

January 15, 2013

**SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL INVESTMENT MANAGEMENT SERVICES FOR OTHER POST-EMPLOYMENT BENEFITS TRUST (RFP# 31922)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals (“Proposals”) in response to this Request for Proposals (RFP) for a firm (the “Firm”) to provide Expert Professional Investment Management Services for the Port Authority’s other post-employment benefits (OPEB) trust (the “Trust” or “OPEB Trust”). The scope of the tasks to be performed by the Firm are set forth in Attachment A to the Authority’s Standard Agreement (the “Agreement”), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority requires that you sign in the event of acceptance of your proposal (“Proposal”) and forms the basis for the submission of Proposals.

**I. PROPOSER REQUIREMENTS**

The Authority will consider only those Proposals from firms (“Proposers”) who are able to demonstrate that they meet the following qualification requirements:

1. Demonstrate your firm is a registered investment advisor under the Investment Advisors Act of 1940, or provide proof of exemption.
2. Demonstrate your firm has at least \$10 Billion under management and has been in business for a minimum of five (5) years.
3. Provide evidence that your firm currently manages at least five (5) accounts with similar investment guidelines as those outlined in the Attachment E.

If submitting as a common law joint venture, at least one (1) member must meet the requirements listed above.

A determination that a Proposer meets the requirements above is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements shall not be considered.

**II. PROPOSAL FORMAT REQUIREMENTS**

To respond to this RFP, the Proposer shall submit a concise Proposal complying with the following requirements:

- A. To be acceptable, the Proposal shall be of no more than thirty (30) pages single-sided or fifteen (15) pages double-sided, using 12-point or greater font size, not including resumes. This limit does not include Section III, items: A, B, E, H, and I below nor section and/or tab dividers. Each resume shall be 2-page maximum, single-sided or 1-page double-sided, using 12- point or greater font size. Product brochures and other sales literature will not be accepted as substitutes for written responses to this RFP. The

Proposal pages shall be numbered and bound, with “Your Firm Name,” and **RFP Number 31922** clearly indicated on the cover.

- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 2 Montgomery Street, 3rd Floor, Jersey City, NJ 07302, **Attention: RFP Custodian**. Do not address your Proposal to any other name. You are required to submit one (1) reproducible original and five (5) copies, along with one (1) compact disc copy, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.
- D. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- E. Provide the address of your firm to which any written correspondence should be sent.
- F. Your Proposals should be forwarded in sufficient time so that the Authority receives them **no later than 2:00 p.m. on February 5, 2013**. The cover of your submittal must include the RFP Number (as stated above) and the RFP title. The Authority assumes no responsibility for delays caused by any delivery services.
- G. If your Proposal is to be hand-delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

### **III. SUBMISSION REQUIREMENTS:**

In order for your Proposal to be considered, your Proposal must address all of the following information in the order listed. (Failure to address each question in each Section and sub-section, shall result in your proposal deemed as not responsive, and not be considered for this Agreement):

#### **A. Agreement on Terms of Discussion**

In accordance with Authority policy, you are required to include in the front of your Proposal, a copy of Attachment B, Agreement on Terms of Discussion, signed by an officer of your company.

#### **B. Transmittal Letter**

Each Proposer shall submit a transmittal letter on its letterhead, signed by an authorized representative, demonstrating compliance with each of the aforementioned “Proposer Requirements” listed above in Section I. Your transmittal letter shall also include the following:

1. A statement indicating whether the Firm is proposing as a single entity or joint venture. If a joint venture, submit all information required for a single entity for each participant in the joint venture. If the Proposer is a joint venture and seeks to propose as such, the joint venture Proposer must meet the prerequisites. All the qualification

information required for a single entity shall be submitted for each participant in the joint venture. If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally, and each participant shall execute the Proposal. If a joint venture is invited to deliver a formal presentation of how it proposes to perform the services outlined herein, the joint venture must be composed of the same participants as were in the joint venture when it submitted the Proposal. No substitution of participants will be allowed after submission of the Proposal without the express prior written permission of the Authority.

2. Submit a copy of any written agreement, or understanding, which exists between each party to the joint venture as part of the Proposal. If no written agreement or understanding exists, a Lead Proposer shall be identified and the joint venture shall include in its Proposal a written statement explaining how the joint venture will fulfill the requirements of the Agreement. Such explanation shall fully discuss and identify the responsibility of each party to the joint venture for performing the Work, and for providing the required insurance.
3. Complete a copy of Attachment C (Company Profile).

**C. Staff Qualifications and Experience**

In this section, identify the key personnel responsible for implementing the scope of work described in Attachment A and highlight their relevant experience and technical capabilities. Key personnel are staff who will perform the contemplated services required to successfully complete this project.

- 1) Provide a matrix, listing the name(s), title(s), firm, responsibility on the project and the resumes of personnel who will be assigned to perform any services requested under this Agreement. Resumes shall include the firm the individual works for, their educational background, chronological history of employment, relevant licenses and certifications.
- 2) Are any investment professionals under employment contract? If so, please discuss the nature of the contracts.
- 3) Describe any contingent procedures in the event a key investment professional assigned to the account should leave the firm.
- 4) Identify the qualifications and training programs your firm requires for members of the investment management team and your firm's training programs (initial, ongoing, and periodic) for such staff.

In the event of a change in personnel working on the Port Authority's account, a written notification is required.

**D. Firm Qualifications and Experience.**

- 1) Describe your firm's history and organizational structure. Include number of years in business, size of company (number of employees, yearly revenue, and total assets under management).
- 2) Describe your Firm's ownership, capital structure, and specific details of any affiliated companies or joint ventures and/or affiliations with other financial or investment management firms. Specify the percentage owned by principals.

