

**THE PORT AUTHORITY OF NY & NJ**  
**PROCUREMENT DEPARTMENT**  
**ATTN: BID/PROPOSAL CUSTODIAN**  
**4WTC 150 GREENWICH STREET 21<sup>ST</sup> FLOOR**  
**NEW YORK, NEW YORK 10007**

**REQUEST FOR PROPOSALS**

**ISSUE DATE: December 14, 2015**

**TITLE: EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE  
INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES  
FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING  
2016 - 2018**

**RFP NO.: 44686**

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

**QUESTIONS DUE BY: December 31, 2015 TIME: 2:00 P.M.**

**PROPOSAL DUE DATE: January 7, 2016 TIME: 2:00 P.M.**

**CONTACT: GUSTAVO ORDUZ**

**PHONE: (212) 435-5694**  
**FAX: (212) 435-4699**  
**EMAIL: [gorduz@panynj.gov](mailto:gorduz@panynj.gov)**

December 14, 2016

**SUBJECT: REQUEST FOR PROPOSALS FOR EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING 2016 - 2018**

**RFP NO. 44686**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (“Authority” or “Port Authority”) is seeking Proposals from prospective Consultants (also “you,” “Firm” and “Proposer”) in response to this Request for Proposals (RFP) for the performance of Expert Professional Storm Mitigation and Resilience Insurance Adjustment, and Grant Management Services for Federally Funded Storm Resiliency Projects During 2016-2018 for a two (2) year term, with an option to extend for two (2) additional, one-year terms, at the exclusive option of the Port Authority. The scope of the services to be performed by the Consultant hereunder are set forth in Attachment A to this RFP Letter and shall form part of the Port Authority’s Standard Agreement (“Standard Agreement” or “Agreement”). A sample of the Standard Agreement is attached hereto. Please review the attached form of agreement that will be the basis for the submission of Proposals and which you will sign in the event the Authority accepts your Proposal.

The Standard Agreement contains the terms and conditions governing the resultant agreement of this RFP. You are expected to agree with all of the terms and conditions of the standard agreement. You should therefore not make any changes to the Standard Agreement or restate any of its provisions in your Proposal or supporting material. However, if you have 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 or accept any such specific exceptions. After the Proposal Due Date, the Proposer will be precluded from raising any exceptions to this RFP.

This Agreement may be funded in whole or in part by the Federal Emergency Management Agency (“FEMA”). Accordingly, As a result, the Proposer agrees to comply with the applicable FEMA requirements and upon award of the Agreement, firms will be required to comply with applicable FEMA requirements, provisions set forth in the referenced Agreement as Attachment H – Federal Emergency Management Agency Requirements.

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**I. SUBMISSION OF PROPOSALS:**

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

- A. The Proposal shall be no more than **25** pages per proposal (single-sided) or **13** pages (double-sided) using 12 point or greater font size, not including resumes and attachments. Each resume shall be 2-page maximum, single-sided using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number 44686** 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 in Section V below entitled Proposal Submission Requirements.
- C. **All Proposals must be delivered in sealed envelopes and/or packages. Address Proposal to: The Port Authority of New York and New Jersey, Attention: RFP Custodian, Procurement Department, 4WTC, 150 Greenwich Street, 21<sup>st</sup> floor, New York, NY 10007. Do not address your Proposal to any other name.** Clearly mark the solicitation number on the outermost package. You are required to submit one (1) reproducible original and five (5) copies, along with one (1) copy on USB, of your Proposal for review. Notwithstanding retention of the USB, in case of conflict, the reproducible original of the Proposal shall take precedence over material on the USB.
- 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 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, as well as a contact name with phone number and email address.
- F. Your Proposal should be received in sufficient time so that the Authority receives it **no later than 2:00 p.m. on January 7, 2016.** The cover of your submittal must include the

RFP Number (as stated above) and the RFP title. The outermost cover of your submittal must be labeled to include the RFP Number and RFP title as indicated in “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.

- G. The Authority will not accept Proposals submitted via electronic mail or fax.
- H. 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 shall be turned away and their packages not accepted. There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

## **II. PROPOSER PREREQUISITES:**

Only Proposals from Firms demonstrating previous experience in the performance of services similar to those contemplated herein shall be considered. The Authority will be the sole judge of whether a Proposer meets the prerequisite requirements.

Only Firms that can demonstrate that they comply with the following prerequisites should submit Proposals, as only Proposals from such Firms will be considered:

- A. The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of five (5) years experience, at the time of proposal submission in performing federal grant management services for major transportation agencies.
- B. The Proposer must demonstrate to the satisfaction of the Port Authority that it has at least five (5) or more individuals on staff, including executive management, who has demonstrated experience performing federal grant management services.

In the event a Proposal is submitted by a joint venture, the foregoing prerequisites will be considered with respect to such Proposal as follows:

With respect to subparagraphs (A), and (B) above, the prerequisites will be considered satisfied if the joint venture itself, or any of its participants individually, meet the requirements.

If a joint venture which has not been established as a distinct legal entity submits a proposal, it and all participants in the joint venture shall be bound jointly and severally and each participant in the joint venture shall execute the proposal and do each act and thing required by this Request For Proposals.

If the joint venture is a distinct legal entity the name of the joint venture Proposer shall appear on the original proposal and wherever else the Proposer's name would appear.

If the Proposer is a common law joint venture, the names of all participants shall be listed followed by the words "acting jointly and severally".

All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites. Attachment C-1 Proposer Prerequisites Item A and Attachment C-2 Proposer Prerequisites Item B should be completed and submitted as part of the Proposal to document the required experience. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that it will be deemed qualified in connection with other Proposal requirements included herein.

### **III. FINANCIAL INFORMATION**

The Proposer will be required to demonstrate that it is financially capable of performing the Agreement resulting from this RFP. The determination of the Proposer's financial qualifications and ability to perform this Agreement will be in the sole discretion of the Port Authority. The Proposer shall submit, with its Proposal, the following:

A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer's most recent fiscal year.

(2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by

an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

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

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

#### **IV. EVALUATION CRITERIA**

Each Proposal will be evaluated by a Selection Committee composed of Port Authority personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of a proposing Firm and its oral presentation, if necessary.

The Selection Committee members will base their evaluation on selection criteria, which are listed below in relative order of importance.

1. Personnel qualifications and experience
2. Firm qualifications and experience
3. Technical Approach
4. Management Approach

Award will be made to the responsible Firm whose Proposal is most advantageous to the Authority. In determining which Proposal is most advantageous, the Authority will evaluate Proposals to determine which Proposal offers the greatest business value to the Authority based upon an analysis of the qualitative technical factors and price/cost in order to derive which Proposal represents the "best value" to the Authority. In the event that two or more Proposals are considered by the Authority to be equal or similar in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, the Authority may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price proposal, if doing so would not be in the overall best interest of the Authority.

#### **V. PROPOSAL SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

In the front of your Proposal, a copy of Attachment B of the Standard Agreement, "Agreement on Terms of Discussion," signed by an officer of your Firm. If the Proposer is a

joint venture, an authorized representative of each member of the joint venture shall sign the Agreement.

