

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
REQUEST TO QUALIFY #45952
FOR
PATH – EXCHANGE PLACE STATION UNDERWATER NETTING
CONTRACT PAT-024.002
MAY 2016

I. INTRODUCTION

The Port Authority of New York & New Jersey (the “Port Authority” or the “Authority”) is a body corporate and politic created by the States of New York and New Jersey with the consent of the Congress of the United States. The Port Authority, together with its wholly-owned subsidiaries, provides the region with integrated transportation and trade services and operates facilities in connection therewith, including, but not limited to, four major regional airports, four bridges and two tunnels that serve interstate traffic, a bus terminal, a bus station, the Port Authority Trans-Hudson Corp. (PATH) rapid transit system, the Hoboken-lower Manhattan ferry service, the World Trade Center site and certain New York-New Jersey port facilities.

Responses to this RTQ are due on the Response Due Date set forth on the advertisement of this RTQ. Responses received after that date and time may not be accepted.

Only pre-qualified firms who have received written approval from the Authority will be asked to respond to future solicitations on the specific project described below.

Note: In this RTQ, “firm,” “contractor,” “you,” “bidder,” “Respondent” and “Proposer” shall refer to the same party.

II. PROJECT DESCRIPTION

The Authority wishes to pre-qualify prospective firms to submit bids for Contract No. PAT 024.002 – PATH Exchange Place Station Underwater Netting. This work will be performed along the face and underside of an existing pier structure in a tidal marine environment at the Exchange Place PATH Station.

A. Scope of Work

It is anticipated, but it is not guaranteed, that work required by the Contract may include, but may not necessarily be limited to the following:

- a) Furnishing of stainless steel underwater ring netting and installation of the netting by attaching to the underside of the concrete pier structure and anchoring below the mud line;
- b) Furnishing and installation of anchors, bolts, nuts, washers, shackles and any other required hardware;
- c) Fabrication and installation of anchor collars on existing piles;
- d) All work must be performed waterside from a work barge;

- e) Providing detailed AutoCAD drawings of record with accurate dimensions of all elements at the completion of work.

B. Estimated Total Contract Costs

For information purposes only, PATH estimates that the total value of work required to be performed under the Contract resulting from the RTQ will be in the range of \$1 Million - \$2 Million.

C. Contract Schedule

It is presently anticipated, but it is not guaranteed, that Bid Documents may be available to pre-qualified bidders in or about the third Quarter of 2016. It is anticipated that all Work under the Contract will be completed within 12 months after award of the Contract.

III. SUBMITTAL INSTRUCTIONS AND CONTENT

A. Requirements

To be considered for prequalification, the Respondent must demonstrate to the satisfaction of the Chief Engineer of the Authority that it meets the minimum requirement of the RTQ as stated in Paragraphs III. A.1 and III. A.2. Company brochures alone shall not be submitted for the purpose of demonstrating experience and technical expertise. Submittals must be tailored to the specific requirements of this RTQ. If the Respondent cannot demonstrate that it meets all of the below mentioned qualifications, then the Respondent may with others form a joint venture and request that the joint venture be pre-qualified as set forth in Paragraph B.5 below.

1. Minimum Experience of the Firm

The firm seeking to be pre-qualified should have a minimum of ten (10) years construction experience and shall have completed (or substantially completed) as a prime or general contractor at least three (3) contracts of size, type and complexity comparable to that indicated in Paragraphs II.A and II.B. Work experience in an in a tidal marine environment is required.

The firm may also qualify if during the time period stated above the prospective bidder has (or persons or entities owning and controlling the prospective bidding firm have) satisfactorily performed, as owning and controlling another firm, and completed services of scope similar to that required under this Contract. The work must have been completed skillfully in a satisfactory manner and on time.

2. Minimum Qualifications of the Project Manager and Superintendent

The prospective bidder's Project Manager and Superintendent must each have a minimum of ten (10) years construction experience on contracts comparable in size to that outlined in Paragraphs II.A and II.B. Work experience in an in a tidal marine environment is required. Respondent shall submit resumes for staff proposed to perform this role.