- 3) Provide an organizational chart that diagrams the interrelationships between the professional staff as well as any parent-subsiary, affiliate, or joint venture entities. (See also Section H).
  - 4) Discuss the financial condition of the firm based on the most recently audited financial statements and annual report.
  - 5) Provide your composite of similarly structured accounts (OPEB and/or Pension Trusts) along with an appropriate benchmark including the Sharpe, and if possible the Sortino, ratios. Please complete attachment G and G.1; "Firm Composite/OPEB & Pension" to answer this question. Provide the returns for at least the last 5 years, or more preferably 10 years, including the year to date, one-year, three-year, five-year, and if possible, ten-year annualized returns, as well as the annual calendar year returns for the periods ending December 31, 2012.
  - 6) Indicate the number of accounts of your client base in terms of assets under management. Please segment as follows:
    - a) \$5 million to \$25 million;
    - b) \$26 million to \$100 million;
    - c) \$101 million to \$500 million; and
    - d) \$501 million or more.
  - 7) Describe your firm's experience in the investment advisory business dealing with funds similar to an OPEB Trust fund and the scope of services described in this RFP.
  - 8) Provide a representative client list, the size of portfolio, the number of OPEB Trust clients (if any), and the number of clients who are public agencies. Include at least three client references.
  - 9) Provide the following; (a) total dollar value of assets under management, (b) total number of accounts currently managed by your firm, and (c) a breakdown between the clients using a passive style and an active style of investing.
  - 10) List any pending administrative proceedings, investigations and civil suits against the firm relating to the firm's performance of professional duties.
  - 11) List all litigation or proceedings to which your firm is a party and which would either (a) materially impair your ability to perform the services enumerated herein and for which this RFP was issued, or (b) if decided in an adverse manner, could be reasonably expected to have a material adverse effect on the financial condition of your firm.
- E. Complete Attachment D (Cost Proposal Form) for performance of Tasks outlined in Attachment A.

The Cost Proposal Form shall include all fees for providing investment services to the Authority as described in this RFP. Please list and identify any and all fees charged, such as asset manager fees, Index Fund expense fees, trading fees, separate account or administrative expenses, and subcontractor investment management fees, if any.

The Port Authority will pay fees quarterly, in arrears. If an asset-based structure is used, the fees will be calculated based on the portfolio's average daily market value, as determined by the Trust Custodian (the "Custodian"). If all or a portion of your proposed

cost proposal is based on a fixed fee structure, please provide a breakdown of the fee structure.

If proposing the use of subconsultant(s), provide the terms and conditions for their compensation (including their multipliers, and/or billing rates as appropriate), their Minority/Women-owned Business Enterprise (MBE/WBE) status and the technical qualifications of their key personnel to be assigned to the subject project.

**F. Technical Approach**

This section shall discuss, in detail, the Proposer's approach to completing the required tasks (other than as-needed services) described in Attachment A, which shall include:

**1) Investment Policy**

- a) Under the current Investment Policy Statement contained in Attachment E, the Port Authority's OPEB Trust invests in index funds. Do you agree this is the best structure for the Port Authority's OPEB Trust? If not, what changes would you recommend and what is the basis for such recommendations?
- b) Describe the investment program you are proposing, based on the Port Authority's objectives, including the type of securities you propose to purchase, and how the funds will be managed after the initial investments are made.
- c) How often do you suggest rebalancing the portfolio?
- d) Referring to the current Investment Policy Statement contained in Attachment E, would you recommend maintaining the existing Investment Policy Statement or would you recommend revisions? If changes are recommended, provide an explanation for the basis of the change and the expected improvement in the overall performance of the OPEB Trust and what would be the basis for measuring such improvement.

**2) Asset Allocation**

- a) Describe with specific details how your firm currently derives its asset allocation recommendations and how the asset allocation decisions are made going forward. What specific buy and sell signals/indications do you use to make your decisions?
- b) Describe your firm's philosophy with regard to the investment management of an OPEB Trust.
- c) What would prompt your firm to increase an allocation to an existing asset class in the portfolio or establishing a new position in an asset class in the portfolio?
- d) What would prompt your firm to decrease an allocation to an existing asset class in the portfolio or to exit an asset class in the portfolio?
- e) What changes would you recommend to the existing asset allocation as stated within the Scope of Services contained in Attachment A?

3) Performance

- a) Provide the two composites including the Sharpe, and if possible the Sortino, ratios required in Attachment F and F.1; composite #1 is your firm's composite that most closely resembles the Port Authority's investment strategy as outlined in Attachment E, and Composite #2 is your firm's composite that represents the investment strategy that your firm is recommending in this proposal. Provide the returns for at least 5 years, or more preferably 10 years, including the year to date, one-year, three-year, five-year, and if possible ten-year annualized returns as well as annual calendar year returns for the period ending December 31, 2012.
- b) The goal of the Port Authority's OPEB Trust is to earn a 7.5% rate of return, net of fees, over a 10 to 15 year time horizon. In your firm's estimation, will the current asset allocation of the Port Authority's OPEB portfolio achieve this level of return, net of fees, over this period based upon the existing risk parameters? Please explain.
- c) If, in your opinion, the current asset allocation in the Port Authority's OPEB Trust will not achieve a 7.5% rate of return, net of fees, over a 10 to 15 year time horizon, what asset allocation would you suggest. Provide performance/risk analytics to support your response.
- d) Do you consider the benchmark 60% S&P 500/40% Barclays Aggregate index to be an appropriate index to measure the performance for a trust of this nature? Please explain.
- e) Which Benchmark would you use to measure the performance of the Port Authority's portfolio? Please explain. What empirical evidence can you show to support your suggestion?
- f) Provide the Alpha investment performance for the asset allocation changes of your firm over the past one-, three-, five-, and if possible ten-years for the period ending 12/31/2012. Also, provide the annual calendar Alpha performance for each of the past ten-years for the period ending 12/31/2012.

4) Reporting

- a) Provide a sample of your firm's monthly reporting package. This package should include, at a minimum, a performance statement, capital markets outlook, economic commentary, and accounting statement.
- b) Describe the timeframe in which your firm is able to provide accurate, final performance, asset and transactions statements following month-end.
- c) Describe your firm's online capabilities and ability to deliver monthly portfolio reports electronically by the third business day of the following month.

5) Risk

- a) How does your firm measure and monitor risk ensuring that risk parameters are in line with portfolio returns and client guidelines?
- b) How does your firm reduce risk in each asset class that a portfolio invests? When the asset classes are combined to make one portfolio, what is your approach to reducing risk?