#### A. PERSONNEL QUALIFICATIONS AND EXPERIENCE

List the name(s) and title(s) and provide the resumes of key personnel who will be assigned to perform any services requested. Detail the experience of key individuals to be responsible for the successful completion of the proposed project. Attach a detailed resume for each individual that includes his or her educational background, chronological history of employment, relevant licenses and certifications. The resumes should clearly identify the years of experience and technical capabilities in the field related to the tasks for which the individual will be responsible.

Indicate how you will assure commitment to the project of said key personnel and your plan for providing equally qualified personnel in the event that such key personnel become unavailable during the progress of the work. However, notwithstanding the aforementioned required plan, please note that it is expected that key personnel submitted under this Request for Proposals will be committed to being assigned to this project for its duration. The Consultant shall not remove or replace the Project Manager or any other key personnel, as identified by the Authority, without the written consent of the Authority and the Authority will not consent until the Consultant has proffered a candidate with similar and equal credentials acceptable to the Authority.

Identify sub-consultants, if any, and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their MBE/WBE status and the technical qualifications of their key personnel to be assigned to the subject project.

#### B. FIRM QUALIFICATIONS AND EXPERIENCE

Demonstrate your compliance with the proposer prerequisites listed above by providing Attachments C-1, and C-2.

In addition, prepare a spreadsheet signed by the principal of your firm identifying your firm's specific relevant experience in the performance of services similar to those contemplated herein.

For all projects referenced, the services must have been performed by or are currently being performed by the Proposer within the last five (5) years. The spreadsheet outlining the services performed or currently being performed shall include:

- The name, address, point of contact and telephone number(s) of the Contracting party
- The locations where the work was performed
- Duration of the Contract
- Date(s) the services were provided
- The approximate dollar amount of the Contract
- The annual staff hours of full and part time labor expended in the performance of the Contract
- A summary of the types of work performed
- Representatives familiar with the work that the Port Authority may contact.

Only Proposals received from Firms demonstrating relevant prior experience will be evaluated for performance of the subject services.

C. TECHNICAL APPROACH

Submit a detailed description of the proposed technical approach to be taken for the performance of the required services. Factors addressed in your technical approach shall include, but are not limited to your proposed technical approach demonstrating to the Authority, the knowledge and skill of your firm to address specific technical areas, (i.e. Federal Funding requirements insurance allocation strategy, compliance management). The technical approach description should provide at a minimum a clear understanding of how the Consultant will carry out their duties in accordance with Attachment A, of this Agreement, entitled "Scope of Services".

D. MANAGEMENT APPROACH

Submit a detailed description of the proposed management approach to be taken for the administration of work under the Contract covering the tasks listed in Attachment A entitled "Scope of Services". In support, the Proposer shall also provide:

1. A detailed Staffing Plan in accordance with the Attachment E – Staffing Plan including an organization chart
2. A tracking template for deliverables, task and cost management
3. Procedures for keeping the Authority team informed of issues and progress during the period of engagement.
4. Approach to quality control.

E. MBE/WBE PARTICIPATION

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

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. Native American or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

The Authority has set a goal of twelve percent (12%) participation by qualified and Port Authority certified MBEs and five percent (5%) 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 Consultant shall use every good-faith effort to utilize subconsultants who are Port Authority certified MBEs or WBEs to the maximum extent feasible.

#### F. PRICING AND COMPENSATION PROPOSAL

The Proposer shall submit a concise "Pricing and Compensation Proposal" (Attachment F) that provides the following information in accordance with the Scope of Services presented in Attachment A.

(i) The Pricing and Compensation Proposal must include the following for the twenty-four (24) month period, in accordance with Section 7 of the Agreement:

1. The Consultant/Firm's Fully Loaded (All-Inclusive) Hourly Rates in accordance with Section 7.A of the Standard Agreement
2. Cost of Subconsultants, in accordance with Section 7.B of the Standard Agreement
3. Reimbursable expenses, in accordance with Section 7.C of the Standard Agreement;
4. The Proposer must submit any backup material deemed appropriate, including but not limited to, the computation of the Fully Loaded Hourly Rates and the Firm's Certified Overhead Statement, if any, along with Attachment F - Pricing and Compensation Proposal, for consideration of costs. Failure by a Proposer to submit such material as requested may deem such Proposer non-responsive.

The Proposer shall also submit the Cost Detail and the Itemized Out of Pocket Expenses Worksheet with the Pricing and Compensation Proposal as part of Attachment F.

G. FIRM'S AFFILIATES.

Provide a complete list of your firm's affiliates.

H. CONTRACTOR'S INTEGRITY PROVISIONS

If your Firm is selected for performance of the subject services, the agreement you will be asked to sign 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". By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its 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".

I. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Background Qualifications Questionnaire (BQQ). This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

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

A BQQ is also to be submitted for any subcontractor, subconsultant or vendor known to the Proposer at the time of Proposal submission.

J. GENERAL CONFLICT OF INTEREST

If the Proposer or any employee, agent or subconsultant of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict.

In the opinion of the Authority, any Proposer performing construction management, general contracting, design, environmental and/or management services in any capacity for the Authority or stakeholders/owners responsible for Hurricane Sandy Resiliency Projects has a potential conflict of interest. A Proposer who has a business relationship as indicated above, and who believes that it can develop a mitigation plan that would address the conflict of interest shall submit such plan for evaluation to the Authority with its Proposal.

It is envisioned and recommended that the following items/concepts be addressed in a

proposed mitigation plan where a conflict or the appearance of a conflict of interest may in the future, or does currently exist:

- 1) A proposed organizational chart/structure/firewall designed to keep staff and resources separate, as specific by project, and to allow for no overlap between team members and resources, including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.
- 2) Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not be limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
- 3) Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
- 4) Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its role in preventing fraud waste, and abuse, and verification of such education/training and individual understanding.
- 5) Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
- 6) Specific contingency plan, notification, and approval process for cases where there is a necessary, reasonable and business related purpose for overlap in and/or sharing of staff members and/or resources.
- 7) Specific contingency plan addressing any direct or suspected violation of said mitigation plan. All violations must be reported to the Port Authority, including its Inspector General.
- 8) The Consultant shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

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. The Authority's determination regarding any question(s) of conflict of interest shall be final.

As used herein, "Integrity Monitor" shall mean a private firm hired to assist the Office of Inspector General in preventing and detecting fraud. There are two applications for an integrity monitor. First, an integrity monitor is assigned to prevent or detect fraud on a specific project - for example all Port Authority projects at the World Trade Center site have an integrity monitor. Second, the Port Authority has required contractors with

integrity issues to retain at their own cost an Office of Inspector General-approved integrity monitor as a condition of being awarded contracts.

#### K. ORGANIZATIONAL CONFLICT OF INTEREST

1. This Agreement may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the Agreement may, without some form of restriction on future activities, result in an unfair competitive advantage to the Consultant.

- a. The Consultant will have access to confidential and/or sensitive Authority information in the course of Agreement performance. Additionally, the Consultant may be granted access to proprietary information obtained from other contracted entities during Agreement performance. The Consultant agrees to protect all such information from disclosure even after contract expiration or termination unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
- b. To the extent that the Consultant either (i) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (ii) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Consultant agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority issues, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Consultant was ineligible to complete.