B. Submittals

The following items must be submitted in order to be considered for pre-qualification on this specific project:

1. Attachments

In order to expedite the evaluation of this pre-qualification based on information furnished, the Respondent must complete and submit the attached documents. Responses that fail to adhere to this requirement may be excluded from consideration. The following attachments are incorporated herein and must be submitted:

- A. **Contractor's Qualification Statement**
- B. **Attachment I – Agreement on Terms of Discussion**
- C. **Attachment II – Non-Disclosure and Confidentiality Agreement and Acknowledgments**
- D. **Business Qualification Questionnaire**

2. Performance and Payment Bond

The prospective bidder may, upon award, be required to obtain a Performance and Payment Bond for the amount indicated in Paragraph II.B from a surety company whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts. A letter from the surety company must be submitted with your response to this RTQ.

3. Experience Modification Rate

The Respondent must submit a copy of its Experience Modification Rate (EMR) as a measure of the Respondent's safety record. If the rate exceeds 1.2, a written explanation shall be provided.

4. Required Licenses/Certifications

The Contractor and/or proposed sub-contractors must, upon award, have all required New York and New Jersey certifications and/or licenses to perform the work in accordance with applicable codes, rules and regulations.

5. Joint Ventures

PATH will entertain requests for prequalification from a joint venture. A joint venture itself may be prequalified if it submits its prequalification package as such, and is prequalified in accordance with this RTQ.

If two or more entities separately are prequalified and elect to submit a proposal as a joint venture, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the Bid/proposal. (i.e., members of the joint venture may meet the qualification requirements collectively.)

6. Proof of Information Security Controls

(a) Designation of Security Information Manager

The pre-qualified firms (and the awarded Contractor(s) may require access to Port Authority Confidential or Confidential and Privileged Security Information. Confidential and Privileged Security Information is information belonging to the Port Authority that, if it were subject to unauthorized access, modification, loss or misuse, could seriously damage the Port Authority, public safety or homeland security. Protecting this sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any

authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. These procedures are identified in the Port Authority's "Information Security Handbook". Respondents may obtain a copy of the Information Security Handbook from the Port Authority's website:

<http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>

The Information Security Handbook requires that certain criteria be met prior to being granted access to Confidential Information. Generally, an individual must be a U.S. Citizen, an alien who has been lawfully admitted for permanent residency or employment (indicated by immigration status), as evidenced by Immigration and Naturalization Service documentation, or a national of the United States, as defined by the Immigration and Nationality Act. This requirement may be waived in exceptional circumstances and Respondents should refer to § 3.2 of the Information Security Handbook for details on this policy and the process for waiver. An individual may also be required to undergo background screening prior to being approved for receipt of certain information. As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities and the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at:

<http://www.secureworker.com>

S.W.A.C. may be contacted directly at (877) 522-7922 for more information.

Individuals may also be required to attend an Information Security Awareness and Education training session. This training has been offered in the past, is offered from time to time and, if determined to be appropriate for this solicitation, will be offered again to the pre-qualified firms at a time and location to be determined at a later date.

Each Respondent, and each participant in a joint venture, if a joint venture is a Respondent, shall designate **at least one** Security Information Manager ("**SIM**") responsible for identifying members of their team who will need electronic access to documents (generally, via Livelink) and for ensuring that those members have passed the requisite background checks and have completed the requisite Livelink access forms. SIMs shall be required to maintain their firm's Livelink user account access list. In addition, the SIM shall identify an individual who will be trained by the Port Authority in the use of Livelink and that individual will subsequently be responsible for training the Respondent's team.

For each SIM, please submit the following information:

(1) Full legal name

- (2) Title
- (3) Physical address
- (4) Email address
- (5) Phone number and fax number and
- (6) Proof that the SIM has been issued a SWAC credential.*

* If your firm’s designated SIM has been issued a SWAC credential, submit a copy of the face of the SWAC card with your response. While firms are not required to have a SIM with SWAC at the time of RTQ submission, you are highly encouraged to do so. Firms may be asked to supplement their responses to provide proof of issuance of a SWAC credential after they are notified of their pre-qualification determination.