- c) Describe what systems are in place for ensuring that portfolio managers are adhering to client guidelines and investment policies.
- d) What is your firm's plan regarding the backup of computer files and systems? In the event of a disaster how long would it take to become fully functional?

#### G. Management Approach

A detailed description of the proposed management approach to be taken for the performance of the required services.

- 1) Provide a summary of your risk oversight policy and objectives.
- 2) Prepare a staff organization chart for the project that identifies the responsibilities of each individual included on the team. Include a list of any intended sub-consultant(s) and their MBE/WBE status. Another organization chart shall be included that identifies the key individuals, their firms, work locations, and a clear management structure for sharing project responsibilities, work allocation, oversight, deliverable, costs and reporting responsibilities across different office locations of the Firm, if any, during performance of the services stipulated in Attachment A.
- 3) A description of how your proposed organizational structure will be responsive to the Authority's needs; your proposed approach and schedule for keeping the client apprised of the project status; and your proposed approach to ensuring the quality of the work product to be produced.
- 4) Your attention is directed to Paragraph 17 of the Agreement in which the Authority has stated the MBE/WBE goals for participation in this project. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms will be provided upon request.

#### H. A complete list of your firm's affiliates and subsidiaries (See also Section III. C. 3)

- I. If the Proposer or any employee, agent or subcontractor of the Proposer may have an actual or appearance of a conflict of interest, or circumstances which may give rise to an appearance of impropriety, the Proposer shall include in its Proposal a statement indicating the nature of the conflict or circumstances which may give rise to an appearance of impropriety. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest or appearance of impropriety. The Authority's determination regarding any question(s) of conflict of interest or appearance of impropriety shall be final.
- J. The Proposer is expected to agree with the form of Agreement and its terms and conditions. The Proposer should therefore not make any changes in the Agreement nor restate any of its provisions in your Proposal or supporting material. ***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.*** The Authority is under no obligation to entertain and/or accept any such specific exceptions. Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.

#### **IV. SELECTION PROCESS:**

The qualifications based selection shall take into consideration the technical qualifications presented below in order of importance, as well as cost, as appropriate, in the sole discretion

of the Authority. After consideration of these factors, the Authority may enter into negotiations with the firm (or firms) deemed best qualified to perform the required services. Such negotiations shall be conducted between the Authority's contact-person as identified herein, or the undersigned, and the individual contact-person identified by your firm.

- A. Staff Qualifications and Experience
- B. Firm's Qualifications and Experience
- C. Technical Approach
- D. Management Approach

**V. ORAL PRESENTATIONS:**

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given short advance notice. Presentations would be limited to sixty (60) minutes, and include the material contained in your Proposal. The presentation would be followed by an approximately thirty (30)-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than four (4) other senior staff members proposed to work on this project. Notification of presentation scheduling is made by email. Please provide the name and email address of the contact person for presentation scheduling as well as an alternate in the event that person is unavailable.

**VI. ADDITIONAL INFORMATION:**

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov). Proposers are responsible for periodically checking the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> for RFP updates and addenda.

If your firm is selected for performance of the subject services, the Agreement you will be asked to sign, at that time, will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees" (see paragraphs 20-21 of the form of Agreement). By submitting a Proposal, the Firm shall be deemed to have made the certifications contained therein unless said Firm submits a statement with his Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT."

It is Authority policy that its contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State's requirements that certain contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State's Department of the Treasury. The Firm assumes liability for compliance with such requirements.

Following selection of a Firm, the Authority will forward two copies of the Agreement to the selected firm, which must sign and return both copies. The return to you of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Mr. David Gutiérrez, by email at [david.gutierrez@panynj.gov](mailto:david.gutierrez@panynj.gov). All such correspondence must have your name, title, company, mailing address, telephone number and state “**RFP 31922**” in the subject line. The Authority must receive all questions no later than 4:00 P.M., seven (7) calendar days before the RFP due date. Neither Mr. Gutiérrez nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority and no rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more Firms, to waive defects in Proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely yours,

Tim Volonakis  
Assistant Director  
Procurement Department

Attachments

## **ATTACHMENT A**

### **PERFORMANCE OF EXPERT PROFESSIONAL INVESTMENT MANAGEMENT SERVICES FOR OTHER POST-EMPLOYMENT BENEFITS TRUST**

#### **I. BACKGROUND**

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

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

In 2006, the Port Authority implemented an employee benefits trust which provides funding for health, prescription, dental, vision and life insurance benefits for retired employees of the Port Authority and their eligible dependents. Collectively, these benefits are commonly referred to as other post-employment benefits (OPEB). In 2007, Wells Fargo Bank, N.A. – Institutional Trust Services, was selected as the Trustee for the Port Authority’s OPEB Trust.

As of December 31, 2012, the OPEB Trust had approximately \$500 million in assets across a range of asset classes utilizing passive investment vehicles. Currently, the Port Authority contributes \$25 million per quarter, or \$100 million on an annual basis, and intends to continue its contributions subject to periodic assessment of the funds in the Trust and its OPEB commitments. The allocation of trust assets as of December 31, 2012 is as follows:

Asset Class	Current Allocation
Domestic Equity	36%
International Equity	21%
REITs	6%
Fixed Income	37%
Cash Equivalents	0%

## **II. SCOPE OF SERVICES**

The Port Authority is seeking a Firm to provide investment management services in connection with the OPEB Trust. The Port Authority's goal is to maximize returns within the Port Authority's risk parameters. Investment, performance and risk guidelines associated with this mandate are included in the "Investment Policy Statement for The Port Authority of New York and New Jersey Health Benefits Trust" attached hereto and made a part hereof as Attachment E.

