

**SITE WIDE PROPERTY MANAGEMENT AGREEMENT**

**BETWEEN**

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

**AS OWNER**

**AND**

[\_\_\_\_\_],

**AS SITE WIDE PROPERTY MANAGER**

Dated as of \_\_\_\_\_, [2020]

World Trade Center,  
New York, New York

Neither this draft agreement, nor any other draft agreement, nor any correspondence, writings, communications, or other documents delivered or exchanged between the parties hereto shall be deemed to be an offer or agreement on the terms set forth herein or otherwise, and no agreement shall be binding on either party unless and until executed and delivered by both parties hereto.

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## SITE WIDE PROPERTY MANAGEMENT AGREEMENT

**SITE WIDE PROPERTY MANAGEMENT AGREEMENT** (this “Agreement”) is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by a Compact between the States of New York and New Jersey with consent of the Congress of the United States of America, having an office at 4 World Trade Center, 150 Greenwich Street, New York, New York 10007 (the “Port Authority”), and [\_\_\_\_\_] a [\_\_\_\_\_] having an office at [\_\_\_\_\_] (the “SWPM”; the Port Authority and the SWPM are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### WITNESSETH

#### WHEREAS:

A. Bounded by Vesey Street, West Street (Route 9A), Church Street, and Albany Street in Lower Manhattan, the World Trade Center (the “WTC”) has been redeveloped in accordance with architect Studio Daniel Libeskind’s Master Plan (as the same may be modified from time to time, the “WTC Master Plan”), with only a few capital or development projects remaining on campus.

B. The WTC is generally divided by Greenwich Street into two geographic segments, commonly referred to as the West Bathtub and East Bathtub.

C. The WTC Master Plan, which is largely complete, calls for the construction of five (5) commercial office towers situated around a memorial plaza and sub-grade memorial/museum, to include the following commercial and public uses:

- (i) the National September 11 Memorial and Museum;
- (ii) approximately 9,800,000,000 square feet of office space to be located in five (5) buildings, three (3) of which are complete and occupied;
- (iii) an approximately 455,000 square foot retail complex;
- (iv) the WTC Oculus Transportation Hub;
- (v) the Ronald O. Perelman Performing Arts Center, which is under construction;
- (vi) the St. Nicholas National Shrine, which is under construction;

(vii) various public infrastructure programs, including the Central Chiller Plant, the Power Distribution Center, the Vehicular Roadway Network, the West Bathtub Vehicular Access, and the Below-grade Parking and the Vehicle Security Center; and

(viii) various public plazas and open spaces to be provided at-grade for tenants and visitors, including Liberty Street Park and the WTC's managed streets and pedestrian sidewalks.

D. Portions of the WTC are controlled by various distinct lessee and non-lessee stakeholders ("Stakeholders"), which have varying levels of asset ownership, leasehold interests, and operational responsibilities at the WTC.

E. The Port Authority desires to hire the SWPM to provide management, operations, repair, and maintenance services for various non-exclusive, shared/common areas throughout the WTC controlled by the Port Authority for the benefit of the Stakeholders and to perform the duties, obligations, services, and work set forth in this Agreement.

F. The SWPM desires to provide such duties, obligations, services, and work and to be bound by this Agreement in performance thereof.

**NOW, THEREFORE**, in consideration of the agreements and mutual covenants of the Parties herein contained, the Parties hereto hereby agree as follows:

## **1. DEFINED TERMS**

Capitalized terms used in this Agreement shall have the following meanings:

1.1 "Additional Services" shall have the meaning set forth in Section 4.1 of this Agreement.

1.2 "Affiliate" shall mean as follows: two or more firms are affiliates if a parent owns more than fifty percent (50%) of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

1.3 "Agreement" means this Site Wide Property Management Agreement, including all Exhibits and Schedules annexed hereto, as the same may be amended or modified from time to time.

1.4 "Ancillary Service Contractors" shall mean those contractors, consultants, suppliers, and other vendors contracting directly with the SWPM by executing Ancillary Service Contracts to perform a portion of the Services, and all subcontractors of every tier of such Ancillary Service Contractors, including those entities currently contracting, directly or indirectly, with the predecessor firm that served as the site wide property manager of the WTC immediately prior to the SWPM, and which may be utilized by the SWPM in performing the Services.

1.5 “Ancillary Service Contracts” shall mean those executed contracts defining the rights and responsibilities of the respective Ancillary Service Contractor and the SWPM for the performance by the Ancillary Service Contractor of the Services. All Ancillary Service Contracts shall be in the form to be provided to the SWPM by the Port Authority or otherwise approved by the Port Authority in writing in advance. Any changes to the form of Ancillary Service Contract so provided or approved are subject to the prior written approval of the Port Authority.

1.6 “Annual Business Plan” shall have the meaning set forth in Section **Error! Reference source not found.** of this Agreement.

1.7 “Applicable Procurement Requirements” shall have the meaning set forth in Section 5.3 of this Agreement and set forth on **Exhibit 5** (Applicable Procurement Requirements) to this Agreement. The Applicable Procurement Requirements may be modified by the Port Authority from time to time in its sole discretion by the Port Authority giving notice of such modifications to the SWPM.

1.8 “Approval Threshold” shall have the meaning set forth in Section 5.2A of this Agreement.

1.9 “Anything of Value” shall have the meaning set forth in Section 18.2 of this Agreement.

1.10 “Capital Budget” shall mean the annual capital budget for the Site Wide Managed Budget prepared by the SWPM and approved by the Port Authority in its sole discretion pursuant to Section 4.5.

1.11 “Claims, damages, losses, and expenses” shall have the meaning set forth in Section 9.3 of this Agreement.

1.12 “Contract Amount Cap” shall have the meaning set forth in Section 6.7 of this Agreement.

1.13 “CPI” shall mean the Consumer Price Index for all Urban Consumers; Series Id: CUURA101SA0L2; Not Seasonally Adjusted; New York-Northern New Jersey-Long Island, NY-NJ-CT-PA area; all items less shelter; 1982-1984=100, as published by the Bureau of Labor Statistics of the United States Department of Labor, or if the same is discontinued, converted to a different standard reference base, or otherwise revised or the United States Department of Labor shall cease to publish it, then for the purposes hereof there shall be substituted for such index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the index used in the latest adjustment as the Port Authority in its sole discretion determines.

1.14 “Direct Personnel Costs” shall have the meaning set forth in Section 6.2 of this Agreement and are listed in **Exhibit 8** (Direct Personnel Costs) to this Agreement.

1.15 “East Bathtub REOA” shall mean that certain Second Amended and Restated Reciprocal Easement and Operating Agreement of the East Bathtub of the World Trade Center, executed on November 16, 2006, by and among the Port Authority, WTC Retail LLC (as predecessor-in-interest to WTC Retail Owner LLC, the lessee of the retail portions of the WTC the “Retail Lessee”), 2 World Trade Center LLC (the “Two World Trade Center Lessee”), 3 World Trade Center LLC (the “Three World Trade Center Lessee”), and 4 World Trade Center LLC (the “Four World Trade Center Lessee”), as amended, modified, revised and supplemented by that certain letter agreement, dated as of November 15, 2011, by and among the Port Authority, WTC Retail LLC (as predecessor-in-interest to the Retail Lessee), the Two World Trade Center Lessee, the Three World Trade Center Lessee, and the Four World Trade Center Lessee, and as further supplemented by that certain letter agreement, dated as of June 30, 2020, by and among the Port Authority, the Retail Lessee, and Two World Trade Center Lessee and acknowledged by Three World Trade Center Lessee and Four World Trade Center Lessee, and as the same may be further amended, modified, revised, or supplemented from time to time.

1.16 “Effective Date” shall have the meaning set forth in the introductory paragraph to this Agreement.

1.17 “ERISA” shall mean the Employment Retirement Security Act of 1974.

1.18 “Environmental Requirements” shall mean all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, ‘best management practices plans’, and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

(i) All requirements pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist; and

(ii) All requirements, pertaining to the protection from Hazardous Substances of the health and safety of employees or the public

1.19 “Excluded Areas” shall mean those portions of the WTC which are either in the exclusively possession of the Stakeholders or are areas for which the Net Lessees’ Association (as such term is defined in the East Bathtub REOA) is responsible for the operation, repair, or maintenance thereof pursuant to the East Bathtub REOA, which areas are further described in **Exhibit 1** (Scope of Services) and **Exhibit 1.A** (Site Wide Managed Areas and Stakeholder Managed Areas) to this Agreement.

1.20 “Exhibits” shall mean the exhibits (and attachments thereto) to this Agreement.

1.21 “Four World Trade Center Lessee” shall have the meaning set forth in the defined term for “East Bathtub REOA” for this Agreement.

1.22 “Funding Schedule” shall have the meaning as set forth in Section **Error! Reference source not found.** of this Agreement.

1.23 “Governmental Authority” shall mean the United States of America, the State of New York, the State of New Jersey, the City of New York, and the Port Authority (in its governmental capacity), and any political subdivision, agency, department, commission, board, bureau, or instrumentality thereof and any of any of the foregoing, now existing or hereafter created, having jurisdiction over the WTC or the Parties.