(b) Checklist for Project Team

You must submit a Microsoft spreadsheet showing the status, at the time of the RTQ submission, of your firm’s team for this project with respect to information security requirements. The spreadsheet must list all persons at your firm that may require access to Port Authority Confidential or Confidential and Privileged Information, and must set forth their status as to whether they have (1) undergone Port Authority Information Security Training; (2) executed a Port Authority Non-Disclosure Agreement (“NDA”); (3) executed a Port Authority Exhibit A to the a NDA; (4) executed an Exhibit B to the NDA; and (5) been issued a SWAC credential, if required.

Example Spreadsheet Illustration:

Name	Trained	NDA	Exhibit A (to NDA)	Exhibit B (to NDA)	SWAC
Jason Jones (Principal, C.E.O.)		1/31/2013	1/31/2013		
Noah Jacobs (Estimator)	2/12/2013		1/13/2013		Yes
Rodney Manning (SIM)	1/12/2013		1/12/2013		Yes
Franklyn Benjamin, P.E. (Subcontractor)	2/12/2013			2/15/2013	

7. Non-Disclosure and Confidentiality Agreement and Acknowledgements

By submitting your firm’s pre-qualifications to the Authority in accordance with this RTQ, your firm acknowledges and understands that if your firm becomes pre-qualified under this RTQ, it will be required to execute a Non-Disclosure and Confidentiality Agreement and any required Acknowledgments prior to receiving any Confidential or Confidential and Privileged documents in accordance with the issuance of bid documents.

8. Background Qualification Questionnaire

The Port Authority has implemented a Project Corruption Prevention Program (“PCPP”) for this Project. One of the components of the PCPP is contractor and vendor screening, designed to ensure that, in addition to demonstrated records of quality performance and solid financial capacities, firms awarded contracts for work on Port Authority Projects possess high ethical standards and records of law abiding

conduct. Screening is performed through the use of a background qualification questionnaire package (“BQQP”). This solicitation requires each Respondent to complete and submit a BQQP as part of its RTQ. In addition, Respondents will also be required to ensure that their respective subcontractors, subconsultants and vendors, of all tiers, also complete and submit BQQPs.

The BQQP document may be downloaded at:

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>

IV.SUBMISSION INSTRUCTIONS

Respondents must clearly indicate the RTQ#45952 Contract-PAT024.002 and Title (“PATH Exchange Place Station Underwater Netting”) on the outside of any package or document submitted in connection with this Contract.

The Respondent shall submit six (6) copies of the required pre-qualification information or, preferably, one (1) hard copy and six (6) copies in CD-Rom/flash format to sallen@panynj.gov in sufficient time so that PATH receives it no later than 4:00PM on **June 1, 2016.**

PLEASE NOTE THE FOLLOWING

Submissions must be delivered in sealed envelopes and/or packages.

The Procurement Department is located at 4 World Trade Center (4 WTC), located at 150 Greenwich St., 21st Floor, New York, New York, 10007.

PLEASE READ THE FOLLOWING DELIVERY REQUIREMENTS CAREFULLY.

Bidders assume all responsibility for delays or problems in delivery.

Submissions will be received at:
The Port Authority of New York and New Jersey Attention: Proposal Custodian Procurement Department 4 World Trade Center 150 Greenwich Street, 21st Floor New York, NY 10007
At this address, proposals will be accepted only when submitted via the United States Postal Service, UPS or hand delivery. Clearly mark the solicitation number on the outermost package.

- A. 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.
- B. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited.
- C. Express carrier deliveries by commercial vehicles may be made only 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.

- D. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated.
- E. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with VSC procedures. If applicable, the specific solicitation document will include that information.
- F. The Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.
- G. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal as provided above. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact discs.
- H. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- I. Provide the address of your firm to which any written correspondence should be sent.
- J. The cover of your submittal must include the RTQ Contract Number (as stated above) and the title. The Authority assumes no responsibility for delays caused by any delivery services.
- K. If your proposal is to be hand-delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted. It is necessary to carry valid photo identification when attempting to gain access into the building to hand-deliver proposals. Late submittals may be rejected.