2. The Consultant, by submitting its Proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Contract and, in doing so, agrees not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

3. If the Authority determines that the Consultant has violated any term of this clause entitled "Organizational Conflict of Interest," the Authority may take any appropriate action available under the law or regulations to obtain redress including, but not limited to, requiring the Consultant to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority, determining the Consultant ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Consultant's actions under this Agreement or violations of this numbered clause, or terminating this Agreement, in whole or in part.

VI. **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 30 minutes, and include the material contained in your Proposal. The presentation would be followed by an approximately 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 person who should be contacted for presentation scheduling as well as an alternate in the event that person is unavailable.

VII. **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 <http://www.panynj.gov>.

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." By submitting a Proposal the Consultant shall be deemed to have made the certifications contained therein unless said Consultant 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.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s) who shall sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Mr. Gustavo Orduz by email at [gorduz@panynj.gov](mailto:gorduz@panynj.gov). **All such correspondence must have your name, title, company, mailing address, telephone number and state "RFP Number 44686" in the subject line.** The Authority must receive all questions no later than 2:00 P.M., seven (7) calendar days

before the RFP due date. No 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. Addenda to the RFP, if any, will be posted at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6>. You should therefore monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority, and the Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

#### **VIII. CITY PAYROLL TAX**

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

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

These taxes, if applicable, are the sole responsibility of the Consultant. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Sales Tax Exemption", in Section IX below does not apply to these taxes.

#### **IX. SALES TAX EXEMPTION**

Purchases of services and tangible personal property by the Port Authority are exempt from New York and New Jersey state and local sales and compensating use taxes. (Sales Taxes). Therefore, the Port Authority's purchase of the Consultant's services under this Contract is exempt from Sales Taxes. Accordingly, the Consultant must not include Sales Taxes in the price charged to the Port Authority for the consultant's services under this Contract.

#### **X. PROTEST PROCEDURES**

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

The Authority reserves the right, in its sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more Consultants, 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,

Richard Perez  
Manager  
WTC/Federal Compliance  
Procurement Department

**ATTACHMENT A**

**SCOPE OF SERVICES**

## ATTACHMENT A

### **PERFORMANCE OF EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING 2016 - 2018**

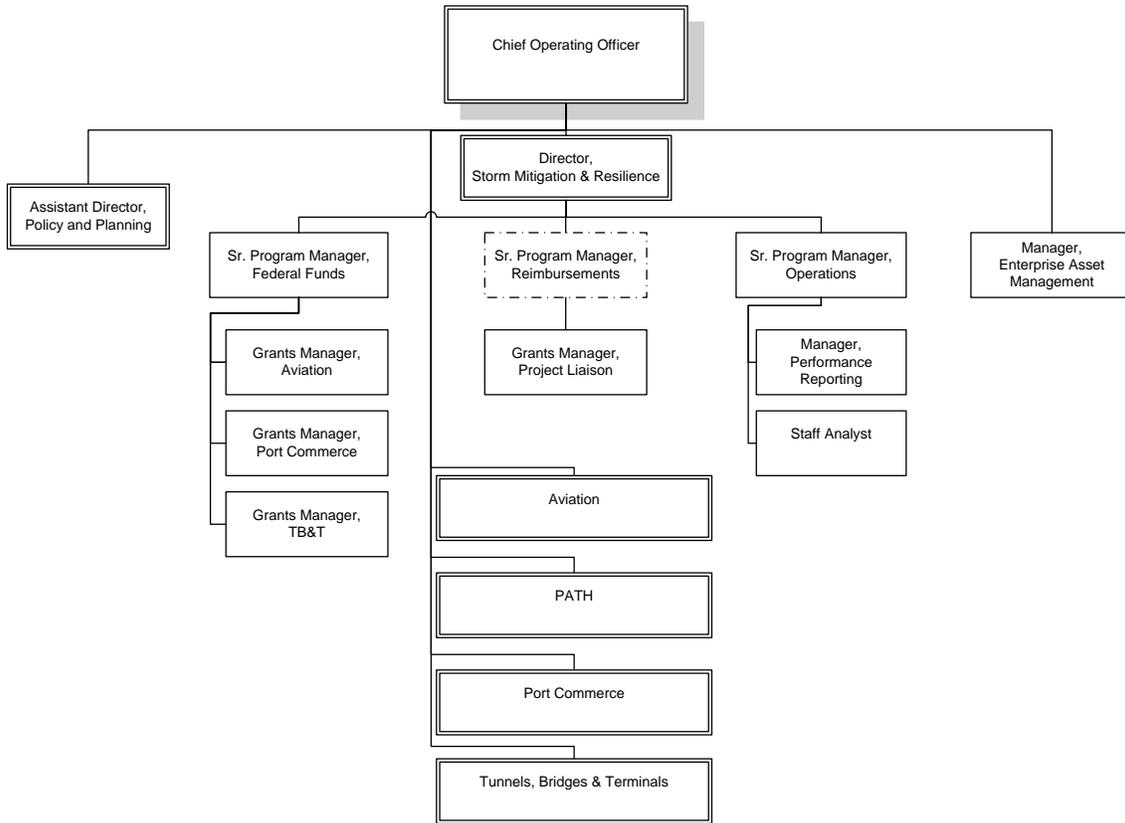
#### **I. BACKGROUND**

For background with respect to The Port Authority of New York and New Jersey (the “Authority”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

The Authority is responsible for the architectural, engineering, and interior design of all properties that it leases and owns, as well as for economic development projects in New York and New Jersey, as required. Through the Authority’s Real Estate Services Department, the Authority manages approximately 1.3 million square feet of office space in both New York and New Jersey: leased properties at 4 World Trade Center, 233 Park Avenue South, 115 Broadway, 116 Nassau Street in New York City, and 5 Marine View Plaza in Hoboken, as well as the Port Authority Technical Center, 777 Jersey Avenue and 2 Montgomery Street in Jersey City, New Jersey.

The Authority has created the Storm Mitigation and Resilience Office (SMRO), which is responsible for overseeing and coordinating the Authority’s recovery, mitigation, and resiliency efforts from the effects of storms to Authority facilities and assets. The mission of the SMRO is to assist the Authority’s Chief Operating Officer in the oversight of the Port Authority’s Storm Recovery Program including Line Departments and associated operations. The Line Departments include Aviation, PATH, Port Commerce, and the Tunnels, Bridges, and Terminals Departments, and World Trade Center Construction. SMRO has specific responsibility for formulating and executing corporate policies and procedures to assure effective policy development, program and performance management in the coordination, financing and completion of the Super Storm Sandy recovery effort. SMRO works collaboratively with the Office of Emergency Management, Engineering, Management and Budget, Capital Planning, Procurement and the Line Departments to oversee the development and implementation of a \$2.5 billion dollar effort, over a three (3) to six (6) year period. The office has assumed responsibility for the grant administration of Federal Emergency Management Administration (FEMA) Public Assistance and Hazard Mitigation Grant Program (HMGP 404 Program). In addition, SMRO provides oversight for the Federal Transit Administration (FTA) Sandy Recovery Grants and FTA Resiliency Program.

## Organization Chart of the Office of the Chief Operating Officer



Please see Appendix A for more information on the functional areas within SMRO.

### II. SCOPE OF WORK

The Authority is seeking experienced Firms/Consultants to provide expert professional storm mitigation and resilience insurance adjustment and grant management services for the SMRO for federally funded storm-related resiliency projects at various Authority facilities.