## **III. DESCRIPTION OF CONSULTANT'S TASKS**

Tasks to be performed by the Firm will include, but are not limited to:

- 1) Invest the Port Authority's OPEB Trust fund assets in accordance with the investment criteria set forth in Attachment E.
- 2) Research and recommend at least one equity and fixed income Index Fund provider. Each recommended Fund should have a verifiable, highly correlated record of returns compared to each Fund's underlying index.
- 3) Monitor, on a continuous basis, that the Index Fund provider's investments are in compliance with the respective underlying index.
- 4) Rebalance the portfolio with a method and frequency agreed upon by the Port Authority to comply with the investment guidelines.
- 5) Recommend, as needed, changes to the asset allocation mix of the Port Authority's portfolio in accordance with the investment policy set forth in Attachment E to maximize investment returns. Implement such changes only when directed and approved by the Port Authority.
- 6) Construction of a benchmark, to be agreed at the commencement of the engagement, to measure the Trust performance which should take into consideration the existing asset allocation guidelines and risk profile and provide ongoing measurement of the Trust's performance versus that benchmark.
- 7) Measure and monitor risk ensuring that risk is in line with portfolio returns and the Port Authority's investment guidelines.
- 8) Provide monthly written performance reports to the Port Authority that fully comply with Global Investment Performance Standards (GIPS) of the Association of

Investment Management and Research (AIMR) performance reporting standards, and other pertinent information pertaining to the investment of the OPEB Trust funds, as requested by the Port Authority, by the tenth business day of the following month.

- 9) Provide electronic reports on portfolio holdings and transactions that occurred within the portfolio during the month by the third business day of the following month.
- 10) Periodically reassess the portfolio and make recommendations for changes to the Port Authority's investment policy set forth in Attachment E and/or investments in alternative Index Funds. Implement such changes only when directed and approved by the Port Authority.
- 11) Conduct quarterly investment meetings with the Port Authority and present the performance of the Port Authority's OPEB Trust portfolio, as well as attend special meetings as requested by the Port Authority.
- 12) Reconcile portfolio value and holdings with the Custodian of the Trust.
- 13) Identify new strategies and innovative portfolio management techniques/concepts, which can be used by the Port Authority to maximize returns.
- 14) Comply with the guidelines for an Investment Manager set forth in the body of the Port Authority's investment policy attached as Attachment E hereto.

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**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL  
INVESTMENT MANAGEMENT SERVICES FOR OTHER  
POST-EMPLOYMENT BENEFITS TRUST (RFP# 31922)**

**ATTACHMENT B**

**AGREEMENT ON TERMS OF DISCUSSION**

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, 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. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority's Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.  
DO NOT RETYPE.**

**ATTACHMENT C**

**COMPANY PROFILE**

**PERFORMANCE OF EXPERT PROFESSIONAL INVESTMENT MANAGEMENT SERVICES FOR OTHER POST-EMPLOYMENT BENEFITS TRUST (RFP# 31922)**

1. Company Name (print or type):

\_\_\_\_\_

2. Business Address (to receive mail for this RFP):

\_\_\_\_\_

\_\_\_\_\_

3. Business Telephone Number: \_\_\_\_\_

4. Business Fax Number: \_\_\_\_\_

5. Firm website: \_\_\_\_\_

6. Federal Employer Identification Number (EIN): \_\_\_\_\_

7. Date (MM/DD/YYYY) Firm was Established: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

8. Name, Address and EIN of Affiliates or Subsidiaries (use a separate sheet if necessary):

\_\_\_\_\_

\_\_\_\_\_

9. Officer or Principal of Firm and Title:

\_\_\_\_\_

10. Name, telephone number, and email address of contact for questions:

\_\_\_\_\_

\_\_\_\_\_

11. Is your firm certified by the Authority as a Minority-owned, Woman-owned or Small Business Enterprise (M/W/SBE)?  Yes  No

If yes, please attach **Port Authority** certification as a part of this profile.

If your firm is an M/WBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, to receive information and apply for certification.

## ATTACHMENT D

### Cost Proposal

Proposers must submit their annual compensation schedule for this proposal. The proposed fee shall include all costs for providing investment services to the Authority as described in this RFP. Please list and identify any and all fees charged, such as asset manager fees, Index Fund expense fees, trading fees, separate account or administrative expenses and subconsultant investment management fees. Please also list whether you are proposing to charge a fixed annual fee and/or whether you are proposing to charge asset based fees.

1) Fixed Annual Fee: \_\_\_\_\_

and/or

2) Asset Based Fees: List total fees charged in basis points.\*

Please provide the break points for asset-based fees in the following format.

Market Value of Portfolio	Firm's Fees in Basis Points*	Index Fund Fees
First \$ Million		
Next \$ Million		
Next \$ Million		
Next \$ Million		

\*A basis point equals 0.01%

The firm must list on this Attachment D any other fees (if any), it proposes to charge the Port Authority for providing the scope of services set forth under this agreement.

**NOTE: Fees will be paid by the Port Authority quarterly, in arrears. If an asset-based fee structure is used, the fees will be calculated based on the portfolio's average daily market value, as determined by the Custodian of the Trust.**

**PERFORMANCE OF EXPERT PROFESSIONAL  
INVESTMENT MANAGEMENT SERVICES FOR OTHER POST-EMPLOYMENT  
BENEFITS TRUST  
ATTACHMENT E**

**INVESTMENT POLICY STATEMENT**

**FOR**

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

**RETIREE HEALTH BENEFITS TRUST**

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## **Background**

The Port Authority of New York & New Jersey (the “Authority”) has established the Port Authority of New York & New Jersey Retiree Health Benefits Trust (the “Trust”). The Trust is intended to provide for funding of post-employment health and welfare benefits (“OPEB”) provided under various medical, prescription, dental, vision, and life insurance benefit plans to retired employees of the Authority and the eligible dependents of such retired employees and reimbursement of certain Medicare premiums.

## **Scope**

This Investment Policy Statement (the “Policy”) reflects the oversight, investment policy, objectives, and constraints of the Trust.

## **Purpose**

The main investment objective of the Trust is to achieve long term growth of Trust assets by maximizing long term rate of return on investments and minimizing risk of loss to fulfill the Authority’s current and long term OPEB obligations and certain Medicare premiums.

The purpose of the Policy is to achieve the following:

1. Document the key roles and responsibilities of the OPEB Investment Committee.
2. Document investment objectives, performance expectations and investment guidelines for Trust assets.
3. Establish an appropriate investment strategy for managing all Trust assets, including an investment time horizon, risk tolerance ranges and asset allocation to provide sufficient diversification and overall return over the long-term time horizon of the Trust.
4. Establish investment guidelines to control overall risk and liquidity.
5. Establish periodic performance reporting requirements that will effectively monitor investment results and ensure that the investment policy is being followed.
6. Comply with all fiduciary, prudence, due diligence and legal requirements for Trust assets.