1.24 “Hazardous Substances” shall mean any pollutant, contaminant, toxic or hazardous waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, radon, chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products, fractions, derivatives and constituents thereof, of any kind and in any form, including, but not limited to, oil, petroleum, fuel, fuel oil, sludge, crude oil, gasoline, kerosene, and mixtures of, or waste materials containing any of the foregoing, and other gases, chemicals, materials and substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have or in the future shall be restricted, prohibited, regulated or penalized by any federal, state, county or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations adopted and publications promulgated pursuant thereto.

1.25 “Indemnitees” shall mean the indemnitees listed on **Exhibit 9** (Insurance Requirements) annexed hereto and any other Stakeholders or third parties now or hereafter having an interest in the WTC and designated by the Port Authority by written notice to the SWPM, including but not limited to the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives, and employees.

1.26 “Information Security Handbook” shall mean the handbook issued by the Port Authority relating to the procedures and practices that must be followed by all parties that receive Confidential Information and/or Confidential and Privileged Information disclosed by the Port



Authority with respect to the WTC, as the same may be modified or supplemented from time to time without the approval of the SWPM. A copy of the current edition of the Information Security Handbook is attached hereto as **Exhibit 10** (Port Authority Information Security Handbook).

1.27 “Integrity Monitor” shall have the meaning set forth in Section 17.1 of this Agreement.

1.28 “Intellectual Property Claims” shall have the meaning set forth in Section 11.3 of this Agreement.

1.29 “Intellectual Property Rights” shall have the meaning set forth in Section 11.4 of this Agreement.

1.30 “Investigation” shall mean any inquiries made by any appearance before a grand jury by representatives of the SWPM, any oral or written inquiry, or review of the SWPM’s documents, including, but not limited to, subpoenas, and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of the SWPM by any federal, state, or local criminal prosecuting or other investigative bodies, including inspectors general and temporary commissioners. The term “Investigation” shall also mean any inquiries concerning civil antitrust investigations made by any Governmental Authority. Except for inquiries concerning civil antitrust investigations, the term does not include inquiries made by any Governmental Authority 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.

1.31 “Key Personnel” shall have the meaning set forth in Section 4.3C of this Agreement and are those persons listed in **Exhibit 3** (Key Personnel and Organizational Chart) to this Agreement.

1.32 “Legal Requirements” shall mean any and all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, code, executive orders, and any judicial interpretations thereof, extraordinary as well as ordinary, of all Governmental Authorities, including the American Disabilities Act, the Port Authority Manual, and any law of like import, any memoranda, and letter agreements between the Port Authority and the New York City Fire Department, the New York City Police Department, and the New York City Department of Buildings, and all rules, regulations, and government orders with respect thereto and any of the foregoing relating to environmental matters, Hazardous Materials, public health and safety matters, and any fire rating organizations or insurance entities performing substantially similar functions to the New York Board of Underwriters and the New York Fire Insurance Rating Organization (while such organizations were in existence), in each case, affecting the WTC or the maintenance, use, or occupation thereof.

1.33 “Management Fee” shall have the meaning set forth in Section **Error! Reference source not found.** and as set forth in **Exhibit 7** (Calculation of Management Fee) to this Agreement.

- 1.34 “OFAC” shall mean the Office of Foreign Asset Control.
- 1.35 “Operating Account” shall have the meaning set forth in Section 20.1B of this Agreement.
- 1.36 “Operating Budget” shall mean the annual operating budget for the Site Wide Managed Budget prepared by the SWPM and approved by the Port Authority in its sole discretion pursuant to Section 4.5.
- 1.37 “Overhead” shall mean the ongoing, indirect costs incurred by the SWPM to perform the Services, including, but not limited to, costs and expenses related to general corporate operations, mailing and delivery charges, typing, and expendable office supplies.
- 1.38 “Party” and “Parties” shall have the respective meanings set forth in the first paragraph of this Agreement.
- 1.39 “PATH” shall mean the Port Authority Trans-Hudson Corporation.
- 1.40 “Personnel” shall have the meaning set forth in Section 4.3 of this Agreement.
- 1.41 “Port Authority” shall mean the Port Authority of New York and New Jersey, a body corporate and politic created by compact between the States of New York and New Jersey with the consent of the Congress of the United States of America.
- 1.42 “Port Authority Vendor Code of Ethics” shall have the meaning set forth in Section 14.1 of this Agreement.
- 1.43 “Port Authority Legislation” shall have the meaning set forth in Section 25.14 of this Agreement.
- 1.44 “Port Authority Manual” shall mean, collectively, (i) the Tenant Construction and Alteration Process Manual; (ii) World Trade Center Site Rules and Regulations; and (iii) the World Trade Center Security Guidelines, as all of the foregoing items shall exist as of the Effective Date and as the same may be modified or supplemented from time to time following the Effective Date without the approval of the SWPM.
- 1.45 “Port Authority Representative” shall have the meaning set forth in Section 4.11 of this Agreement.
- 1.46 “Port District” shall mean an area comprised of approximately 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 the State of New York, and the Cities of Newark, Jersey City, Bayonne, Hoboken, and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties in the States of New York and New Jersey.

1.47 “Project Documents” shall have the meaning set forth in Section 4.9 of this Agreement and are listed in **Exhibit 4** (List of Project Documents) to this Agreement.

1.48 “Property Management Expenses” shall have the meaning set forth in Section 6.3A of this Agreement.

1.49 “Retail Lessee” shall have the meaning set forth in the defined term for “East Bathtub REOA” for this Agreement.

1.50 “Revenue Account” shall have the meaning set forth in Section 20.1A this Agreement.

1.51 “Sales Taxes” shall have the meaning set forth in Section 4.7 of this Agreement.

1.52 “Site Wide Managed Areas” shall mean those portions of the WTC excluding the Excluded Areas with respect to which the Services are to be performed, as more particularly described in **Exhibit 1** (Scope of Services). The Port Authority shall have the right to expand or contract the portions of the WTC constituting the Site Wide Managed Areas effective upon notice to the SWPM of such expansion or contraction.

1.53 “SWAC Badge” shall mean a secure work access consortium badge.

1.54 “SWPM” shall have the meaning set forth in the first paragraph of this Agreement.

1.55 “SWPM Onsite Office” shall have the meaning set forth in Section 6.3B of this Agreement, as more particularly described in Section 6.6 of this Agreement and **Exhibit 12** (SWPM Onsite Office).

1.56 “Scope of Services” or “Basic Services” shall have the meaning set forth in Section 4.1 of this Agreement and in **Exhibit 1** (Scope of Services) to this Agreement.

1.57 “Self-Performed Services” shall have the meaning set forth in Section 4.5A of this Agreement.

1.58 “Services” shall have the meaning set forth in Section 4.1 of this Agreement and in **Exhibit 1** (Scope of Services) to this Agreement.

1.59 “Stakeholders” shall have the meaning set forth in Recital paragraph D of this Agreement.

1.60 “Stakeholder Payments” shall have the meaning set forth in Section 4.6 of this Agreement

1.61 “Standard of Performance” shall have the meaning set forth in Section 2.2A of this Agreement.

1.62 “Three World Trade Center Lessee” shall have the meaning set forth in the defined term for “East Bathtub REOA” for this Agreement.

1.63 “Transition Plan” shall have the meaning set forth in Section 4.14 of this Agreement.

1.64 “Two World Trade Center Lessee” shall have the meaning set forth in the defined term for “East Bathtub REOA” for this Agreement.

1.65 “WTC” shall mean to the facility of commerce located in the Borough of Manhattan, City, County, and State of New York as described in Recital paragraph A of this Agreement.

1.66 “WTC Master Plan” shall have the meaning set forth in Recital paragraph A of this Agreement.

## **2. RETENTION; STANDARD OF PERFORMANCE**

2.1 Retention. The Port Authority hereby retains the SWPM to provide the services and perform the obligations required of the SWPM under this Agreement in accordance with the terms and conditions of this Agreement. The SWPM hereby accepts such retention and agrees to continuously manage, operate and maintain the Site Wide Managed Areas throughout the term of this Agreement in an efficient manner and in conformance with the Standard of Performance and the Annual Business Plan and Operating Budget approved by the Port Authority.

### **2.2 Standard of Performance.**

A. The SWPM acknowledges that the WTC is of symbolic and commercial importance that has local, regional, national, and international significance and visibility. The SWPM represents and warrants that it has expert experience in managing mixed-use assets with similar complexity, prominence and prestige located in comparable urban locations. The SWPM shall perform its duties under this Agreement in conformance with its expert experience and with the very highest standards of performance practiced by property managers with substantial and noteworthy experience successfully managing complex, major, multi prime, multi owner, multi-use, prestigious high profile projects in highly dense urban areas (the “Standard of Performance”). Nothing to the contrary in this Agreement shall be construed to limit or erode the Standard of Performance.

B. The SWPM shall consistently devote its best efforts to manage, operate, secure and maintain the Site Wide Managed Areas in a diligent, careful and vigilant, prompt, cost effective manner and shall perform its duties at all times in a manner which is consistent with the Standard of Performance. In performing such duties, the SWPM will act in a fiduciary capacity with respect to the proper protection of and accounting for the Site Wide Managed Areas. The SWPM will deal at “arm’s length” with all third parties (including any Affiliates of the SWPM) and the SWPM will serve the Port Authority’s interests at all times.