### III. DESCRIPTION OF CONSULTANT'S TASKS

The following table lists the recommended staffing hours for the tasks outlined below. Please note that the Consultant can assign any number of staff resources to each task so long as they meet the experience and professional qualifications for the work described, and stay within the general recommended hours.

YEAR	TASK	STAFF HOURS
One	Task A	1,600
	Task B	3,900

	Task C	1,800
	<b>Sub-Total</b>	<b>7,300</b>
Two	Task A	1,500
	Task B	3,500
	Task C	2,000
	<b>Sub-Total</b>	<b>7,000</b>
	<b>Total</b>	<b>14,300</b>

The services of the Consultant shall include but not limited to:

**TASK A: STRATEGIC MANAGEMENT ADVISORY SERVICES**

The Consultant will assist SMRO with the development and implementation of strategies that will minimize risk, maximize reimbursements and ensure compliance. The Consultant will provide recommendations based on federal funding regulations and research that provides historical precedents that support the recommended strategies. The Consultant will participate in meetings with Port Authority, New York State, New Jersey State, FEMA, and FTA staff as required support SMRO. The subtasks in this category include but are not limited to:

1. Provide program management guidance for the FEMA program to minimize risk and maximize recovery;
2. Serve in an advisory capacity as eligibility or other program related issues arise;
3. Assist SMRO in the development and cyclical evaluation of an insurance allocation strategy that ensures compliance and maximizes recovery for both the FEMA and FTA programs;
4. Assist SMRO in the preparation of correspondence to the State, FEMA, FTA, and other related Agencies;
5. Provide guidance for the implementation of best practices that will facilitate that administration of future recovery programs;
6. Prepare white papers and presentations as needed.

This body of work is based on the needs during any given week. The Program Director will provide guidance weekly, typically at the Monday weekly staff meetings for the work to be accomplished for the remainder of the week. The Consultant will develop a weekly task tracker, which will be used to evaluate performance and as a reference for invoice payments.

<u>Deliverable</u>	<u>Date to be completed</u>
Task Tracker	Weekly

**TASK B: FEMA PROGRAMMATIC MANAGEMENT SUPPORT**

The FEMA recovery program comprises 128 project worksheets (PWs) across three line departments (Aviation, Port Commerce, and Tunnels, Bridges & Terminals) and the World Trade Center (WTC). SMRO is responsible for the administration of the line departments’ PWs and coordinates with WTC staff who administer their respective PWs. Please see Appendix B for details on the PWs. The Consultant will:

1. Assist SMRO with preparation of cost and scope amendments to the PWs as the portfolio of capital projects advances;
2. Assist SMRO in the preparation of PW versions as needed;
3. Assist SMRO in the project delivery process coordination with the line departments, the Engineering Department, Capital Planning, Project Management, and Management and Budget;
4. Assist in the development and administration of Hazard Mitigation Grant Program projects;
5. Assist in the preparation of reimbursement packages and, responses to Requests for Information (RFIs) as they arise;
6. Assist in the tracking of program spending to be categorized based on eligibility (grant eligible, insurance, ineligible, etc.);
7. Assist in the development of FEMA PWs for PATH projects as needed.

The Consultant will work closely with the SMRO Grants Management team and two weeks ahead of the start of each month will provide a schedule of FEMA project worksheet tasks (scope alignments, cost reconciliation, project review and update, etc) to be completed in that month. This schedule will be used for performance evaluation and as a reference for invoice payments.

<u>Deliverable</u>	<u>Date to be completed</u>
FEMA PW Work Plan	Monthly

**TASK C: FEMA COMPLIANCE MANAGEMENT SUPPORT**

SMRO will also require support to ensure that the processes and procedures employed in the management of the FEMA grants are compliant with federal funding regulations. The Consultant will:

1. Provide guidance concerning eligibility, contract options, change orders and other project related compliance issues;
2. Review contracts, vendor qualification process, purchasing documentation, and other procurement related items;
3. Review existing document control process and procedures, and provide guidance for improvement as needed;

4. Assist in the maintenance of the PW audit files;
5. Develop and maintain an “off-the-shelf” program management information system for PW management, tracking, and reporting, preferably Quickbase.

<u>Deliverable</u>	<u>Date to be completed</u>
Compliance Plan	Month 3
Compliance Update	Monthly
Program Management System Implementation Plan	Month 2
Program Management System	Month 8

The SMRO Sandy recovery program is a fast-paced and evolving program. Although this is a thorough list based on the experience of SMRO thus far, it is not exhaustive. Any work arising from the recovery program will be considered in scope for this solicitation. SMRO will work closely with the selected firm to ensure that all assignments fall within the professional qualifications of selected Consultants.

The Consultant shall have access to various Port Authority IT systems including but not limited to SAP, LiveLink, ICMS, and Alchemy, as required and approved by the Authority.

#### **IV. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY**

During the performance of the work, the Authority will make available for the Consultant's information certain documents. The Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn there from. They will be made available to the Consultant for the purpose of providing the Consultant with such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value to the Consultant. The documents may be prepared for the purpose of providing information for the Consultant upon the present work, or other purposes. All documents, as well as Authority standards, and examples of Authority specifications will be made available to the Consultant.

#### **V. CONDITIONS AND PRECAUTIONS**

The Consultant shall comply with the following conditions and precautions in the performance of contemplated services hereunder, except as otherwise directed by the Authority.

##### **A. General**

Immediately inform the Authority of any unsafe condition discovered at any time during the course of work.

Throughout the period of work, immediately inform the Authority of findings if any that represent unanticipated conditions that would reduce the intended effectiveness of the assigned task unless a modification to planned work was implemented.

B. Work Hours

Coordinate all work at the site(s) with the Project Manager, unless otherwise directed by the Authority.

In any case, no work shall be performed at the site on a legal holiday of either the State of New Jersey or the State of New York.