## **OPEB Investment Committee**

The OPEB Investment Committee (“Committee”) will be responsible for the oversight and management of the policies and procedures of the Trust. The Committee will be comprised of the Chief Financial Officer, Chief Administrative Officer, Comptroller and Treasurer of the Authority. The Committee will:

1. Exercise its fiduciary responsibilities in regard to the investment program in accordance with the provisions of the Trust document as well as this Investment Policy Statement.

2. Review the asset allocation policy, asset class guidelines, and current capital market assumptions at least annually to ensure that the current asset mix can reasonably be expected to achieve the long-term goals of the Trust.
3. Review the Trust's updated actuarial valuation and financial projection annually.
4. Evaluate the appropriateness of the policy on an annual basis and, based on such evaluation, either confirm the terms of the policy as then in effect, or amend the Investment Policy Statement.
5. Review the investments of the Trust no less than annually to assess whether policy guidelines continue to be appropriate and confirm that the investment manager is compliant with the investment policy. The Committee shall monitor investment risk, as well as monitor investment returns on an absolute and benchmark relative basis.
6. Appoint investment consultants to review investment performance of the Trust in whole or with respect to specific asset classes, to assist in the development of the investment policies and asset allocation, to monitor and report on investment risks, and to provide independent assessment of investments proposed by the current investment manager.
7. Delegate to the Treasurer general responsibility for implementing the policies established by the Committee. As such, the Treasurer shall prepare semi-annual reports for the Committee on the investment program of the Trust, including achievement of overall performance objectives compliance with policy guidelines, particularly asset allocation policy.

### **Investment Authority**

Investments will consist of high-grade corporate stocks and bonds with a purpose of producing the necessary long-term yield to fund future payments for employee benefits other than pensions, consistent with Government Accounting Standards Board Statement No. 45. In implementing this policy, to provide expert trustee, custodial and investment management services in connection with the Trust, the following services have been retained:

1. Investment Manager to invest the assets of the Trust in accordance with this investment policy; research, recommend and monitor investments for the portfolio on a continuous basis and ensure investments are in compliance with this investment policy; rebalance the portfolio with a method and frequency agreed upon by the Authority to comply with the asset allocation guidelines set forth below or changed by the Authority from time to time; provide quarterly written performance reports that fully comply with CFA Institute (formerly Association of Investment Management and Research, AIMR) performance reporting standards, and other pertinent information pertaining to the investment of the Trust; conduct periodic investment meetings to present the performance of the Trust's portfolio as well as attend special meetings as requested by the Authority; and reconcile portfolio value and holdings with the Trustee. The Investment Manager will also select investment vehicles and assign Designees with discretion to purchase, sell, or hold specific securities that will be used to meet the Trust's investment objectives. The Designees chosen by the Investment Manager must be registered with the Securities and Exchange Commission.

## **Statement of Investment Objectives**

The investment objectives of the Trust are as follows:

1. To invest assets of the Trust in a manner consistent with the following fiduciary standards:  
(a) all transactions undertaken must be for the exclusive benefit of eligible retired employees of the Authority and the eligible dependents of such retired employees and (b) assets are to be diversified in order to minimize the impact of large losses in individual investments.
2. To provide for funding and anticipated withdrawals on a continuing basis for payment of OPEB benefits and related expenses, reimbursement of certain Medicare premiums and reasonable expenses of the Trust.
3. To conserve and enhance the value of Trust assets in real terms through asset appreciation and income generation, while maintaining a moderate investment risk profile.
4. To minimize principal fluctuations over the Time Horizon (as defined below).
5. To achieve a long-term level of return commensurate with contemporary economic conditions and equal to or exceeding the investment objective set forth in this Policy under the section labeled “Performance Expectations”.

### **Investment Guidelines**

#### Time Horizon

The Trust’s investment objectives are based on a 15-year investment horizon so that interim fluctuations should be viewed with appropriate perspective. The Committee has adopted a long-term investment horizon such that the chances and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets.

#### Diversification

In general, the Trust will hold up to 3 months of projected liquidity needs for certain administrative and operational expenses in cash. The projected liquidity needs assets will always be held exclusively in cash equivalent investments. The remaining assets will be invested in longer-term securities. Investments shall be diversified with the intent to minimize the risk of investment losses. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holdings in high-grade corporate stocks and bonds.

#### Asset Allocation

Based on review and recommendations from the Investment Manager, the Committee believes that to achieve the greatest likelihood of meeting Trust’s investment objectives and the best balance between risk and return for optimal diversification, the Trust should allocate assets into two broad classes called Investment Assets and Liquidity Assets. The Investment Assets will be invested in accordance with the targets for each asset class as follows to achieve an average total annual rate of return that is equal to or greater than the Trust’s actuarial discount rate as described in the section titled “Performance Expectations”. The Liquidity Assets will be held in cash equivalent investments and used to pay for benefits and expenses of the Trust.

## Investment Assets

<u>Asset Classes</u>	<u>Asset Weightings</u>	
	<u>Range</u>	<u>Target</u>
Domestic Equity	23% - 43%	33%
International Equity	11% - 31%	21%
REITs	0% - 12%	6%
Fixed Income	25% - 65%	40%

## Liquidity Assets

<u>Asset Class</u>	<u>Asset Weightings</u>
	<u>Range</u>
Cash Equivalent	0 - 20%

The Investment Manager shall have discretion to temporarily invest a portion of the assets in cash reserves when deemed appropriate. The Designees will be evaluated against their peers on the performance of the total funds under their direct management

### Rebalancing Philosophy

The asset allocation range established by this Policy represents a long-term perspective. As such, rapid unanticipated market shifts or changes in economic conditions may cause the asset mix to fall outside the Policy ranges. When these divergences occur, the Investment Manager will rebalance the asset mix to its appropriate targets and ranges. Similarly, if the cash requirement to handle liquidity needs falls to a level where near term distributions (over the following three months or less) cannot be met and no contributions are anticipated, the Investment Manager will rebalance the fund to its appropriate targets and ranges.