2.3 Scope of Authority. The SWPM shall not approve, nor shall the SWPM have any authority to execute or otherwise enter into, on behalf of the Port Authority, any contract, real property lease, lease of equipment, easement, encumbrance, obligation or agreement affecting the Site Wide Managed Areas or any other portion of the WTC, including without limitation, any Ancillary Service Contract, without the express prior written consent of the Port Authority, except as expressly otherwise set forth in this Agreement. This Agreement is not one of general agency by the SWPM for the Port Authority, but one pursuant to which the SWPM is engaged as an independent contractor, and in that respect has only a limited agency as specifically set forth in this Agreement.

### **3. TERM OF AGREEMENT; TERMINATION**

3.1 Term. The initial term of this Agreement will be for a period of seven (7) years commencing on the Effective Date. The Port Authority shall have the option, in its sole discretion, to renew the term of this Agreement for successive periods of one (1) year each (but in no event for more than three (3) years following expiration of the initial term), by notifying the SWPM of such renewal at least thirty (30) days prior to the end of the then existing term. In addition, the Port Authority shall have the right to extend the term of this Agreement for a period of one-hundred twenty (120) days following the end of the initial seven (7) year term or following the end of any of the three (3) one (1) year extensions provided for in the preceding sentence, by notifying the SWPM of such renewal at least thirty (30) days prior to the end of the then existing term.

3.2 Termination With or Without Cause. Notwithstanding the foregoing, and in addition to any other right to terminate this Agreement set forth herein, the Port Authority may terminate this Agreement: (i) for cause, immediately upon notice at any time, (ii) without cause, by giving the SWPM at least ninety (90) days prior written notice, or (iii) if any of the following senior management shall cease to provide the active management required under this Agreement or shall be convicted of a felony: [applicable members of senior management of the SWPM to be inserted here].

3.3 Termination Without Notice. Upon the occurrence of any one or more of the following events, at the sole election of the Port Authority and without further notice to the SWPM, this Agreement will be deemed terminated: (i) dissolution or termination of the corporate or partnership existence of the SWPM, whether by merger, consolidation or otherwise; (ii) death of the SWPM, if an individual, or death of a general partner of the SWPM, if a partnership; (iii) cessation on the SWPM's part to do business; (iv) failure of the SWPM to deal properly with and promptly account for funds with respect to the Site Wide Managed Areas or the Port Authority; (v) the termination of the SWPM (or an Affiliate thereof) for cause under any other property management agreement entered into between the SWPM and a third party; (vi) committing of fraud by the SWPM (or any employee) to the Port Authority; (vii) the filing of proceedings by or against the SWPM or any general partner or parent corporation of the SWPM for bankruptcy, insolvency, reorganization, or other relief of debtors; or (viii) any assignment for the benefit of the creditors of the SWPM. In addition, at the Port Authority's sole election and without further notice to the SWPM, this Agreement shall terminate upon the occurrence of any of the following events

with respect to the Site Wide Managed Areas: (a) condemnation of the Site Wide Managed Areas or such substantial portion of the Site Wide Managed Areas that the Port Authority determines the remainder cannot be operated in a commercially reasonable manner or (b) the destruction of all or substantially all of the improvements located on the Site Wide Managed Areas or such a substantial portion thereof that the Port Authority determines that the remainder thereof cannot continue to be operated in a commercially reasonable manner, and the Port Authority determines in its sole discretion not to rebuild such improvements.

3.4 Final Accounting. Upon the expiration or termination of this Agreement, the SWPM will deliver to the Port Authority the following with respect to the Site Wide Managed Areas:

A. A final accounting, reflecting the balance of income and expenses of the Site Wide Managed Areas as of the date of expiration or termination, to be delivered within thirty (30) days after such expiration or termination;

B. Any balance of monies of the Port Authority held by the SWPM with respect to the Site Wide Managed Areas, to be delivered immediately upon such expiration or termination; and

C. All records, contracts, leases, correspondence, plans, specifications, drawings, files, receipts for deposits, unpaid bills and other papers, documents or computer disks or information which pertain in any way to the Site Wide Managed Areas, to be delivered immediately upon such expiration or termination.

3.5 Obligation to Vacate; Orderly Transition. Upon the expiration or termination of this Agreement, the SWPM promptly will vacate any office space provided by the Port Authority for the location of the SWPM's personnel and will restore any such office space to the same condition that it was in at the time such space was first provided to the SWPM or to such better condition as may have existed at any time during the term of this Agreement. Upon the expiration or termination of this Agreement, the SWPM will cooperate in all respects and use its best efforts in order to affect an orderly transition of the employment and management functions to a new SWPM. Without limiting the generality of the foregoing, upon termination, cancellation, or expiration of this Agreement as provided above, the SWPM shall immediately surrender to the Port Authority, or its nominee, custody and possession of the Site Wide Managed Areas, as well as all keys, tools, equipment, and all security devices; deliver all funds held by the SWPM relating to the Site Wide Managed Areas to the Port Authority in accordance with the Port Authority's instructions; and within five (5) business days following such termination or expiration deliver to the Port Authority, or its nominee all books, computer software, electronic data, documents, tenant leases, and records theretofore maintained by the SWPM with respect to the Site Wide Managed Areas, together with all inventory in its possession or control belonging to the Port Authority or received by the SWPM pursuant to the terms of this Agreement. In addition, the SWPM shall assign, transfer, or convey to the Port Authority, or its nominee, all leases, service contracts, and inventory relating to or used in the operation and maintenance of the Site Wide Managed Areas,

except any personal property which was paid for with the SWPM's own funds and not reimbursed by the Port Authority. The SWPM shall render a full accounting to the Port Authority, including all statements and reports in the forms herein required, and confirmation of ending inventory for the final period ending with the termination date. The SWPM shall facilitate the hiring by the Port Authority or the Port Authority's designee of any on-site staff at the level of building the SWPM and assistant engineer or higher as requested in writing by the Port Authority. The SWPM shall, at its sole cost and expense and within ten (10) days of such termination, expiration, or cancellation, remove all management and leasing signs on the Site Wide Managed Areas whether or not previously approved by the Port Authority which contain references to the SWPM or its Affiliates, and restore the affected areas of the Site Wide Managed Areas to the condition which existed immediately prior to the Effective Date or the date on which such signage was initially installed. In the event the SWPM fails to affect such removal and restoration within ten (10) days, the Port Authority may affect such removal and restoration at the cost and expense of the SWPM. Such cost and expense shall be deducted from any sums due or owing the SWPM or at the Port Authority's discretion may be payable by the SWPM to the Port Authority upon demand. The SWPM shall, for a period of sixty (60) days following such termination or expiration, designate and make available to the Port Authority or its designee for reasonable periods and upon reasonable prior notice, one or more of its senior executives familiar with the Site Wide Managed Areas to consult with and advise the Port Authority, or its nominee, regarding the administration, financial, construction, operation, and maintenance records and history of the Site Wide Managed Areas. The SWPM expressly waives any right it may have to set off any claim, including, but not limited to, any claim for Management Fee or reimbursements against any of the Port Authority's funds held by the SWPM or to which the SWPM has access by reason of this Agreement. The SWPM's obligations under Section 3.4 and this Section 3.5 shall survive the expiration or termination of this Agreement. Termination of this Agreement under the foregoing provisions or any of the provisions of this Agreement by the Port Authority shall not release the SWPM from liability for failure to perform any of the SWPM's duties.

#### **4. SWPM'S RESPONSIBILITIES**

4.1 Performance of Services. The services to be provided by the SWPM during the term of this Agreement (collectively, the "Services") shall consist of (i) all of the services (including, without limitation, the Property Management Services) described in the scope of services (the "Scope of Services") annexed to this Agreement as **Exhibit 1** (Scope of Services), ("Basic Services"), and (ii) such additional services that the Port Authority may require in accordance with this Agreement ("Additional Services"), the parameters of which are further described in Section 6.4 hereof.

4.2 Direct Responsibility to Port Authority. The SWPM shall be directly responsible to the Port Authority for all of the SWPM's duties and responsibilities set forth in this Agreement; in turn, the SWPM shall cause Ancillary Service Contractors to be responsible for all such duties and obligations set forth in their respective Ancillary Service Contracts. Such duties and obligations include, but are not limited to, (i) performing the Services in accordance with this Agreement, (ii) complying with the Standard of Performance set forth in Section 2.2 above, (iii)

maintaining written standard operating procedures, as applicable, in order to inspect the SWPM's books and records, test internal controls in place to administer the Agreement, and recommend corrective actions, and (iv) complying with all of the Legal Requirements applicable to the performance of the Services.

#### 4.3 Employees.

##### A. General Requirements.

(i) The SWPM shall have in its employ at all times such experienced personnel as may be necessary to accomplish the efficient and successful operation and management of the Site Wide Managed Areas, including without limitation, experienced senior supervisory executives satisfactory to the Port Authority ("Personnel"). The SWPM shall make available, for the benefit of the Port Authority, the full extent of the best professional judgment, experience, and advice of the most qualified employees and members of the SWPM's organization and staff with respect to the policies to be pursued to fulfill its duties herein. All Personnel shall be employees of the SWPM or Ancillary Service Contractors, and not employees of the Port Authority. Subject to reimbursement of the SWPM pursuant to Sections 6.2 and 6.3 of this Agreement, all matters pertaining to the employment, supervision, compensation, promotion, and discharge of such Personnel will be the sole responsibility of the SWPM, and the Port Authority will have no liability with respect thereto. The SWPM expressly acknowledges that it shall be required to provide staffing in the event of any fires, casualties, emergencies, or other force majeure events notwithstanding the occurrence of such events.