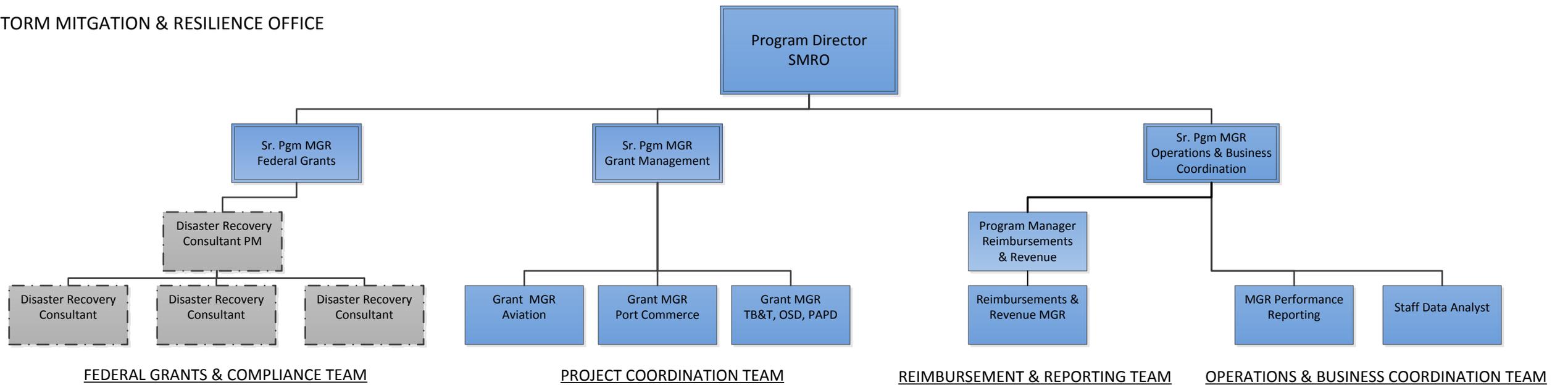
**Appendix:**

SMRO Functions

END SCOPE OF WORK

**APPENDIX A**  
**SMRO FUNCTIONS**

STORM MITIGATION & RESILIENCE OFFICE



FEDERAL GRANTS & COMPLIANCE TEAM

1. Maximize recovery funding opportunities and ensures all Port Authority recovery projects meet federal grant requirements.
2. Work with the grant managers to align contract scope with the scope identified in the grants.
3. Maximize recovery funding by seeking eligibility for additional damage scope to be added to federal grants through versioning / amendment process. Supports FEMA appeal process with states for project worksheets that are declared ineligible.
4. SR PGM MGR Responsible for presenting the status of the recovery program to the Executive Steering Committee.
5. Works with the grant management team to track the status of recovery projects, the reimbursement team to identify drawdowns relative to the advancement of recovery projects and the business coordination and budgeting team to coordinate with Engineering, MBD and Capital Planning to ensure recovery projects can advance as part of the capital plan and have the appropriate board authorizations.
6. Works with operations team to identify deficiencies in Port Authority policies, procedures or guidelines so that the agency is better positioned to maximize recovery in future disaster events.

PROJECT COORDINATION TEAM

1. Work with the facility project managers to track the schedule, scope and budget of Sandy recovery projects.
2. Works with the line departments to identify the facility project managers who manage the recovery projects.
3. Work with engineering and capital planning and the assistant directors for capital planning at the line departments to ensure the projects are in the capital plan and have offsets
4. Work with reimbursement team to ensure draw downs keep pace with invoices for active projects.
5. Work with compliance team to ensure project contract scopes are match damage scope identified in recovery grants.
6. Works with compliance team to ensure projects comply with federal completion deadlines. Apprise compliance team in advance to request extensions as required.
7. Supports 404 program and PPM projects.

REIMBURSEMENT & REPORTING TEAM

1. Manages the (1) internal Port Authority, (2) external state and federal government reimbursement process.
2. Fulfills the agency's reporting obligations to the states and federal government.
3. Works with the grant management team to ensure that draw down packages keep pace with invoiced contracts.
4. Works with the operations team to manage reporting data and update SMRO's (forthcoming) performance dashboard.
5. Works with the comptroller to obtain reports on invoiced recovery projects to support drawdown package efforts.
6. Works with compliance and grant management team to support closeout. Responsible audit and final reconciliation of federal grants.

OPERATIONS & BUSINESS COORDINATION TEAM

1. Responsible for ensuring that operational needs of SMRO are met.
2. Manages all consultant contracts, budgets and board items for SMRO. The team is also responsible for ensuring that the other teams are compliant with all internal agency procedures.
3. Responsible for creating a performance dashboard for SMRO and for updating it.
4. responsible for creating database to create automated reports as requested by other SMRO teams.
5. Responsible for document and data control.
6. Works with compliance team to identify opportunities to change corporate policies, procedures or guidelines to maximize recovery for future disaster events.
7. Liaison to all support departments.

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

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority’s Board of Commissioners on October 22, 2014, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

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

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

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

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

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

**Attachment C-1**

**Proposer Prerequisite A.**

- A. The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of five (5) years experience, at the time of proposal submission in performing federal grant management services for major transportation agencies.

\* Note - Duplicate form as necessary \*

*Reference RFP Section II – Proposer Prerequisites*  
**If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite A.**

<b>Client Name/ Contracting Entity</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client Contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

<b>Client Name/ Contracting Entity</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client Contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

<b>Client Name/ Contracting Entity</b>	
<b>Contract Start Date</b>	
<b>Contract End Date</b>	
<b>Brief description of Scope of work</b>	
<b>Client Contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

Note – Client Contact must be employee of Company

**Attachment C-2**

**Proposer Prerequisite B.**

The Proposer must demonstrate to the satisfaction of the Port Authority that it has at least five (5) or more individuals on staff, including executive management who has demonstrated experience performing federal grant management services.

\* Note - Duplicate form as necessary \*

*Reference RFP Section II – Proposer Prerequisites*  
**If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite B.**

<b>Name</b>	
<b>Employee Start Date</b>	
<b>Project Name</b>	
<b>Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

<b>Name</b>	
<b>Employee Start Date</b>	
<b>Project Name</b>	
<b>Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

<b>Name</b>	
<b>Employee Start Date</b>	
<b>Project Name</b>	
<b>Value</b>	
<b>Brief description of Scope of work</b>	
<b>Client contact Name / Title</b>	
<b>Client Contact Email Address</b>	
<b>Client Contact Phone Number</b>	

**NOTE:** PLEASE ADD ROWS AS NEEDED

Note – Client Contact must be employee of Company

**ATTACHMENT D**

**M/WBE PARTICIPATION PLAN**

**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT** **PA 3760C/ 11-15**

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

**CONTRACT NUMBER AND TITLE:** \_\_\_\_\_

**PROPOSER:**

Name of Firm: \_\_\_\_\_

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

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

**MBE/WBE:**

Name of Firm: \_\_\_\_\_

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

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

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

The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_ or \_\_\_\_\_ % of the total contract amount of \$ \_\_\_\_\_. The anticipated start date is \_\_\_\_\_ and the anticipated completion date is \_\_\_\_\_

**AFFIRMATION of MBE/WBE**

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

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

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the PA 3749 MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

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

**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**PA 3760C**

**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)**

ACKNOWLEDGEMENT  
of

STATE OF \_\_\_\_\_)

S.S.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to be known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

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

My commission expires:

MODIFIED MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT PA 3760D / 11-15

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

CONTRACT NUMBER AND TITLE: \_\_\_\_\_

PROPOSER:

Name of Firm: \_\_\_\_\_

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

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

MBE/WBE:

Name of Firm: \_\_\_\_\_

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

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

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

Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_

or \_\_\_\_\_% of the total contract amount of \$ \_\_\_\_\_. The anticipated start date is \_\_\_\_\_ and the anticipated completion date is \_\_\_\_\_

AFFIRMATION of MBE/WBE

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

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

Signature of Principal or Officer of MBE/WBE - Print Name and Title

If the Proposer does not receive award of the Contract, any and all representations in this MBE/WBE Participation Plan and Affirmation Statement shall be null and void.

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the PA 3749A MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

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

**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**PA 3760D**

**MODIFIED MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)**

ACKNOWLEDGEMENT  
of

STATE OF \_\_\_\_\_)

S.S.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to be known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

\_\_\_\_\_  
Notary Public  
My commission expires:

**ATTACHMENT E**

**STAFFING PLAN**



**ATTACHMENT F**

**PRICING AND COMPENSATION PROPOSAL**

**(Please click the above link to download the excel version of the document)**

PROPOSER ENTITY NAME: \_\_\_\_\_

**RFP No. 44686**

**PERFORMANCE OF EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING 2016 - 2018 (24 months)**

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Consultant's Total Labor Cost (see Agreement, Section 7.A)	
(2) Consultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants Total Costs (see Agreement, Section 7.B)	
<b>(4) Total Proposed Pricing &amp; Compensation</b> (Item 1 + Item 2 + Item 3)	

Total Proposal price is to be filled out both words and in figures.