Any questions concerning this RTQ shall be directed to Sharon Allen at sallen@panynj.gov. Neither Ms. Allen nor any employee of the Port Authority is authorized to interpret the RTQ or give additional information as to its requirements. Such interpretation or additional information will only be given by written addendum to this RTQ.

V. CONFLICT OF INTEREST

If the Respondent or any employee, agent or subcontractor of the Respondent may have, or may give the appearance of having, a possible conflict of interest, the Respondent shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Respondent if, in the Authority's 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.

VI. NOTIFICATION

Notification as to whether a Respondent has been pre-qualified will be made only by a notice in writing, signed by the Chief Procurement Officer or her designated representative on behalf of the Authority and mailed or delivered to the office designated by the Respondent in its response to this RTQ.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

CONTRACTOR'S QUALIFICATION STATEMENT
FOR
RTQ#45952 – REQUEST TO QUALIFY -
PATH EXCHANGE PLACE STATION UNDERWATER NETTING –
CONTRACT PAT-024.002

MAY 2016

A. Contractor's General Business Information

Statement submitted by:

Name of Firm:

Name of Principal:

Business Address:

Telephone No:

Fax No:

E-mail:

Name & Telephone No. of contact person if not individual mentioned above:

Check how bid will be submitted: Single Entity Joint Venture

If a Joint Venture, each participant in such Joint Venture must submit all the information that is required for a single entity.

Indicate which part of the work indicated in Paragraphs II.A and II.B of the attached Request to Qualify Information ("RTQ") you plan on performing with your own forces and what work you plan on subcontracting to another firm.

Work to be performed with own forces:

Work to be performed by sub-contractors:

B. Relevant Experience and Past Performance:

- On **Schedule A**, below, list construction contracts completed by your firm, which document **your firm’s meeting of the requirements indicated in Paragraphs II.A and II.B**. If a joint venture, list each joint venture partner’s projects separately. Indicate if the contract was performed by your firm’s own forces or by a subcontractor. Submit each project on one page in the following format.

SCHEDULE A - CONTRACTS COMPLETED:

Project Name, Location and Description	Owner/ Name, Address & Tel No. *	Design Engineer*	Date Completed	Contract Amount	Percentage of Work Completed by Own Forces **

***Include Name, Address and Phone No. of Reference Contact**

****Indicate amount of Firm’s contract and if work was done as prime contractor**

- On **Schedule B**, below, list the name and qualifications of the individual who will function as the **Project Manager**, as well as those of any other **key construction supervision personnel** to be assigned to the Contract along with the anticipated function and relevant experience of each person in the format below.
Attach resumes.

SCHEDULE B - KEY CONSTRUCTION SUPERVISION PERSONNEL:

Name	Position	Date started with Organization	Date started in Construction	Prior Positions and Experience in Construction

- On **Schedule C**, below, list projects **currently under construction** (**work on hand**) by your firm. If joint venture, list each joint venture partner's projects separately. Please follow format below, one page per contract.

SCHEDULE C - CURRENT WORK ON HAND:

FIRM NAME: _____

Project Name, Location and Description	Owner Name, Address/Tel No.*	Design Engineer	Contract Amount	Scheduled Completion Date and Percentage Complete**

***Include Name, Address and Phone No. of Reference Contact**

****Indicate amount of Firm's contract and if work was done as prime contractor**

SCHEDULE D: CURRENT BIDS SUBMITTED:

FIRM NAME: _____

Project Name, Location and Description	Owner Name, Address & Tel No.*	Design Engineer	Contract Amount	Anticipated award Date/Contract Duration

***Include Name, Address and Phone No. of Reference Contract**

Does your firm have the required certification(s) and/or license(s) required under paragraph III.B.4 of the RTQ, if required?

Yes **No** **Not Applicable**

- If Yes - Submit documentation of required certification(s) and/or license(s)
- If No, indicate how you plan on meeting this requirement:

Has your firm ever failed to complete any construction contract awarded it?