(ii) The SWPM will negotiate with any union lawfully entitled to represent any such Personnel and will execute in its own name, and not as agent for the Port Authority, any collective bargaining agreements or labor contracts covering such personnel. Further, the SWPM shall cooperate with the Port Authority (and any successor owner of the WTC) in transitioning any collective bargaining agreements or other union contracts (and all plans related thereto) to the Port Authority, a successor owner of the WTC or any replacement property manager.

(iii) The SWPM will comply fully with all applicable Legal Requirements relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. The SWPM represents that it is and shall continue to be an equal opportunity employer and agrees to advertise as such.

(iv) Unless the Port Authority directs otherwise through prior written approval, Personnel shall not take more than thirty (30) days of vacation per year while performing the Services during the term of this Agreement.

B. Schedule of Employees. Attached hereto as Exhibit 2 (Employee Schedule) is a schedule of employees to be employed on-site in the direct management and operation of the Site Wide Managed Areas, and of off-site employees providing services for the



management of the Site Wide Managed Areas, including the names of such employees, their respective titles and salary ranges. All on-site employees (who are identified in Section A of **Exhibit 2** (Employee Schedule)) shall spend one hundred (100%) percent of their working time on matters related to the Site Wide Managed Areas. As noted in Sections B and C of **Exhibit 2** (Employee Schedule), no portion of the compensation of any offsite personnel or any senior management or principal of the SWPM shall be includible as a Property Management Expense. Employees whose compensation may not be charged (in whole or in part) include, but are not limited to, general or supervising management personnel, accountants, and auditors. Notwithstanding anything in this Agreement to the contrary, the Site Wide Managed Areas manager and all other on-site staff must be approved by the Port Authority in advance, following the submittal by the SWPM of details on the proposed property manager's and staff's background and experience. **Exhibit 2** (Employee Schedule) shall be updated promptly by the SWPM to provide current information at all times and such updated **Exhibit 2** (Employee Schedule) shall be delivered by the SWPM to the Port Authority. All changes to **Exhibit 2** (Employee Schedule) and all changes to staffing and staff allocations are subject to the prior approval of the Port Authority. Additionally, **Exhibit 2** (Employee Schedule) also indicates which employees are bonded or are covered under the SWPM's comprehensive crime insurance policy. The SWPM shall discharge and/or cause to be discharged from the Site Wide Managed Areas all persons unnecessary or ineffective in providing or performing the Services and/or the SWPM's duties hereunder consistent with the Standard of Performance. In addition, at the Port Authority's request, the SWPM will terminate the employment at the WTC of any employee of the SWPM who in the Port Authority's sole judgment does not meet the standards of the Port Authority for the operation of the Site Wide Managed Areas, to the extent permitted by law and applicable collective bargaining agreements.

C. **Key Personnel.** The SWPM shall hire and assign sufficient numbers of appropriately experienced (a) full-time personnel, and (b) part-time personnel based at the SWPM's home office, to carry out the duties under this Agreement and in accordance with the terms of such Agreement; provided, however, that (i) the SWPM shall assign personnel to the Site Wide Managed Areas only after such personnel are approved by the Port Authority in writing; and (ii) such personnel assigned to the Site Wide Managed Areas shall begin performing the Services and bill time to the Site Wide Managed Areas only after the Port Authority has so approved in writing ("**Key Personnel**"), which Key Personnel are identified in **Exhibit 3** (Key Personnel). Key Personnel who are dedicated to the Site Wide Managed Areas on a full-time basis shall continue performing the Services on a full-time basis for the Site Wide Managed Areas unless a member of such Key Personnel is deceased, goes on medical leave, voluntarily leaves the employment of the SWPM, or is terminated for cause. The SWPM shall neither terminate the employment of full-time Key Personnel nor reassign full-time Key Personnel to work on any other project other than the Site Wide Managed Areas for any other reason without the prior written consent of the Port Authority. No Key Personnel shall (i) perform any other services for their employer other than those directly related to the performance of the Services in accordance with this Agreement, or (ii) meet with any other Stakeholders with respect to any matters without the prior approval of the Port Authority (which approval may be conditioned, among other things, on the right of the Port Authority to have a representative present at such meetings).

D. Port Authority's Right to Remove or Replace Personnel. The Port Authority shall have the right in its sole and absolute discretion to direct the SWPM to remove from or replace any Personnel.

E. Port Authority Approval for Certain Staff. At no time during the term of this Agreement shall the SWPM include on its staff anyone who is currently or has previously worked on a Port Authority project at the WTC or otherwise, unless (i) such arrangement complies with the provisions of Section 19 (Conflict of Interest) of this Agreement, and (ii) the SWPM obtains the Port Authority's written approval prior to the actual use of those individuals, which approval shall be granted or denied at the discretion of the Port Authority.

F. Labor Provisions; Labor Harmony.

(i) The SWPM shall at all times during the term of this Agreement be responsible for ascertaining whether any union then represented or not represented at the WTC is claiming or is likely to claim jurisdiction over any aspect of the Services to be performed hereunder.

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

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

of the rights granted to it in this Section shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Agreement or a waiver of any rights or remedies which may be available to the Port Authority under this Agreement or otherwise.

(iv) During the time that the SWPM is performing the Services, other persons may be engaged in other operations on or about the WTC including (i) the Port Authority operations team for the WTC, (ii) persons contributing to pedestrian, bus and vehicular traffic, and (iii) other contractors performing work at the WTC, all of which shall remain uninterrupted. The SWPM shall so plan and conduct its operations as to work in harmony with others engaged at the WTC and not to delay, endanger, or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

G. No personnel employed either by the SWPM or by any contractor or consultant engaged by the SWPM in connection with the performance of the Services shall perform work or services at the WTC for or on behalf of any other Stakeholder other than the Port Authority without the prior written consent of the Port Authority in each instance.

H. No public events, shows, performances, promotions, or other similar gatherings may be held at the Site Wide Managed Areas or authorized by the SWPM without the prior written approval of the Port Authority in each instance, and such approval shall be made at the Port Authority's sole discretion.

#### 4.4 Compliance with Legal Requirements and Related Matters.

A. The SWPM will be responsible at the Port Authority's expense (except as otherwise provided in this Agreement), for full compliance with all applicable Legal Requirements relative to the use, operation, repair, and maintenance of the Site Wide Managed Areas. The SWPM, with the prior approval of the Port Authority, shall promptly remedy any violation of any such law, ordinance, rule, regulation, or order which comes to its attention; provided that in the case of emergency, or imminent threat to the health, safety, or welfare of tenants or any other person, or if so ordered by a governmental authority, the SWPM shall promptly remedy such violation and notify the Port Authority as soon as practical. The SWPM shall notify the Port Authority and recommend any repairs or changes to the Site Wide Managed Areas or operation thereof which will be required under proposed changes in laws, ordinances, rules, and regulations (such as the Americans with Disabilities Act); provided, however, that the cost of any such repairs or changes shall be an expense of the SWPM.

B. Except as otherwise specifically directed by the Port Authority, the SWPM shall be responsible for full compliance with all contracts and agreements relating to the Site Wide Managed Areas, including, without limitation, the East Bathtub REOA and all other Project Documents and any easement agreement, operating agreement, ground lease, space lease, mortgage, deed of trust, or other security instrument now or hereafter affecting the Site Wide Managed Areas; provided, however, that such compliance shall be an expense of the Port

Authority and the SWPM will not be required to make any payment from its own funds or incur any individual liability.

C. The SWPM shall, at the SWPM's individual expense, maintain its corporate existence and good standing and obtain and maintain in effect all licenses and permits necessary or desirable to carry out its duties hereunder.

#### 4.5 Annual Business Plan; Budgets.

A. For each calendar year during which this Agreement is in effect, the SWPM shall prepare and submit to the Port Authority for the Port Authority's approval, (i) a proposed annual business plan (the "Annual Business Plan"), (ii) a proposed operating budget reflecting anticipated expenses and expenditures (controllable and non-controllable) for providing the Services (the "Operating Budget"), (iii) a proposed capital budget for capital projects being recommended by the SWPM for replacements of aging or damaged equipment, upgrades due to changes in technology or building of local code, or Stakeholder-requested services (the "Capital Budget"), and (iv) a proposed schedule for the periodic funding by the Port Authority of the anticipated expenses and expenditures contained in the Operating Budget and Capital Budget (the "Funding Schedule"). The Annual Business Plan, Operating Budget, and Capital Budget shall (x) be in such form and contain such information and level of detail as the Port Authority shall require, (y) contain forecasts based on timeframes requested by the Port Authority, and (z) be submitted by the SWPM to the Port Authority for its approval (in its sole discretion) not later than one-hundred eighty (180) days prior to the commencement of the calendar year in question. If requested by the Port Authority, the SWPM shall revise the Annual Business Plan, Operating Budget, and Capital Budget so as to make the same acceptable to the Port Authority and resubmit the same for approval by the Port Authority within ten (10) days after such Port Authority request for revisions. The Operating Budget and Capital Budget shall contain a contingency for each line item in an amount approved by the Port Authority in its sole discretion, and all amounts allocated as a contingency for each line item shall be specifically identified in each of the Operating Budget and the Capital Budget.