**Total Amount (In words):**

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PROPOSER ENTITY NAME: \_\_\_\_\_

**RFP NO. 44686 - PERFORMANCE OF EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING 2016 - 2018 (24 months)**

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	\$ -
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

SUBCONSULTANT: \_\_\_\_\_

Pricing and Compensation Proposal	Contract Term (24 months)
(1) Subconsultant's Total Labor Cost (see Agreement, Section 7.B)	
(2) Subconsultant's Reimbursable Expenses (see Agreement, Section 7.C)	
(3) Subconsultants <b>Total Costs</b> (Item 1 + Item 2)	

**TOTAL FOR ALL SUBCONSULTANTS ABOVE** \_\_\_\_\_

Cost Detail

RFP NO. 44686 - PERFORMANCE OF EXPERT PROFESSIONAL STORM MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING 2016 - 2018 (24 months)

Task	Staffing/ Individual Discipline	Fully Loaded Hourly Rates	2016		2017		2018		Total hours per Task	Total cost per Task
			HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT		
Task A - Strategic Management Advisory Services		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
TASK A - TOTAL										\$
Task B - Grant Management Support		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
TASK B - TOTAL										\$
Task C - FEMA Compliance Management Support		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
		\$								\$
TASK C - TOTAL										\$
TOTAL DIRECT LABOR			\$		\$		\$			\$

Reimbursable Expenses	
Year	Amount*
1ST CONTRACT YEAR	
2ND CONTRACT YEAR	
Total ODC's	

\* Only include total amount for term indicated. In the attached worksheet, itemize all expenses that make up the total amount.



**ATTACHMENT G**

**INSURANCE REQUIREMENTS**

**RFP # 44686**  
**REQUEST FOR PROPOSAL FOR EXPERT PROFESSIONAL STORM MITIGATION  
AND RESILIENCE INSURANCE ADJUSTMENT, AND GRANT MANAGEMENT  
SERVICES FOR FEDERALLY FUNDED STORM RESILIENCY PROJECTS DURING  
2016 - 2018**

**ATTACHMENT G**  
**INSURANCE REQUIREMENTS**

**COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION  
INSURANCE**

**A. Commercial Liability Insurance:**

1) The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is unescorted in the performance of any field services airside, or if so directed by the Authority, the Commercial General Liability Insurance and Automobile Liability Insurance must contain limits of not less than \$25,000,000 combined single limit per occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey and its related entities" as additional insureds and shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Consultant's insurance shall be primary insurance as respects to the above additional insureds, its representatives, officials, and employees. Any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Further, the certificate of insurance and the liability policy(ies) shall be specifically endorsed that *"The insurance carrier(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."*

2) **Additional Coverages:** The Consultant shall have the policy endorsed when required by the Director for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) If the services of the Consultant, as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**B. Workers' Compensation Insurance:**

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.

2) **Additional Coverages:** The Consultant shall have the policy endorsed when required by the Director for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**C. Professional Liability Insurance:**

The Consultant shall take out and maintain Professional Liability Insurance in limits of not less than \$5,000,000 each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

**D. Compliance:**

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number, compliance with notice of cancellation provisions, and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

1) Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

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

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

4) The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

**ATTACHMENT H**

**FEDERAL EMERGENCY MANAGEMENT AGENCY REQUIREMENTS**

## FEDERAL EMERGENCY MANAGEMENT AGENCY REQUIREMENTS

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**1. DEFINITIONS**

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

“Agreement” means “Contract.”

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

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

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

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

All federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to those remedies set forth in Title 44 of the Code of Federal Regulations, Part 13 (“44 C.F.R. 13”) shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FEMA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

**3. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FEMA issues a written determination otherwise. All standards or limits are minimum requirements, unless modified by the FEMA.

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

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

Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**5. ORGANIZATIONAL CONFLICT OF INTEREST**

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
  - 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
  - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an

Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Contractor’s actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

**6. CERTIFICATION - DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are excluded or disqualified as defined at 2 C.F.R. 180.935 and 180.940.

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

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

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 C.F.R. 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. Each potential Contractor, for major third party contracts, is required to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the last paragraph of these requirements.
  
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.

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- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the last paragraph of these requirements which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Chief Procurement Officer, 4 World Trade Center, 150 Greenwich Street, 21<sup>st</sup> Floor, New York, NY 10007.
- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. The Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

- A. Definitions as used in this Clause:
  - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the last paragraph of these requirements, it also includes any other public agency.
  - 2.) "Covered Federal action" means any of the following Federal actions:
    - a. The awarding of any Federal contract;
    - b. The making of any Federal grant;
    - c. The making of any Federal loan;
    - d. The entering into of any cooperative agreement; and
    - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the

## FEMA Requirements

above referenced Certification, it includes the award of the contract with which it is associated.

- 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
- 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
  - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
  - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
  - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the

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normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

### B. Prohibition

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

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

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

c. Reporting for Own Employees.

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

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

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

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

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth in the form that follows these requirements, that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth in the form that follows these requirements, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.
- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
  - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

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

E. Penalties

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

F. Cost Allowability

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

**8. ACCESS TO RECORDS AND REPORTS**

Pursuant to 44 C.F.R. 13.42 and 2 C.F.R. 215.53, the Contractor agrees to provide the Authority, the FEMA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees to provide the FEMA Administrator or his authorized representatives access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FEMA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

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

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

**9. CIVIL RIGHTS**

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FEMA may issue.
  
- B. Equal Employment Opportunity - The following equal employment opportunity requirements may apply to the underlying contract and subsequent subcontracts:
  - 1.) Race, Color, Creed, National Origin, Sex - (Construction contracts awarded in excess of \$10,000) - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Department of Homeland Security regulations 6 C.F.R. § 21 and 44 C.F.R § 7, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.

- 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.
- 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.

C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

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

The Davis-Bacon and Copeland Acts are codified at 40 U.S.C 3141, *et seq.*(as supplemented by Department of Labor Regulations (29 C.F.R Part 5)) and 18 U.S.C 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 U.S.C 3145(a), 29 C.F.R. 5.2(h), 44 C.F.R. 13.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 U.S.C 3142(a), 29 C.F.R. 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 C.F.R. 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 C.F.R. 3.11) enumerated at 29 C.F.R. 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000, or over \$2500 if this Contract involves the employment of mechanics or laborers.

A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary

## FEMA Requirements

of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

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

- 2.)
  - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
    - (ii) The classification is utilized in the area by the construction industry;
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - (iv) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.
  - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount

## FEMA Requirements

designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

## FEMA Requirements

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

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

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

C. Payrolls and Basic Records

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

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- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
  - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Emergency Management Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

### D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State

Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2.) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which

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provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

### E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

### F. Subcontracts

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

### G. Contract Termination: Debarment

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

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

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

### I. Disputes Concerning Labor Standards

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

**J. Certification of Eligibility –**

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

**11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

**A. Overtime Requirements**

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

**B. Violation; liability for unpaid wages; liquidated damages**

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph

A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

C. Withholding for unpaid wages and liquidated damages

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

D. Subcontracts

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

**12. ENERGY CONSERVATION**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

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

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C §1251 et seq.

