregoing.
EXHIBIT C: PROVIDER’S INSURANCE REQUIREMENTS

(Documentation of Proposer Insurance as required by Attachment B of the RFP)
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10. Definitions
STANDARD CONTRACT TERMS AND CONDITIONS

PART I   GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

(a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

(c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;

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

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated

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Standard Contract Terms and Conditions

Rev. 11/22/17 (PA RFP)
therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:
- The principal place of business must be located in New York or New Jersey;
- The firm must have been in business for at least three years with activity;
- Average gross income limitations by industry as established by the Port Authority.

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

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

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

PART II GENERAL PROVISIONS

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

2. Contractor Not An Agent
   This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.
3. **Contractor’s Warranties**

The Contractor represents and warrants:

a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;

d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;

e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

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

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

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

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

4. **Personal Non-Liability**

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor.
under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Non-Discrimination Requirements

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

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

B. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled “Default, Revocation, or Suspension of Contract.”

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

6. Rights and Remedies of the Port Authority

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

a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.

b. The right to cancel this Contract as to any or all of the Work yet to be performed.

c. The right to specific performance, an injunction or any appropriate equitable remedy.

d. The right to money damages.

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

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

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

8. **Submission To Jurisdiction**

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

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

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

9. **Harmony**

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

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

b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.
The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

10. Claims of Third Persons

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

11. No Third Party Rights

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

12. Provisions of Law Deemed Inserted

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

13. Costs Assumed By The Contractor

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

14. Default, Revocation or Suspension of Contract

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

1. If fire or other cause shall destroy all or a substantial part of the Facility.

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

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

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

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

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its
reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or

4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or

5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

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

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

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

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

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

e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to
exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.

k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

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

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

16. No Estoppel or Waiver

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

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

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

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

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

a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.

b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinafore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements is not to be construed as a submission by the Port Authority to the application to itself of such requirements.

c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.

d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.

e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

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

1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or

2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or

3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or

4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or

5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or

6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.

g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and,
moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.

h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

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

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

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

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.

c. The risk of claims, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

d. The risk of claims for injuries, damage or loss of any kind whether just or unjust of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor’s operations or its performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

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

21. Approval of Methods

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

22. Safety and Cleanliness

a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.

b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.

c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets,
equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

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

24. Trash Removal

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

25. Lost and Found Property

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

26. Property of the Contractor

a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.

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

27. Modification of Contract

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

28. Invalid Clauses

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

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

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

30. Intellectual Property

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

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

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

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

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

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

33. Notification of Security Requirements

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

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

- **Execution of Port Authority Approved Non-Disclosure and Confidentiality Agreements**

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

- **Contractor/ Subcontractor identity checks and background screening**

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

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

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

- **Issuance of Photo Identification Credential**

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

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

- **Access control, inspection, and monitoring by security guards**

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

- **Compliance with the Port Authority Information Security Handbook**

The Contract may require access to Port Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

1. require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure and Confidentiality Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per the Handbook;

2. require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.
(3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;

(4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;

(5) restrictions on the transfer, shipping, and mailing of PI;

(6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;

(7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;

(8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority awarded contract.

(9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, on a need to know basis, without prior approval of the Port Authority;

(10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- Audits for Compliance with Security Requirements

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

34. Construction In Progress

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

35. Permit-Required Confined Space Work

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

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

36. Signs

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

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

38. Protected Information/Non-Publication

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

b. Protected Information shall mean and include collectively, as per The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013), Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

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

39. Time is of the Essence

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

The following holidays will be observed at the Site:

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

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

41. Personnel Standards

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

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

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program.

42. General Uniform Requirements for Contractor’s Personnel

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

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.
All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

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

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

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

44. Contractor’s Vehicles – Parking - Licenses

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

45. Manager’s Authority

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

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

46. Price Preference

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

(a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or

(b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (MBE/WBE), certified by the Port Authority by the day before the bid opening.
If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

47. MBE/WBE Good Faith Participation

The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority Business Enterprises (MBEs) and Port Authority Certified Women-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. If this Contract contains participation goals, the Contractor shall use good faith efforts to achieve the goals.

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

A. Dividing the services and materials to be procured into smaller portions, where feasible.
B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
C. Soliciting services and materials from a Port Authority certified MBE/WBE. To access the Port Authority’s Directory of MBE/WBE Port Authority certified firms go to http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html.
D. Ensuring that provision is made to provide progress payments to MBE/WBEs as defined in the prompt payment provision below.
E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

PART III CONTRACTOR’S INTEGRITY PROVISIONS

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

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

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

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

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

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

b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

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

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

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

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

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

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish
with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “2g”, if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Contract, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated as necessary. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

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

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

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

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

4. Contractor Responsibility, Suspension of Work and Termination

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

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

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


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

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

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

6. Obligation to Report

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by the section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, or if the Contractor knows or should reasonably know that a principal, employee, or agent of the Contractor or of its subcontractor(s) has committed a
violation of federal, New York or New Jersey law addressing or governing: antitrust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Port Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “http://www.panynj.gov/inspector-general” for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for a finding of non-responsibility. The Contractor shall not take any Retaliatory Action against any of its employees for reporting such conduct.

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

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

7. **Conflict of Interest**

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

Standard Contract Terms and Conditions

Rev. 11/22/17 (PA RFP)
8. **Integrity Monitor**

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

9. **Right to Audit**

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

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

10. **Definitions**

As used in this section, the following terms shall mean:

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

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

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

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

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

- **Retaliatory Action** - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled “Obligation to Report,” above.
If the solicitation is a Request for Proposal:

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

In a Contract resulting from the taking of bids:

-Bid shall mean bid;
-Bidder shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor
-Bidding shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

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