B. The Annual Business Plan shall provide for the operation, repair, and maintenance of the Site Wide Managed Areas and shall identify those Services to be performed by employees of the SWPM ("Self-Performed Services") and those Services to be performed by one or more Ancillary Service Contractors.

C. The SWPM agrees to use its best efforts to fulfill the goals established in the approved Annual Business Plan and to ensure that the actual costs of maintaining and operating the Site Wide Managed Areas do not exceed the approved Operating Budget either in total or in any one accounting category. All actual expenses must be charged to the proper account on a basis consistent with the Operating Budget classifications.

D. No expense may be reclassified except as needed to correct an inadvertent error. Without limiting the foregoing, the SWPM shall not be permitted to reallocate cost savings or contingencies between line items in any Operating Budget or Capital Budget without the prior

written approval of the Port Authority in each instance. The SWPM shall immediately report to the Port Authority any circumstances and secure the Port Authority's prior written approval for any expenditure, that will result (or is reasonably likely to result) in any variance of the annual budgeted amount in any one or more accounting categories of the Operating Budget. The SWPM shall also inform the Port Authority promptly of any other significant costs, expenses, or income that were not reflected in the Operating Budget.

E. In the event that the Port Authority has not approved the Operating Budget for the Site Wide Managed Areas in any year, the SWPM shall cause the Site Wide Managed Areas to be operated in accordance with the Operating Budget approved by the Port Authority for the prior year, unless the Port Authority has approved a portion of the Operating Budget submitted by the SWPM for the current year (or has pre-approved increases in any budgeted items for the current year), in which case the SWPM shall cause the Site Wide Managed Areas to be operated in accordance with the portion of the Operating Budget approved for the current year (including any such preapproved increases) and in accordance with the provisions of the Operating Budget approved for the prior year for all items not so approved for the current year. No operating expenditures shall be made by the SWPM unless specifically provided for in the approved Operating Budget for the period.

F. The execution and implementation of capital projects pursuant to the Capital Budget (other than those which are in the nature of preventative maintenance or are otherwise required to extend the useful life of improvements or equipment) are not part of Basic Services, but the Port Authority may require (in its sole discretion) that same be performed as an Additional Service.

G. Within one (1) year following the Effective Date, the SWPM shall prepare and submit to the Port Authority (and thereafter update annually) a fifteen (15) year capital replacement plan covering all improvements, facilities, and equipment managed in connection with the performance of the Services.

H. Within six (6) months following the Effective Date, the SWPM shall prepare and submit to the Port Authority a detailed operating plan identifying how to operate the WTC more efficiently.

4.6 Billing and Collection of Common Area Maintenance and Utility Charges. As part of the Services and as provided in the Scope of Services, the SWPM shall be responsible for the timely billing and collection of all common area maintenance and utility charges and fees (and such other charges and fees as the Port Authority may designate from time to time by notice to the SWPM, which may include payments in lieu of taxes and charges related to "business improvement districts" located in the City of New York) (collectively, "Stakeholder Payments") from all Stakeholders in accordance with the requirements of the WTC net leases and any other applicable Project Documents. The SWPM shall take all proper and necessary action to collect all Stakeholder Payments pursuant to and any all applicable Project Documents (including the imposition of interest and late payment penalties as provided thereunder); provided, however that

the SWPM shall not commence any non-payment or other legal proceedings or arbitrations against any Stakeholders unless and until so directed in writing by the Port Authority. All Stakeholder Payments collected by the SWPM shall be immediately deposited into the Revenue Account established pursuant to Section 20.1 hereof.

4.7 Sales Taxes. Purchases of the 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”). The SWPM shall not include Sales Taxes in the price charged to the Port Authority for the Services under this Agreement. Unless the Port Authority directs otherwise, the SWPM shall not be permitted to utilize the Port Authority’s exemption from Sales Taxes for any tangible personal property purchases or for any other purchases the SWPM makes related to the Services, including, without limitation, rental charges incurred by the SWPM for equipment with respect to the performance or procurement of any Services.

4.8 Notice by the SWPM. The SWPM shall use best efforts to promptly give notice to the Port Authority upon becoming aware of the following:

A. Any act, omission, event, or occurrence that might reasonably be anticipated to result in the assertion of a claim, lien, or other demand against the Port Authority, the SWPM, or any of Ancillary Service Contractors arising out of the performances of the Services under this Agreement;

B. Any claim, demand, or request asserted, filed, or made, or that the SWPM anticipates may be asserted, filed, or made, for extensions to time or for additional compensation with respect to Services rendered, including, without limitation, claims of Ancillary Service Contractors with respect to Services.

4.9 Project Documents. A list of documents that are relevant to the WTC and may impact the SWPM’s performance of the Services are set forth on **Exhibit 4** (List of Project Documents) annexed hereto and are collectively referred to as “Project Documents.” The SWPM represents to the Port Authority that the SWPM has received and reviewed copies of, and is familiar with, the terms and conditions of the Project Documents. The Port Authority may add to the list of Project Documents at any time and from time to time and shall deliver to the SWPM a copy of any documents added to the list. Except as may otherwise be directed by the Port Authority in writing from time to time, the SWPM shall be responsible for performing the Services in a manner which complies with all applicable requirements of the Project Documents.

4.10 Cooperation and Coordination. The SWPM shall cooperate fully with, and coordinate performance of the Services with, other persons or entities performing services for the Port Authority or others with respect to the redevelopment of the WTC, including, without limitation, as follows:

A. Whenever the cooperation and assistance of the SWPM is required to enable Stakeholders or any contractors or other third parties working at the WTC to perform their

obligations with respect to the management of the WTC, then the SWPM shall cooperate with and assist them in good faith.

B. The SWPM shall coordinate the performance of the Services with the activities of all Stakeholders, the Port Authority, and any contractors or other third parties working at the WTC. The SWPM shall synchronize the performance of the Services with the performance of activities of the foregoing persons or entities, each with the other, so that all activities are performed in a harmonious manner. The SWPM shall review the work of others or facilitate a joint review among relevant parties and shall provide that the activities of all shall be carried out in a proper and appropriate sequence for the best interest of the Port Authority. The SWPM shall cooperate fully with other persons or entities performing services or working at the WTC.

C. The SWPM shall cooperate fully with the Port Authority's Inspector General and Audit Department in providing access to all personnel and records related to the performance of this Agreement. Failure to comply with this provision shall constitute a material breach of this Agreement.

4.11 Port Authority Representative. For purposes of this Agreement, approval of the Port Authority means approval of Port Authority Representative or its designee(s). The term the "Port Authority Representative" shall mean the Director of the World Trade Center Department or his or her designee(s). The Port Authority Representative is the only representative of the Port Authority authorized to act, or receive, on behalf of the Port Authority with respect to any duty, obligation, notice, or other action set forth in this Agreement. The Port Authority, at its sole discretion, may change the Port Authority Representative upon written notice to the SWPM in accordance with the provisions of Section 24 of this Agreement. Any reference to the Port Authority's approval, discretion, consent, action, review, or otherwise, shall be performed by the Port Authority Representative, regardless of whether the Port Authority Representative is explicitly stated in such reference.

4.12 Not an Agreement of Employment or Partnership. In no event shall this Agreement be considered an agreement of employment or partnership between the Port Authority and the SWPM.

4.13 Port Authority's Rights Regarding Performance of the Services. The Port Authority shall have the right, but shall not be obligated, to control or supervise the particular manner or method by which the SWPM performs the Services. Such right shall in no event relieve the SWPM of any duty, responsibility, or obligation whatsoever under this Agreement.

4.14 Transition Plan. As part of Basic Services, the SWPM shall (i) within thirty (30) days after the Effective Date, develop and deliver to the Port Authority, for the Port Authority's approval, a detailed plan for transitioning the facilities and equipment in the Site Wide Managed Areas to operational status under the SWPM (the "Transition Plan") which shall conform to the outline summary annexed hereto as **Exhibit 14** (Outline of Transition Plan), and (ii) following written approval of the Transition Plan by the Port Authority, fully and promptly implement the approved Transition Plan in accordance with its terms.

## 5. ANCILLARY SERVICE CONTRACTS; PROCUREMENT PROCEDURES

5.1 Annual Business Plan. The Annual Business Plan submitted for Port Authority approval shall, *inter alia*, set forth the SWPM's recommendation for those Services to be performed pursuant to Ancillary Service Contracts (which shall be governed by Section 5.2 hereof) and those Services to be self-performed (*i.e.*, performed using employees of the SWPM). The Self-Performed Services shall be limited to those Services which are typically self-performed by managers of similar facilities and shall be otherwise subject to the provisions of this Agreement.