B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding the Simplified Acquisition Threshold issued pursuant to this Contract.

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

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

**15. FLY AMERICA**

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

**16. PREFERENCE FOR RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

**17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DHS regulations, "Program Fraud Civil Remedies," 6 C.F.R. Part 13, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

## **FEMA Requirements**

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

### **18. ADA ACCESS REQUIREMENTS**

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

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

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

### **20. CHANGES TO THE CONTRACT**

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

### **21. FEDERAL COST PRINCIPLES**

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

### **22. REPORTING**

Contractor shall comply with the FEMA requirements and regulations pertaining to reporting, particularly those contained in 44 CFR parts 13.40 and 13.41.

**23. PATENTS**

The Contractor agrees, pursuant to 44 C.F.R. 13.36 (i)(8), that all rights to inventions and/or discoveries that arise or are developed, in the course of or under this Agreement, shall belong to the Port Authority and be disposed of in accordance with the Port Authority policy. The Port Authority, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.

**24. COPYRIGHTS**

The Contractor agrees, pursuant to 44 C.F.R. 13.36 (i)(9), that if this Agreement results in any copyrightable material or inventions, in accordance with 44 C.F.R. 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, for Federal Government purposes: (1) the copyright in any work developed under a grant or contract; and (2) any rights of copyright to which a grantee or a contractor purchases ownership with grant support.

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

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

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

The undersigned

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

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

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

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

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

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

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_

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

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



## FEMA REQUIREMENTS

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

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

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

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

**FEMA REQUIREMENTS**

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

1. The prospective lower tier participant, \_\_\_\_\_, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
  
3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_.

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**BY SIGNATURE OF AUTHORIZED OFFICIAL**

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**NAME AND TITLE OF AUTHORIZED OFFICIAL**

## **FEMA REQUIREMENTS**

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

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [2 C.F.R. Part 3000]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

### **END OF FEMA CONTRACT PROVISIONS**

**PORT AUTHORITY STANDARD AGREEMENT – SAMPLE**

**P.A. Agreement #\*\*\*-15-\*\*\*  
DATE**

**FIRM  
ADDRESS  
CITY, ST ZIP**

**Attention: CONTACT, TITLE**

**SUBJECT: REQUEST FOR PROPOSALS FOR EXPERT PROFESSIONAL STORM  
MITIGATION AND RESILIENCE INSURANCE ADJUSTMENT, AND  
GRANT MANAGEMENT SERVICES FOR FEDERALLY FUNDED  
STORM RESILIENCY PROJECTS DURING 2016 - 2018**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM ("the Consultant" or "you") to provide expert professional services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, during 2016 through 2018. The Authority reserves the right, at its sole discretion, to extend this Agreement term for two (2) additional one (1)-year periods. A letter extending the Agreement term shall be sent to the Consultant at least 30 days prior to the end of the term signed by the Chief.

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

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

As used herein:

“Agreement” shall mean the writings setting forth the Scope of Services, terms and conditions for the procurement of Services, as defined hereunder and shall include, but not be limited to the Request for Proposals (RFP), Clause 37 hereof entitled “List of Attachments” and, if included, any other attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

“Chief” shall mean the Authority’s Acting Chief Operating Officer who operates various facilities of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

“Manager” shall mean the Program Manager, Project Integration or his/her designee or his/her successor in duties for the purpose of this Contract, acting personally or through his/her duly authorized representative for the purpose of this Contract.

3. The term of this Agreement is a two (2) year period commencing on \_\_\_\_\_ (“Effective Date”). The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Compensation for the Option Periods shall be agreed upon in accordance with Section 8 – Changes and shall be provided in writing at least thirty (30) days prior to the end of the base term.

Your services shall be performed as expeditiously as possible and at the time or times required by the Chief. 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 Consultant shall comply with all provisions of Federal, State, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief personally, in which case the requirements of said notification shall apply.

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

5. The Consultant shall meet and consult with Authority staff as requested by the Chief in connection with the services to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief. The Chief may disapprove, if in his/her sole opinion said items are not in accordance with the requirements of this Agreement or accepted professional standards or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated services is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief, but the Consultant will 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 Consultant of his responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

6. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder, in accordance with Paragraph 7 below, including reimbursable expenses reaches the amount of \$\_\_\_\_\_ unless you are specifically authorized in writing to continue by the Chief. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

7. As full compensation for all of your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and provisions set forth in paragraph 6 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

Attached hereto as Attachment F, Pricing and Compensation Proposal, includes a schedule of the all-inclusive (fully loaded) hourly rates payable hereunder that have been approved by the Port Authority.

- a. At a minimum, the Consultant's compensation may be computed by multiplying the applicable fully loaded hourly rate times the number of hours worked by each employee hereunder. The fully loaded (all-inclusive) hourly rates shall be computed as follows:

1. Direct Personnel Costs - Actual hourly rates of Consultant's full time employees ("Personnel") for Services on the Project.
2. Consultant's Profit.
3. Consultant's Overhead Costs, inclusive of indirect cost items in compliance with 48 CFR Part 31, which shall not apply to partners, principals or temporary employees of Consultant.

When requesting salary or billing rate adjustments for one or more of its Personnel, the Consultant shall submit employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the Services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the Effective Date of this Agreement, it is the intention of the Port Authority to grant an increase in pay if Consultant demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit and cost of living increases normally administered by the Port Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Port Authority employees possessing comparable skills and experience. If, during any calendar year, the Port Authority limits are not available to Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall, therefore, in all cases, be finally determined by the Chief or his/her designee, in his/her sole and absolute discretion.

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

compensation structure.

- c. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense, approved in writing and in advance by the Chief, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.
1. Notwithstanding the above the Authority will pay an amount approved in advance by the Chief and computed as follows for the reproduction of submittal drawings, specifications and reports:
    - a. If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or
    - b. If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.
  2. The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, Telex and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.
  3. When the Consultant uses its employee's personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Services) per mile traveled by auto.
  4. When the Consultant is asked to provide services outside the Port District, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Engineer. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as provided herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing

by the Chief. The total number of reimbursable travel hours (for travel outside the Port District) will be calculated by reducing the actual travel time by three hours. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality. See [www.gsa.gov](http://www.gsa.gov).

5. You shall obtain the Chief's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.
  6. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, 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.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other professional and technical employees of the Consultant for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead Rate.
  - d. All costs under this agreement will be allowed to the extent permitted under 48 CFR Part 31.
8. Changes
- The Authority reserves the right to make changes to the Scope of Services, Schedule or Terms of the Agreement. The Consultant shall diligently perform all such work without delay even if the Consultant does not agree with any schedule or cost decision of the Authority related to changed Work. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The claim will be considered by the Authority and if accepted, in whole or part, the Authority will issue a Change Order. The provisions of the Contract relating to the Work and its performance shall apply without exception to any changed or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. The Chief or his/her authorized representative must authorize in writing the changed or additional Work and/or any change to the Amount Obligated under

the Contract before it is performed and before the Consultant can be reimbursed for such Work.