Yes **No**

If yes, describe the circumstances on a separate piece of paper.

In the last five (5) years, has your firm ever failed to substantially complete a contract in a timely manner? **Yes** **No**

If yes, describe the circumstances on a separate piece of paper.

Identify prior contracts that contained stated goals for MBE/WBE participation and how such goals were met or exceeded:

Contract	Stated Goals	Actual % Obtained	Comments

C. Financial Information:

Can your firm provide a Performance and Payment Bond for the full amount required?

Yes **No**

Indicate approximate total bonding capacity: _____

Indicate name of your proposed surety company and name, address and phone number of agent:

➤ Name: _____

➤ Address: _____

➤ Telephone No. _____

- **Submit letter from your surety documenting your ability to submit the required Bond.**

D. Certification

I hereby certify that the information submitted herewith, including attachments, is true to the best of my knowledge and belief.

(Type or print business name of Firm)

By: _____
(Signature of officer of Firm)

(Print name of officer of Firm)

Dated: _____

(Type or print title of officer of Firm)



ATTACHMENT I

AGREEMENT ON TERMS OF DISCUSSION

**RTQ#45952 - PATH EXCHANGE PLACE STATION UNDERWATER NETTING –
CONTRACT PAT-024.002**

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.

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
BETWEEN**

[1]

AND

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made as of this [2] day of [3], [4], by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 4 World Trade Center, 150 Greenwich Street, New York, New York, 10007, and [5] having an office and place of business at [6] (“**Recipient**”).

WHEREAS, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to Recipient Protected Information (as defined below) in connection with PATH EXCHANGE PLACE STATION UNDERWATER NETTING CONTRACT-PAT.024.002] (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

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

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

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

WHEREAS, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures

implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

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

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

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

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

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

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

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

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

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

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

(f) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Protected Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.

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

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

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

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

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

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

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

(a) All Protected Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook, receipt of which is

acknowledged by Recipient and shall be acknowledged in writing by each Related Party by signing the Acknowledgment attached hereto as Exhibit A or Exhibit B, as applicable, and applicable legal requirements. Protected Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

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

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

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

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

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

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

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

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

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

imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain copies of Protected Information (in any format), provided that (a) the Port Authority is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Protected Information.

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

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

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

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

9. **Notices.** Any notice, demand or other communication (each, a “**notice**”) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually

delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

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

Original to the Port Authority: Sharon Allen
The Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street,
Procurement Department, 21st Floor
New York, NY 10007

with a copy to: The Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street, 24th Floor
New York, NY 10007
Attn: General Counsel's Office c/o Caroline Ioannou, Law
DISO

If to the Recipient: _____

with a copy to: _____

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

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

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

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

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

15. **No Liability.** Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

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

RECIPIENT:

Signature: _____

Print Name: [9]

Title: [10]

Date: [11]

EXHIBIT A

ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL

I, [1] (“**Related Party**”), am employed as a(n) [2] by [3]. I have been provided with and have read the Non Disclosure and Confidentiality Agreement between [4] (the “**Recipient**”) and The Port Authority of New York and New Jersey (the “**Port Authority**”) dated [5a] [5b], [5c] (hereinafter the “**Agreement**”), and the Port Authority Handbook attached to the Agreement. I understand that because of my employer’s relationship with [6], both my employer and I may be provided with access to, and/or copies of, sensitive security materials, protected or confidential information. If it is required for me to review or receive Protected Information, as it is defined in the aforementioned Agreement, I acknowledge that I will be bound by each and every term and provision contained therein, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of law and/or Port Authority policies and procedures, as well as for violation of federal and/or state regulations.