### 5.2 Ancillary Service Contracts.

A. Except for the Self-Performed Services, the SWPM shall enter into Ancillary Service Contracts for the performance of all Services under this Agreement. All Ancillary Service Contracts shall be (i) between Ancillary Service Contractors and the SWPM, (ii) written on a standard contract form that has been approved in advance by the Port Authority, and may include additions, deletions, or other modifications to such form as the Port Authority shall require in its sole and absolute discretion, and (iii) assignable to the Port Authority automatically upon written notice from the Port Authority to each Ancillary Service Contractor. Each Ancillary Service Agreement requiring annual expenditures to the Ancillary Service Contractor which are reasonably expected to equal or exceed TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) (the "Approval Threshold") shall be subject to the prior written approval of the Port Authority. The Port Authority may, in its sole discretion, increase or decrease the Approval Threshold from time to time effective upon the giving of notice to the SWPM of such change.

B. The Ancillary Service Contractors shall be (i) selected through compliance with the procurement procedures set forth in Section 5.3 and **Exhibit 5** (Applicable Procurement Requirements) hereof and (ii) subject to the prior written approval of the Port Authority in its sole discretion.

C. Within ten (10) days following request from the Port Authority from time to time, the SWPM shall provide to the Port Authority a list of all Ancillary Service Contractors then engaged in connection with the performance of the Services and copies of their respective Ancillary Service Contracts.

5.3 Procurement Requirements. All Ancillary Service Contracts and all other contracts for repairs, improvements, and goods and services entered into in connection with the performance of the Services under this Agreement will be awarded in accordance with the procurement requirements set forth on **Exhibit 5** (Applicable Procurement Requirements) annexed hereto (as the same may be modified, amended, or supplemented by the Port Authority from time to time, the "Applicable Procurement Requirements") or otherwise in a manner satisfactory to the Port Authority in its sole discretion.

5.4 Equal Employment Opportunity Programs. In connection with the performance of the Services hereunder, the SWPM shall comply (and shall cause all Ancillary Service Contractors and any other contractors engaged in connection with the performance of the Services to comply)



with (i) all Legal Requirements and all requirements of any Governmental Authority, including, but not limited to, the applicable provisions of the Fair Labor Standards Act, the Fair Employment Practices Law, and the Equal Pay Act, relating to the terms and conditions of employment of any employee who is employed in connection with the Work, and (ii) the provisions of **Exhibit 6** (Minority/Women Business Enterprise Program) annexed hereto regarding the Port Authority's Minority/Women Business Enterprise Program.

#### 5.5 Prevailing Wages.

A. The SWPM shall provide (and shall cause all Ancillary Service Contactors and any other contractors engaged in connection with the performance of the Services to pay or provide) to its workmen, laborers, carpenters, and mechanics (who are employed by the SWPM to work on an hourly or daily basis at any trade or occupation at or about the WTC) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Services are being performed at the time the work in question is being performed and notwithstanding that such rate may be higher than the rate in effect on the date of this Agreement. For the purposes of this Agreement, the annual prevailing wage and supplements schedules for the Services being performed under this Agreement are those published by the Bureau of Labor Law, pursuant to Labor Law §§220 and 230 and New York City Administrative Code §6-109 and located at the New York City Comptroller's website at <https://comptroller.nyc.gov/services/for-the-public/nyc-wage-standards/wage-schedules/>, for the locality and for the period of time in which the work is performed as the same may be amended from time to time. The provisions of this Section are inserted in this Agreement for the benefit of such workmen, laborers, carpenters, and mechanics as well as for the benefit of the Port Authority; and if the SWPM or any Ancillary Service Contractor (or any other contractors engaged in connection with the performance of the Services) shall pay or provide any such workmen, laborers, carpenters, and mechanics less than the rates of wages and supplements above described, such workmen, laborers, carpenters, and mechanics shall have a direct right of action against the SWPM or such Ancillary Service Contractor or other contractor, as the case may be, for the difference between the wages and supplements actually paid or provided and those to which they are entitled under this Section. If such workmen, laborers, carpenters, and mechanics are employed by any subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause (requiring the payment or provision of a least the above minimum, and providing for a cause of action in the event of the subcontractor's failure to pay or provide such wages and supplements) such workmen, laborers, carpenters, and mechanics shall have a direct right of action against the party which contracted such subcontractor (*i.e.*, the SWPM or the Ancillary Service Contractor or other contractor). The Port Authority shall not be a necessary party to any action brought by any workmen, laborers, carpenters, and mechanics to obtain a money judgment against the SWPM or any Ancillary Service Contractor or other contractor pursuant to this Section.

B. Nothing herein contained shall be construed to prevent the SWPM or any Ancillary Service Contractor or other contractor from paying higher rates or providing higher supplements than the minimum hereinbefore described; and nothing herein contained shall be

construed to constitute a representation or guarantee by the Port Authority that the SWPM or any Ancillary Service Contractor or other contractor can obtain workmen, laborers, carpenters, and mechanics for the minimum hereinbefore described.

C. The SWPM's failure to comply with any provision of this Section may be deemed as a substantial breach of this Agreement.

5.6 Defaults under Ancillary Contracts, Project Documents, and Other Similar Documents. The SWPM shall, as and when appropriate in accordance with the Standard of Performance, promptly, upon obtaining knowledge of default or an event of default of any obligation or duty of any person or entity under any Ancillary Services Contract, Project Document, or any other agreement in effect with respect to the WTC with respect to which the SWPM has knowledge, whether monetary or otherwise, notify such person or entity of the nature and extent of such default and shall, unless cured within such period as provided for in the governing agreement, simultaneously provide such person or entity and the Port Authority with written notice of such default or event of default, together with a demand to cure such default. All such notices shall be in form and content consistent with and in compliance with the terms, conditions, and provisions of the applicable agreement and otherwise as the Port Authority may direct or require. In the event the defaulting party fails to cure such default or event of default following notice thereof and the expiration of any applicable grace periods, the SWPM shall promptly advise the Port Authority of such failure and, if directed by the Port Authority in writing, the SWPM shall initiate or commence legal proceedings and prosecute such proceedings through such law firms as Port Authority may, from time to time, designate and/or approve in writing. In all such events, the settlement, discharge, or compromise of any legal action shall require the prior written consent of the Port Authority.

## **6. COMPENSATION; EXPENSE REIMBURSEMENT**

6.1 Management Fee. As full compensation to the SWPM for performance of all of the Services and the SWPM's other obligations under this Agreement, the Port Authority shall pay the SWPM the amounts set forth on **Exhibit 7** (Calculation of Management Fee), subject to the provisions of this Agreement. As set forth on **Exhibit 7** (Calculation of Management Fee), a portion of the Management Fee is contingent upon the SWPM achieving certain performance criteria in connection with the rendition of the Services. Subject to **Exhibit 7** (Calculation of Management Fee), the non-contingent portion of the Management Fee shall be payable in equal monthly installments in accordance with the invoicing procedures set forth in Section 7.1 hereof. In addition to the Management Fee, the SWPM shall be reimbursed for Direct Personnel Costs in accordance with Section 6.2 hereof and Property Management Expenses in accordance with Section 6.3 hereof.

### **6.2 Direct Personnel Costs and Fixed Burden Rate.**

A. The Port Authority shall reimburse the SWPM on a monthly basis, in accordance with this Section, for the salaries and wages attributed to Personnel ("Direct Personnel Costs"); provided that such Personnel have been (i) pre-approved in writing by the Port Authority

to perform the Services and (ii) assigned to perform the Services at the Site Wide Managed Areas. For the reimbursement of salaries and wages paid by the SWPM to Personnel, the Port Authority agrees to provide such reimbursement through the use of the Automated Clearinghouse System or another mutually agreed upon electronic payment system. The salaries and wages referenced in this Section shall refer to salaries (i) actually paid (inclusive of holidays, vacation, and sick time) to Personnel and (ii) approved by the Port Authority, as reflected in **Exhibit 8** (Direct Personnel Costs). The SWPM shall provide backup support for Direct Personnel Costs incurred as the Port Authority may require (including, without limitation, time sheets, sign-in sheets).

B. For purposes of this Section, the Port Authority, at its sole discretion, may annually increase each of the salaries and wages contained within Direct Personnel Costs based on CPI and other factors commencing on the first anniversary of the Effective Date and each anniversary of the Effective Date thereafter for the term of the Agreement. For purposes of this Section, the term “fixed burden rate” shall serve as a fixed percentage rate that accounts for the following full-time employee related costs for the term of the Agreement: (i) associated payroll taxes; (ii) insurance; (iii) workers’ compensation; (iv) life, disability, medical, and health insurance; (v) retirement plans, including pension plans; (vi) social security, Federal Insurance Contributions Act, unemployment, and other employment taxes; and (vii) Overhead. Unless authorized by the Port Authority in advance and in writing, there shall be no additional cost components other than those identified in this Section.

C. Non-Union Exempt Employees. During the term of this Agreement, the Direct Personnel Costs reimbursed by the Port Authority to the SWPM on a monthly basis for the Services performed by non-union exempt employees of the SWPM shall be calculated by multiplying the total amount of annual salaries shown in **Exhibit 8** (Direct Personnel Costs) for non-union exempt employees by [ ] (representing the total costs incurred by non-union exempt employees, using a fixed burden rate of [ ] percent ([ ] %)), and dividing the resulting product by 12 (representing the number of months in a calendar year). During any option period, exercised pursuant to Section 3.1 of this Agreement, the Port Authority, at its sole discretion, may revise the fixed burden rate based on CPI and other factors. The revised, fixed burden rate shall be used for the applicable option period, adjusted and effective on the first date of such option period.