When the Investment Manager is notified of new contributions by the Trustee, the Investment Manager will review the Trust allocation and fill the liquidity allocation first and the remaining investment allocations last.

### Risk Tolerances

Investments will be managed in a style that seeks to minimize principal fluctuations over the established Time Horizon and that is consistent with the Trust's investment objectives.

### Performance Expectations

Over the long-term, a rolling five year period, the performance objective for Trust assets will be to achieve an average total annual rate of return of 7.5%, net of expenses, that is equal to or greater than the Trust's actuarial discount rate. Additionally, it is expected that the annual rate of return on Trust assets will be commensurate with the then prevailing investment environment. Measurement of this return expectation will be judged by reviewing returns in the context of industry standard benchmarks, peer universe comparisons for individual Trust investments and blended benchmark comparisons for the Trust in its entirety. The costs to administer and manage the Trust are to be paid from the Trust; therefore, the return will need to be sufficient to cover the expenses and achieve the desired net return.

## **Selection of Designees**

The Investment Manager shall prudently select appropriate Designees to manage the assets of the Trust. Designees must meet the following criteria:

- The Designees must be banks, insurance companies, or investment advisers as defined by the Investment Advisers Act of 1940.
- With respect to Trust assets invested in a mutual fund, the Designees must provide historical quarterly performance data for the mutual fund compliant with Securities Exchange Commission (“SEC”) and National Association of Securities Dealers (“NASD”) standards.
- The Designees must provide historical quarterly performance data compliant with Global Investment Performance Standards (“GIPS”), calculated on a time-weighted basis, based on a composite of all fully discretionary accounts of similar investment style and reported net of fees.
- The Designees must provide detailed information on history of the firm, key personnel, key clients, fee schedule (including most favored nation clauses), and support personnel. This information can be a copy of a recent Request for Proposal (RFP) completed by the Designee.
- The Designees must clearly articulate the investment strategy that will be followed and document that the strategy has been successfully adhered to over time.
- The Designees for portfolios other than Pooled Vehicles (see Guidelines for Portfolio Holdings) must confirm that it has received, understands and will adhere to this policy and any manager specific policies by signing a consent form provided by the Trustee.
- The Investment Manager shall select Designees employing passive or index strategies unless explicitly authorized by the Committee.

## **Guidelines for Portfolio Holdings**

The Investment Manager shall make every effort to prudently select funds that follow the guidelines listed below.

Because the Trust contemplates investing exclusively in passive or index strategies with few potential exceptions, the use of Pooled Vehicles such as commingled and/or mutual funds are most appropriate to keep costs low versus separate accounts. Pooled Vehicles are regulated by either the Office of the Comptroller of the Currency (“OCC”) or the SEC and provide the Trust the ability to appropriately diversify its holdings in a cost effective manner. Inherent within the Pooled Vehicle structure is the limitation on customizing the underlying security selection based on Trust specific economic, social or other screens. The Equity and Fixed Income sections of the Guidelines for Portfolio Holdings listed below are therefore primarily applicable for only separate accounts management and will not explicitly apply until and unless the Trust uses separate account management.

### **Pooled Vehicles**

Every effort shall be made, to the extent practical, prudent and appropriate, to select commingled funds and/or mutual funds that have investment objectives and policies that are consistent with this Policy (as outlined below in Equities and Fixed Income sections). However, given the nature of commingled funds and mutual funds, it is recognized that there may be deviations between this Policy and the objectives of these pooled vehicles. A commingled fund or mutual fund will not be included in Trust

portfolio unless it complies with the general diversification guidelines outlined by the Investment Company Act of 1940.

### Cash Equivalents

Cash equivalent reserves shall consist of cash instruments having a quality rating of A-1, P-1 or higher, as established by Moody's or Standard & Poor's. Bankers' acceptances, certificates of deposit and savings accounts must be made of United States banks or financial institutions or United States branches of foreign banks, which are federally insured with unrestricted capital of at least \$50 million. Short-term corporate obligations must be rated A or better by Moody's or by Standard & Poor's.

Upon attaining asset size where use of a separate account structure is viable and appropriate, the selection of individual Designees will be considered along with Pooled Vehicles for inclusion in the Trust. Separate accounts are governed by contract. When using separate accounts, the Trust may develop addenda to this Policy to constrain the individual Designee using economic, social or other screening techniques.

### Equities

Investment in common stocks, preferred stocks and publicly traded Real Estate Investment Trusts ("REITs") shall be restricted to high quality, readily marketable securities of corporations that are actively traded on a major exchange.

Not more than 5% of the total stock portfolio valued at market may be invested in the common stock of any one corporation. Ownership of the shares of one company shall not exceed 2% of those outstanding. Not more than 25% of stock valued at market may be held in any one industry category. Other than these constraints, there are no quantitative guidelines suggested as to issues, industry or individual security diversification. However, prudent diversification standards should be developed and maintained by the Investment Manager.

The overall non-U.S. equity allocation should include a diverse global mix of at least 10 countries. The emerging markets exposure as defined by Morgan Stanley Capital International Inc. should be limited to 35% of the non-U.S. portion of the portfolio.

In order to maintain an effective money management structure that is style neutral, the target growth to value allocation in all market capitalizations is one-to-one. However, in no case will the growth to value allocation for market capitalizations exceed two-to-one. Conversely, value shall not exceed growth by the same ratio.

### Fixed Income

Fixed income investments shall be high quality, marketable securities with a preponderance of the investments in (1) U.S. Treasury, federal agencies and U.S. Government guaranteed obligations, and (2) investment grade municipal or corporate issues.

Fixed income securities of any one issuer shall not exceed 5% of the total bond portfolio, including U.S. Treasury/Federal Agency issues, at time of purchase. The 5% limitation does not apply to investment in issues of the U.S. Treasury or other Federal Agencies.