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

Signature: _____

Print Name: [7]

Date: [8]

EXHIBIT B

ACKNOWLEDGMENT BY RELATED PARTY ENTITY

The undersigned, [1], is the [2] of [3], a [4] (“**Related Party**”), located at [5], and is duly authorized to execute this Acknowledgment on behalf of the above Related Party. The above Related Party is involved with the functions of [6] in connection with [7] for The Port Authority of New York and New Jersey (the “**Port Authority**”). I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and shall abide by all of the terms, requirements and conditions set forth in the Non Disclosure and Confidentiality Agreement dated [8a] [8b], [8c], between [9] (the “**Recipient**”) and the Port Authority (hereinafter the “**Agreement**”), and by the Port Authority Handbook described in the Agreement. Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Agreement. The Related Party has notice and acknowledges that any breach or violation of such terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signature: _____

Print Name: [10]

Date: [11]

Port Authority Non-Disclosure and Confidentiality Agreement (NDA)
Instructions:

Please fill in the NDA as described below. All original NDA's must be forwarded to the Port Authority contact with a copy to the Port Authority Law Department (as described on Page 8 of the NDA).

Field Form Number	Description of Data to be Entered
[1]	Insert Name of Your Company (All caps)
[2]	Insert Calendar Date
[3]	Insert Month
[4]	Insert Year
[5]	Insert Name of Your Company (All caps)
[6]	Insert Company's full street address (no P.O. boxes) – city, state, and zip code
[7]	Insert Agreement No. or Awarded Contract, Duration of Agreement or Contract, and Official Title of Agreement or Project.
[8a], [8b] & [8c]	Insert Name and address of Port Authority contact
[9]	Print Your Name (Signatory must be a Principal of the Company)
[10]	Print Your Title – (Signatory must be a Principal of the Company)
[11]	Insert Date Signed (Should match date on Page 1)

The NDA signor must also sign an Exhibit A Related Party Individual Acknowledgment. All Prime employees that will come in contact with information must sign an Exhibit A Related Party Individual Acknowledgment.

EXHIBIT A

Port Authority Acknowledgment by Related Party Individual Instructions:

Please fill in the Exhibit A Related Party Individual Acknowledgment as described below. All original Related Party Individual Acknowledgments must be forwarded to the Port Authority contact with a copy to the Port Authority Law Department.

Field Form Number	Description of Data to be Entered
[1]	Insert Your Name
[2]	Insert Your Working Title (i.e. Project Manager, Field Inspector, Civil Engineer, etc.)
[3]	Insert Name of Your Company
[4]	Insert Name of Your Company OR if employed by for Sub-consultant/Sub-contractor insert the <u>Prime Company's Name</u> . (All caps)
[5a], [5b] & [5c]	Insert Month, Date, and Year of the <u>Prime's Company NDA (page1)</u> ,
[6]	Insert "Port Authority" OR if you are an employee of Sub-Consultant/Sub-Contractor, insert the <u>Prime's Company Name</u> .
[7]	Print Your Name
[8]	Insert Date Signed

EXHIBIT B

Port Authority Acknowledgment by Related Party Entity Instructions
(For use by Sub-Consultants or Sub-Contractors ONLY)

Please fill in the Related Party Entity Acknowledgment as described below. All original Related Party Entity Acknowledgments must be forwarded to the Port Authority contact with a copy to the Port Authority Law Department.

Field Form Number	Description of Data to be Entered
[1]	Insert Your Name – (Signatory must be a Principal of the Company)
[2]	Insert Your Title
[3]	Insert Name of Entity (Company Name)
[4]	Insert Type of Entity (Corp., LLC, etc.) and Jurisdiction of Formation (State)
[5]	Insert Full Address of Entity (Company Address)
[6]	Describe Scope of Work of Related Party (Work performing for Prime)
[7]	Describe Project (include Prime’s Agreement Number or Awarded Contract Number and Official Title)
[8a], [8b] & [8c]	Enter Month, Date and Year of the <u>Prime’s Company NDA</u> (page 1).
[9]	Insert Name of <u>Prime Company</u>
[10]	Print Your Name – (Signatory must be a Principal of the Company)
[11]	Insert Date Signed

Sub-Consultant or Sub-contractor that signs Exhibit B must also sign an Exhibit A Acknowledgment. All Sub-Consultant or Sub-contractor employees must sign Exhibit A Acknowledgment.