D. Non-Union Non-Exempt Employees. During the term of this Agreement, the Direct Personnel Costs reimbursed by the Port Authority to the SWPM on a monthly basis for the Services performed by non-union non-exempt employees of the SWPM shall be calculated by multiplying the total amount of annual salaries for non-union non-exempt employees shown in **Exhibit 8** (Direct Personnel Costs), by [ ] (representing the total costs incurred by non-union non-exempt employees, using by a fixed burden rate of [ ] percent ([ ] %)) and dividing the resulting product by 12 (representing the number of months in a calendar year). During any option period, exercised pursuant to Section 3.1 of this Agreement, the Port Authority, at its sole discretion, may revise the fixed burden rate based on CPI and other factors. The revised, fixed burden rate shall be used for the applicable option period, adjusted and effective on the first date of such option period.

E. Union Employees. For union employees, the SWPM shall be reimbursed by the Port Authority for actual wages, payroll taxes, and other employee costs stipulated in the relevant labor agreement, and as documented by certified payroll records. Benefits for union employees shall be paid directly to the relevant local union. In the event that the SWPM does not have sufficient funds to pay the expenses for such benefits, the Port Authority agrees to supply the funds required to make such payments within a reasonable period of time to the SWPM. The Port Authority also agrees to reimburse the SWPM for any disbursements for expenses pre-approved by the Port Authority that the SWPM elects to advance on behalf of the Port Authority. However, the SWPM is under no obligation to make any such advances under this Agreement. The SWPM shall submit to Port Authority for its review and approval monthly detailed reports identifying and substantiating any overtime hours completed by all union employees in performance of the Services under this Agreement, and any other additional information as the Port Authority may request.

### 6.3 Property Management Expenses.

A. Reimbursable Expenses. The SWPM shall also be compensated in an amount not to exceed the out of pocket expenses, approved in writing and in advance by the Port Authority Representative, necessarily and reasonably incurred by the SWPM and Ancillary Services Contractors, and actually paid by the SWPM in the performance of the Services (“Property Management Expenses”). Property Management Expenses are expenses that are unique to the performance of the Services under this Agreement and not generally considered part of home office Overhead. Notwithstanding the above, the Port Authority shall pay an amount approved in advance by the Port Authority Representative and computed as follows for the reproduction of submittal drawings, specifications, and reports:

(i) If the SWPM uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the SWPM customarily charges for reproduction of such documents in similar circumstances; or

(ii) If the SWPM uses an outside vendor for the reproduction of such documents, the actual, necessary, and reasonable amounts for the reproduction of such documents.

B. Non-Reimbursable Expenses. Property Management Expenses do not include expenses that are usually and customarily included as part of the SWPM home office Overhead other than any Overhead which is incurred solely at or from the onsite office made available to the SWPM by the Port Authority in order to perform the Services (the “SWPM Onsite Office”). For purposes of this Agreement, Property Management Expenses do not include amounts included in Direct Personnel Costs. Except as otherwise expressly provided in this Agreement, the cost of obtaining required insurance is not included in Property Management Expenses. The following are other examples of expenses which are not reimbursable as Property Management Expenses:

(i) Salaries, wages, payroll taxes, insurance, workers compensation, pension benefits, and any other benefits of the SWPM’s home office employees.

(ii) General accounting and reporting services, including preparation and delivery of the reports required by Sections 4.5 and 21 hereof, such services being within the scope of the SWPM's responsibility to Port Authority and covered by the Management Fee.

(iii) Costs of forms, stationary, ledgers, and other supplies and equipment used in the SWPM's home office;

(iv) Cost or pro rata costs of electronic data processing equipment whether located at the SWPM's home office;

(v) Costs of incentive compensation, profit sharing, or pay advances by the SWPM to the SWPM's employees except to the extent included in the labor "fixed burden rate" set forth in Section 6 and or **Exhibit 8** (Direct Personnel Costs);

(vi) Costs of the SWPM's employees time off from the job in excess of the SWPM's company personal time off (*i.e.*, holidays, vacation days, and personal days) policies including but not limited to family leave, short and long term disability, and leaves of absence.

C. Travel Expenses.

(i) When the SWPM uses its employee's personal vehicle to provide services within the Port District at the specific direction of the Port Authority, the SWPM shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the annual standard mileage rate (as determined by the Internal Revenue Service) per mile traveled by automobile.

(ii) When the SWPM is asked to provide services outside the Port District at the specific direction of the Port Authority, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advance in writing by the Port Authority Representative. If the SWPM chooses to travel each day to an assignment, where it would be more cost effective 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 Port Authority Representative. The total number of reimbursable travel hours (for travel outside the Port District) shall 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: [www.gsa.gov](http://www.gsa.gov).

D. Prior Approval. The SWPM must obtain the Port Authority Representative's written approval prior to making expenditures for out-of-pocket expenses in excess of FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. The SWPM shall substantiate all billings for out of pocket expenses in excess of TWENTY-FIVE DOLLARS

AND ZERO CENTS (\$25.00) with itemized receipts or bills and provide said receipts or bills with the appropriate billing.

E. Dues, Attendance at Seminars and Other Similar Events. The SWPM is expected to and shall, at its sole expense, keep its personnel trained and informed throughout the term of this Agreement in the state-of-the-art techniques and technologies related to the performance of the Services and management services generally. Accordingly, the cost of dues, membership fees in professional organizations, attendance at seminars, trade shows, or similar events, and continuing professional education or training shall not be Property Management Expenses and shall not be reimbursable to the SWPM unless specifically approved by the Port Authority in writing in advance in each instance, such approval to be in the Port Authority's sole discretion.

6.4 Additional Services. The Port Authority reserves the right, at any time, by written order, to require Additional Services not specifically set forth in the Scope of Services to be performed by the SWPM. Additional Services that are within the general scope of this Agreement will not result in an increase in the Management Fee or any other additional compensation to the SWPM. At the direction of the Port Authority, the SWPM shall diligently perform all such Additional Services without delay. The provisions of this Agreement relating to Basic Services shall apply without exception to any Additional Services required and to the performance thereof, except as may be otherwise provided by written agreement between the Port Authority and the SWPM. The Port Authority Representative must authorize in writing any Additional Services or any change to the compensation payable to the SWPM hereunder. Additional Services may be recommended or requested by the SWPM at any time by notice to the Port Authority, subject to approval as provided in this Section.

6.5 Reduction in Services. The Port Authority may from time to time reduce the Services then being provided hereunder effective upon notice to the SWPM. Any such reduction in Services shall result in an equitable reduction in the fees and other compensation payable to the SWPM hereunder.

6.6 SWPM Office. The Port Authority will provide space for the SWPM Onsite Office at the WTC, as more particularly described in **Exhibit 12** (SWPM Onsite Office) annexed hereto, to be outfitted and equipped as described in **Exhibit 12** (SWPM Onsite Office). The SWPM shall not permit the SWPM Onsite Office to be used or occupied by anyone other than the SWPM and its employees, or to be used for any purpose other than the provision of the Services, without the prior written approval of the Port Authority in each instance, such approval to be in the Port Authority's sole discretion.

6.7 Cap on Contract Costs. The SWPM agrees that, notwithstanding anything to the contrary contained in this Agreement, the total of the Management Fee, Direct Personnel Costs, and Property Management Expenses (exclusive of the cost of any Ancillary Service Contracts) in each year during the term of this Agreement shall not exceed the sum of \$[ ] (the "Contract Amount Cap"). The SWPM shall be entirely responsible for the cost of providing the

Services (other than the cost of Ancillary Service Contracts), to the extent such cost exceeds the Contract Amount Cap. The Contract Amount Cap shall be subject to equitable adjustment (up or down, as applicable) in the event of (i) the request by the Port Authority for Additional Services in accordance with Section 6.4 hereof, (ii) any reduction in Services directed by the Port Authority pursuant to Section 6.5 hereof, or (iii) the expansion or contraction of the Site Wide Managed Areas at the direction of the Port Authority hereof.

## **7. FUNDING OF OPERATING COSTS BY PORT AUTHORITY**

7.1 Monthly Invoicing. The Funding Schedule prepared by the SWPM pursuant to Section **Error! Reference source not found.** hereof shall include, without limitation, a mechanism for the monthly invoicing of the Management Fee, Property Management Expenses, and Direct Personnel Costs in accordance with Section 6 of this Agreement, which monthly invoice shall include a reconciliation of the prior month's payments and disbursements for the foregoing items against the amount funded by the Port Authority.

7.2 Periodic Deposits to Operating Account. The Port Authority shall, on a monthly basis or at such other frequency as is specified in the approved Funding Schedule, fund the Operating Account in accordance with the approved Funding Schedule and the invoices prepared pursuant to Section 7.1 hereof. The SWPM shall pay from the Operating Account all expenses properly incurred by the SWPM pursuant to this Agreement and set forth in the approved Operating Budget or approved Capital Budget or otherwise approved by Port Authority, as and when the same are due without delinquency and taking advantage of such discounts as are reasonably available for early payment.