The overall rating of the fixed income assets shall be at least "A", according to one of the three rating agencies (Fitch, Moody's or Standard & Poor's). In cases where the yield spread adequately compensates for additional risk, securities where two of the three rating agencies (Fitch, Moody's or Standard & Poor's) have assigned ratings of Baa3 or BBB- ratings, can be purchased up to a maximum of 20% of total market value of fixed income securities. If the credit quality of any one issue should drop below investment grade (as defined by two of the three rating agencies – Fitch, Moody's and Standard & Poor's), the designee should notify Investment Manager immediately detailing their plan of action regarding the security. The Investment Manager will immediately notify the Treasurer to discuss the detailed plan of action regarding this security.

#### Prohibited Investments

The following investments and transactions are not authorized and shall not be purchased: letter stock and other unregistered securities, commodities or commodity contracts, short sales, margin transactions, private placements (with the exception of Rule 144A securities), venture capital funds, private equity, hedge funds; derivatives, options or futures for the purpose of portfolio leveraging are also prohibited. Neither direct real estate equity nor natural resource properties such as oil, gas or timber may be held except by purchase of publicly traded securities or within Pooled Vehicles, except for existing real estate holdings. The purchase of collectibles is also prohibited. Further, the fund shall not invest in Pooled Vehicles or Separate Accounts where the primary holdings are in emerging international equities, domestic high yield corporate fixed income, international fixed income, or convertible securities.

#### Safekeeping

The Trustee shall produce statements monthly listing the name and value of all assets held, and the dates and nature of all transactions in accordance with the terms in the Trust Agreement. Assets of the Trust held as liquidity, or investment reserves shall, at all times, be invested in interest-bearing accounts.

### Control Procedures

#### Review of Investment Objectives

The Investment Manager shall review annually with the Committee the appropriateness of the Policy for achieving the Trust's stated objectives. It is not expected that the Policy will change frequently. In particular, short-term changes in the financial markets should not require an adjustment in the investment policy.

#### Review of Investment Performance

The Investment Manager shall report on a quarterly basis to the Treasurer to review the total Trust investment performance. In addition, the Investment Manager will be responsible for keeping the Treasurer advised of any material change in investment strategy, Designees, and other pertinent information potentially affecting performance of the investments. The Treasurer, in turn will report investment performance periodically, but not less than annually, to the Committee and to the Finance Committee of the Board of Commissioners.

The Investment Manager shall compare the investment results on a quarterly basis to appropriate benchmarks, as well as market index returns in both equity and debt markets. Examples of

benchmarks and indexes that will be used include the MSCI US Broad Market Index for U.S. equities, Total International Composite Index for international equities, MSCI US REIT Index for public real estate, Lehman Aggregate Bond Index for fixed income securities, and the U.S. 91 Day T-bill Index for cash equivalents.

#### Voting of Proxies

Designees are expected to be aware of corporate provisions that may adversely affect stockholdings, including but not limited to “golden parachutes,” “super majorities,” “poison pills,” “fair price” provisions, staggered boards of directors, and other tactics. Proxies should be vigorously voted with the interest of preserving or enhancing the security’s value.

The Designees of a commingled trust or mutual fund that holds the assets of the Trust along with assets of other funds with conflicting proxy voting policies must reconcile the conflicting policies to the extent possible, and, if necessary, to the extent legally permissible, vote the proxies to reflect the policies in proportion to each fund’s interest in the pooled fund.

#### Adoption of Investment Policy Statement

This Investment Policy Statement shall, consistent with the terms of the trust agreement dated as of December 18, 2007, establishing the Trust, be adopted by the Authority and may be modified from time to time by the Committee. The Investment Policy Statement and any changes and exceptions shall be delivered to the Investment Manager. The Investment Manager is responsible for recommending the appropriate investment vehicles and monitoring actions of designees to ensure that the investments are in compliance with such documents.

**Approved by the Port Authority of New York & New Jersey:**

Firm Composites  
Annualized Returns

Attachment F

Annualized Returns for the Period Ending December 31, 2012				
	1 Year	3 Years	5 Years	10 Years
Composite #1				
Sharpe Ratio				
Sortino Ratio				
Benchmark				
Please provide the composition of your Benchmark:				
Composite #2				
Sharpe Ratio				
Sortino Ratio				
Benchmark				
Please provide the composition of your Benchmark:				
60% S&P 500/ 40% Barclays Aggregate				

Composite #1 is defined as the composite of your firm that most closely resembles our current asset allocation, and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

Composite #2 is defined as the composite of your firm that most closely resembles your proposed portfolio structure, and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

Firm Composites  
Annual Calendar Year Returns

Attachment F.1

	Annual Returns for Each Calendar Year									
	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Composite #1										
Sharpe Ratio										
Sortino Ratio										
Benchmark										
Composite #2										
Sharpe Ratio										
Sortino Ratio										
Benchmark										
60% S&P 500/ 40% Barclays Aggregate										

Composite #1 is defined as the composite of your firm that most closely resembles our current asset allocation, and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

Composite #2 is defined as the composite of your firm that most closely resembles your proposed portfolio structure, and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

Firm Composites/OPEB &/or Pension  
Annualized Returns

Attachment G

Annualized Returns for the Period Ending December 31, 2012				
	1 Year	3 Years	5 Years	10 Years
OPEB/Pension Composite				
Sharpe Ratio				
Sortino Ratio				
Benchmark				
Please provide the composition of your Benchmark:				
60% S&P 500/ 40% Barclays Aggregate				

The OPEB/Pension Composite is defined as the composite of your firm that consists of accounts which are OPEB or Pension Trusts (if any), and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

Firm Composites/OPEB &/or Pension  
Annual Calendar Year Returns

Attachment G.1

	Annual Returns for Each Calendar Year									
	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
OPEB/Pension Composite										
Sharpe Ratio										
Sortino Ratio										
Benchmark										
60% S&P 500/ 40% Barclays Aggregate										

The OPEB/Pension Composite is defined as the composite of your firm that consists of accounts which are OPEB or Pension Trusts (if any), and the benchmark returns (including a description of the composition of the benchmark) which your firm compares against the composite.

**P.A. Agreement #\*\*\*-13-\*\*\***  
DATE

FIRM NAME  
ADDRESS  
CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL INVESTMENT  
MANAGEMENT SERVICES FOR OTHER POST-EMPLOYMENT  
BENEFITS TRUST 2013-2016**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME ("the Firm" or "you") to provide expert professional services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, from MONTH DAY, 2013 through MONTH DAY, 2016.