The Consultant shall immediately notify the Authority, in writing, of any change in the scope of work either requested by Authority or desired by the Consultant. Such notice shall be in the form of a Change Request and shall include the estimated hours by element of work and the applicable hourly rates, overhead, other direct charges, subconsultant charges in the same detail as cost elements for the Consultant in accordance with Section 7 – Compensation, as well as any proposed schedule adjustments arising from the proposed change to the Scope of Services, if any. The parties shall negotiate in good faith the proposed changes to the Scope of Services identified in the Consultant's Change Request. The amounts that the parties agree upon shall be incorporated into the Contract by issuance of a Change Order.

The Authority reserves the right to delete any item of the Work in whole or in part. Any deletion of Work must be authorized in writing by the Chief or his/her authorized representative. Consultant will not be paid for Work that is deleted or otherwise not performed.

#### 9. Dispute Resolution.

- A. To resolve all disputes and to prevent litigation, the parties to this Agreement authorize the Chief to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to, or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Consultant's proposal and claims of a type that are barred by the provisions of this Agreement). Chief's decision with respect to any question or dispute under this Paragraph shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Chief may find desirable. The effect of the Chief's decision with respect to any question or dispute under this Paragraph shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Chief participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.
- B. The effect of Chief's decision with respect to any question or dispute under this Paragraph shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Chief participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.
- C. All such questions or disputes under this Paragraph shall be submitted in writing by Consultant or the Port Authority to Chief for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. The Port Authority may join any other entity to the dispute that has a valid dispute resolution agreement with the Port Authority. In any action against the Port

Authority relating to any such question or dispute, Consultant must allege in its complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to Chief.

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

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

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

12. Termination.

- A. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address 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 Chief through the date of termination, minus all prior payments to you.
- B. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause

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

13. 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 Chief. Such approval may be withheld if for any reason the Chief believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

14. 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 Chief, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief.

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

16. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief 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.

17. 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 will have the right to use or permit the use of them and any of any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either

of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, 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.

18. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, 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 Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant, the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

19. You shall promptly and fully inform the Chief in writing of any 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.

20. This Agreement is based upon your special qualifications for the services herein contemplated, and any assignment, subletting 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 sublet services to subconsultants with the express consent in writing of the Chief. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

For each proposed subcontractor, the Contractor shall ensure that the Background Qualification Questionnaire Package ("BQQP"), available at:

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

21. 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 business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. Native American or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

The Authority has set a goal of twelve percent (12%) participation by qualified and Port Authority certified MBEs and five percent (5%) 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 (OBDCR).

In order to facilitate the meeting of this goal, the Consultant shall use every good-faith effort to utilize subconsultants who are Port Authority 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 <http://www.panynj.gov/business-opportunities/supplier-diversity.html>.

Proposers are directed to use form PA3760C as the recording mechanism for the MBE/WBE participation plan, annexed hereto as Attachment D or may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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

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

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

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

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

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

A. Commercially Useful Function. An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the MBE/WBE represent standard industry practice, if

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

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

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

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

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

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

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

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

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

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

## 22. NON-DISCRIMINATION REQUIREMENTS

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

- A. Consultant hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subconsultants and/or vendors under this Contract. Consultant shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.
- B. Consultant agrees that these "Non-Discrimination Requirements" are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Contract in accordance with Section 11 of these Standard Terms and Conditions entitled "Default, Revocation, or Suspension of Contract."
- C. Consultant agrees to cooperate fully with the Authority's investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these "Non-Discrimination Requirements."

### 23. NOTIFICATION OF SECURITY REQUIREMENTS

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

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

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, you shall have your employees, subconsultants and their employees execute Authority approved non-disclosure agreements.

- Consultant/Subconsultant identity checks and background screening

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

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

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

- Issuance of Photo Identification Credential

No person shall be permitted on or about the non-public areas of the Authority's construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such

identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the Consultant to immediately report to the Authority the loss of any staff member's or subconsultant's individual facility-specific identification credential. The Consultant will be billed for the cost of the replacement identification credential. Staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility. Staff may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, non-laminated social security card for identify and SSN verification.

- Designated Secure Areas

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

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

- Access control, inspection, and monitoring by security guards

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

- Compliance with the Port Authority Information Security Handbook

The Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013; and as may be further amended. The

Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request or at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

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

24. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant 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 Consultant 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 Consultant or its subconsultants or the Authority, for loss or damage to any property of the Consultant'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 Consultant 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 Consultant 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 Consultant 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 Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he 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 statues respecting suits against the Authority, such defense to be at the Consultant's cost.

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

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which it 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 it 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 it would assume or the claims for which it would be responsible in the absence of such enumerations.

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

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

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- 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, including an inspector general of a governmental agency or public authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

In any case where the Consultant cannot make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “26G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary, 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 Consultant may be able to make certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this Agreement, 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 Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants 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.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant. Under certain circumstances the Consultant may be required as a condition of 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 Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

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

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

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

agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

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

## 28. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

## 29. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

At all times, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother, or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager, or other person or firm representing the Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or 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 or ingratiate the Authority employee to the Consultant, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment, or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used

herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

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

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", it shall report such occurrence to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about reporting information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants 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 Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.

### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the Consultant or potential Consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a Consultant or potential Consultant of the Authority, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a Consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Authority in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Authority, the Consultant shall not take the contemplated action which might be

viewed as or give the appearance of a conflict of interest. The Authority may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Authority and shall become a requirement, as though fully set forth in this Agreement. In the event the Authority shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the Authority to be no longer appropriate because of such preclusion, then the Authority shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements, which result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any questions of conflict of interest shall be final.

### 31. INTEGRITY MONITOR

The Authority has retained an integrity monitor in connection with the Project ("Integrity Monitor"). The Consultant shall cooperate and cause its Subconsultants and the Contractors to cooperate fully with the Integrity Monitor and the Port Authority and its Inspector General, including but not limited to providing complete access to all personnel and records related to the performance of this Agreement. Failure to comply with this provision shall be a material breach of this Agreement.

32. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Contract.

### 33. DEFINITIONS

As used in sections 23 to 29 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 Consultant by whatever titles known.

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

34. 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.

35. 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.

36. 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.

37. 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.

38. List of Attachments:

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

Attachment A: Scope of Services

Attachment B: Agreement on Terms of Discussion

Attachment D: Contractor's MBE/WBE Participation Plan

Attachment E: Contractor's Staffing Plan

Attachment F: Contractor's Pricing and Compensation

Attachment G: Insurance Requirements

Attachment H: FEMA Requirements

39. Notices. All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered, (ii) transmitted by certified mail, postage prepaid, return receipt requested, or (iii) transmitted by telecopier or facsimile (as elected by the party giving such notice). Notices shall be addressed and delivered as follows:

To Owner: The Port Authority of New York and New Jersey  
Attention: Stephanie Dawson  
Chief Operating Officer  
Office of the Chief Operating Officer  
4 World Trade Center (4WTC)  
150 Greenwich Street, 15<sup>th</sup> Floor  
New York, New York 10007

With a copy to: The Port Authority of New York and New Jersey  
Attention: General Counsel  
4 World Trade Center (4WTC)  
150 Greenwich Street, 25<sup>th</sup> Floor  
New York, New York 10007

To Consultant:

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Chief Procurement Officer  
Procurement Department

Date \_\_\_\_\_

ACCEPTED:  
FIRM NAME

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

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

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