The Authority shall have the unilateral right[, upon notification to the Firm at least 10 days prior to the expiration date, to extend the term of this Agreement for three additional years through MONTH DAY, 2019, upon the same terms, conditions and pricing, unless otherwise agreed to by the Authority. The Authority shall send written notification of the extension to the Firm at least thirty days prior to expiration of the current term. .

2. This Agreement shall be signed by you and the Authority's Director of Procurement. As used herein and hereafter, the "Director" means the Authority's Treasurer, Treasury Department, acting either personally or through her duly authorized representatives acting within the scope of the particular authority vested in her unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, the Director has designated Name, Title, to act as her duly authorized representative. The Project Manager for this project is \*\*\*\*\*  
at (212) 435-\*\*\*\*, or e-mail address [\\*\\*\\*\\*\\*@panynj.gov](mailto:*****@panynj.gov)

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of all your services under this Agreement.

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

5. The Firm shall meet and consult with Authority staff as requested by the Director in connection with the services to be performed herein. All items to be submitted or prepared by the Firm hereunder shall be subject to the review of the Director. The Director may disapprove, if in her sole opinion said items are not in accordance with the requirements of this Agreement or professional standards. If any of the said items or any portion thereof are so disapproved, the Firm shall forthwith revise them until they meet the approval of the Director, but the Firm shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Firm of its responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

6. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the following amount(s) on a quarterly basis in accordance with paragraph 7 below, for each year of the Agreement:

a) Fixed Annual Fee: \$ \_\_\_\_\_

and/or

b) Asset Based Fees:

Market Value of Portfolio	Firm Fees in Basis Points	Index Fund Provider
First \$ Million		
Next \$ Million		
Next \$ Million		
Next \$ Million		

7. You shall render an invoice for services during the quarter to the Project Manager within sixty (60) days after the last date of each individual quarter of the year under the Agreement to provide the Authority sufficient time to process payment in a timely manner. Each invoice shall bear your taxpayer number and the purchase order number(s) as provided by the Authority. Upon receipt of the foregoing, the Project Manager will certify to the Authority that the amount of compensation is correct. The Authority shall, within fifteen days after receipt of such certification by the Project Manager, pay to you by check or electronic payment, the amount certified by the Project Manager.

The Firm shall verify that its employees working under this Agreement (in the United States) are legally present and authorized to work there, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Firm shall furnish, or provide access to the Authority, federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Firm, performing services hereunder. This includes citizens and noncitizens.

8. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon thirty days

(30) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Director through the date of termination, minus all prior payments to you.

9. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Director. Such approval may be withheld, if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

10. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Director.

11. Any services performed for the benefit of the Authority at any time by you or on your behalf, even though in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.

12. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

13. Originals of estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Firm hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Firm to obtain for the Firm and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Firm, or subconsultant, or an employee of either. Whether or not your Proposal is accepted by the

Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

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

15. You shall promptly and fully inform the Director in writing of any intellectual property disputes, as well as patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

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

17. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of 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. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, at least 51 percent 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 resident aliens.

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

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

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

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

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

The Authority has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent to qualified and certified WBEs on technical service projects.

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

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

The Authority has a list of certified MBE/WBE service firms, which is available to you at your request. The Firm will be required to submit to the Authority's Office of Business Diversity and Civil Rights for certification the names of MBE/WBE firms he proposes to use who are not on the list of certified MBE/WBE firms.

## 18. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the Firm, its staff and subconsultants and their staffs depending upon the level of security required, as determined by the Authority. These security requirements may include but are not limited to the following:

- Firm/subconsultant identity checks and background screening, including but not limited to: 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; multi-year check of personal, employment and/or credit history; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- Requiring that the Firm/subconsultant execute a Non-Disclosure and Confidentiality Agreement regarding the disclosure of Confidential Information;
- Issuance of Photo Identification cards;
- Access control, inspection, and monitoring by security guards.

The Firm may be required to have its staff, and any subconsultant's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Firm may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks shall be reimbursable to the Firm as an out-of-pocket expense as provided herein.

The Authority may impose, increase, and/or upgrade security requirements for the Firm and its staff and subconsultants during the term of this Agreement to address changing security conditions and/or new governmental regulations.

19. The Firm assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Firm or its subconsultants in the performance of services hereunder:

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

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

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

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

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

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

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Firm from his obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Firm or of particular claims for which he is responsible shall be deemed (a) to limit the effect of

the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

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

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Firm's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

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

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

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

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the Authority) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

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

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

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

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

In any case where the Firm cannot make the foregoing certifications, the Firm shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons

therefor. If the Firm is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "21G.", if the Firm cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Firm may be able to make the foregoing certifications at the time the proposal is submitted, the Firm shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Firm with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Firm has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Firm is not a responsible Firm with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Firms 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.). Firms are also advised that the inability to make such certification will not in and of itself disqualify a Firm, and that in each instance the Authority will evaluate the reasons therefor provided by the Firm.

Under certain circumstances the Firm may be required as a condition of this Agreement 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 Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Firm to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

## **22. FIRM ELIGIBILITY FOR AWARD OF AGREEMENTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS**

Firms are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New Jersey that a Firm is not eligible to propose on or be awarded public agreements because the

Firm has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

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

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

### 23. NO GIFTS OR GRATUITIES

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

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

The Firm 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.

### 24. NON-DISCLOSURE/CONFIDENTIALITY, OFFERS OF EMPLOYMENT

During the term of this Agreement, the Firm shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your sub-Firms, and your sub-consultant's employees to keep confidential a) all information disclosed by the Authority or its consultant to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

## 25. CONFLICT OF INTEREST

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

## 26. DEFINITIONS

As used in sections 20 to 25 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

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

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

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

27. The entire agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

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

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

Very truly yours,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Director  
Procurement Department

Date \_\_\_\_\_

ACCEPTED:

Company: \_\_\_\_\_

By: \_\_\_\_\_

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

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

**INSTRUCTIONS**

If the selected Firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "29" to "30" and insert a new Paragraph "29" as follows:

29. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.