## **8. HAZARDOUS MATERIALS**

8.1 Policy. The SWPM shall not use or permit the use of any Hazardous Substances to be used, generated, stored, or disposed of on, under or about, or transported to or from the Site Wide Managed Areas unless the same is specifically approved in advance by the Port Authority in writing. The SWPM shall, within thirty (30) days of the date of execution of this Agreement, submit for the Port Authority's approval, a proposed environmental policy and shall work diligently with the Port Authority to develop and implement an environmental policy for the Site Wide Managed Areas which meets with the Port Authority's approval. Without limiting the SWPM's obligations elsewhere under this Agreement to comply with all Legal Requirements, which were or at any time are in effect during the term of this Agreement, the SWPM understands and agrees that it shall be obligated, at its sole cost and expense, to comply with, and relieve the Port Authority from compliance with, all Environmental Requirements which are applicable to or which affect the WTC or the Services performed by the SWPM or others with the consent of the SWPM at the WTC. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the SWPM. Any breach of Environmental Requirements shall immediately be reported to the Port Authority and shall be

followed, within appropriate delays given the nature of the breach, by a report to the Port Authority of a proposed remediation strategy to be approved by the Port Authority.

## **9. INDEMNIFICATION AND DAMAGES**

9.1 Indemnification. To the extent permitted by law, the SWPM shall waive any right of contribution and shall indemnify and hold harmless the Indemnitees from and against all claims and demands, just or unjust, of third persons (including the SWPM's agents, servants, officers, representatives, and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with this Agreement and all other services and activities of the SWPM under this Agreement and for all expenses incurred by it and by them in the defense, settlement, or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the SWPM's operations or to its performance of the Services under this Agreement, or arise out of the acts, omissions, or negligence of the SWPM, anyone directly or indirectly employed or engaged by the SWPM (which shall not include Ancillary Service Contractors), the Indemnitees, third persons (including the SWPM's agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Agreement. Such indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Agreement.

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

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



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

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

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

If so directed by the Port Authority, the SWPM shall at its sole cost and expense defend any suit based upon any such claim or demand (even if such suit, claim, or demand is groundless, false, or fraudulent), and in handling such, the SWPM, Ancillary Service Contractors, and each of their respective subcontractors and insurer(s), shall not shall not without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, directors, officers, agents or employees, their Affiliates, successors and/or assigns, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority. The Port Authority is an intended third-party beneficiary of the agreement between the SWPM, and Ancillary Service Contractors, and each of its respective subcontractors and insurers, with the direct right to enforce the agreement with respect to this provision.

9.2 No Limitation on Damages. In any and all claims against the Indemnites by any employee of the SWPM, anyone directly or indirectly employed by the SWPM, or anyone for whose acts the SWPM may be responsible, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type damages, compensation, or benefits payable by or for the SWPM under workers' or workmen's compensation acts, disability benefit acts, or other employee benefits acts.

9.3 Claims, Damages, Losses, and Expenses. The term "claims, damages, losses, and expenses," as these words are used in this Agreement, shall be construed to include, but not be limited to (1): injury or damage arising out of or related to the failure of or use or misuse by the SWPM, its agents, servants, or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished, or loaned by the Port Authority (and its Affiliates or members); and (2) all attorneys' and experts' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in this Agreement.

9.4 No Indemnification Against the Port Authority for Approval of Methods and Other Similar Actions. Neither the requirements of the Port Authority under this Agreement, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the SWPM to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the SWPM of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

9.5 No Claim for Acts of Ancillary Service Contractors or Other Contractors. The SWPM shall have no claim against the Port Authority for damage sustained through any act or omission of any other Ancillary Service Contractor or any other contractors engaged in connection with the performance of the Services.

9.6 Prompt Notice for Claims Against Port Authority. If the SWPM has any claim(s) as a result of a direction, order, or requirement of the Port Authority, the SWPM shall give written notice to the Port Authority no later than five (5) days after the claim arises. Failure of the SWPM to give such notice shall be deemed to be a waiver by the SWPM of all claims for additional compensation or damages by reason thereof.

9.7 Continuation of the Services. The SWPM shall continue performing the Services and otherwise comply with this Agreement during the processing or resolution of any claim, dispute, action, or proceeding unless otherwise directed in writing by the Port Authority.

## **10. INSURANCE**

10.1 Port Authority's Insurance. The Port Authority will obtain and keep in force property and commercial liability insurance, in amounts and with such coverages as the Port Authority shall determine in its sole discretion, covering the Port Authority as primary insured and, with respect to liability insurance, the SWPM as additional insured. Such insurance may be blanketed with other insurance carried by the Port Authority or any Affiliate of the Port Authority, in which case a pro rata share of the premiums will be chargeable to the SWPM as an operating expense. The Port Authority or the Port Authority's insurer will have the exclusive right (chargeable, at the Port Authority's option, as an operating expense of the SWPM) to conduct the defense of any claim, demand, or suit arising out of the ownership, operation, or management of the Site Wide Managed Areas. Nothing herein will be construed as indemnifying the SWPM or its employees, contractors, or agents against any act or omission for which insurance protection is not available or is not required hereunder to be carried by the Port Authority; neither is the foregoing intended to affect the general requirement of this Agreement that the Site Wide Managed Areas will be managed, operated, and maintained in a safe condition and in a proper and careful manner. The SWPM will furnish whatever information is requested by the Port Authority for the purpose of placement of insurance coverages and will aid and cooperate in every way with respect to such insurance and any claim or loss thereunder. The SWPM will notify the Port Authority and the Port Authority's insurance carrier promptly upon becoming aware of any casualty, loss, injury,

claim, or other event which may result in a claim under any insurance policy maintained by the Port Authority. The SWPM will cooperate with the Port Authority and the Port Authority's insurance carrier on loss control inspections, responding to recommendations and other safety issues. The SWPM shall comply with any and all requirements of such insurance companies or its agents.

10.2 SWPM Insurance. The SWPM will maintain, at its sole cost and expense (*i.e.*, and not as a reimbursable Property Management Expense) the insurance coverages set forth on **Exhibit 9** (Insurance Requirements) annexed hereto and shall otherwise comply with the provisions of **Exhibit 9** (Insurance Requirements) with respect thereto. The SWPM will furnish the Port Authority with certificates at inception of this Agreement and when coverage is renewed or replaced, evidencing the aforesaid coverages, which will include provisions to the effect that the Port Authority will be given at least 30 days' prior written notice of cancellation or non-renewal of or any material change in any of the aforesaid policies. The Port Authority will be named as an additional insured with respect to all required insurance policies and as loss payee where appropriate. The SWPM understands and agrees that the insurance coverage required herein by this Agreement shall not limit the extent of the SWPM's responsibilities and liabilities otherwise imposed by this Agreement or by any federal, state, or local law. The SWPM's failure to provide or maintain the insurance protection required by this Agreement does not relieve the SWPM of its obligation to defend and indemnify the Port Authority against any claim or loss which might have been covered by the above described insurance. The cost of insurance required to be maintained by the SWPM pursuant to this Section shall be borne as follows: (i) if the annual premiums for such insurance are less than or equal to FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00), the entire amount of such premiums shall be a reimbursable Property Management Expense, (ii) if the annual premiums for such insurance are more than FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00) but less than or equal to SIX HUNDRED AND FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$650,000.00), the first FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00) of such premiums shall be a reimbursable Property Management Expense and the balance of such premiums shall be borne by the SWPM and the Port Authority shall not reimburse the SWPM for such amount as a Property Management Expense or otherwise, and (iii) if the annual premiums for such insurance are more than SIX HUNDRED AND FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$650,000.00), the first FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00) of such premiums and any portion of such premiums in excess of SIX HUNDRED AND FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$650,000.00) shall be reimbursable Property Management Expenses, and the balance of such premiums (*i.e.*, ONE HUNDRED AND FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00)) shall be borne by the SWPM and not reimbursable by the Port Authority as a Property Management Expense or otherwise.

10.3 Contractors' and Subcontractors' Insurance. The SWPM will require that all parties performing work on or with respect to the Site Wide Managed Areas, including, without limitation, contractors, subcontractors, and service vendors, maintain insurance coverage at such parties' expense, in the minimum amounts set forth in **Exhibit 9** (Insurance Requirements)

annexed hereto and shall otherwise comply with the provisions of **Exhibit 9** (Insurance Requirements) with respect thereto.

10.4 **Requirements.** The minimum A.M. Best's rating of each insurer is A-/X. The SWPM must obtain the Port Authority's written permission to waive any of the above requirements. Higher amounts may be required by the Port Authority if the work to be performed is deemed by the Port Authority to be hazardous. The SWPM will obtain and keep on file a certificate of insurance which shows that each such party is so insured. The Port Authority will be named as an additional insured with respect to Contractors' and Subcontractors' Auto Liability, Commercial General Liability and Excess Liability policies. The SWPM must obtain indemnification and hold harmless provisions in favor of the Port Authority and the SWPM. The above described coverage and limits are at all times subject to the Port Authority's additional insurance requirements relating to subcontractor services involving special hazards and risks, as may be determined by the Port Authority from time to time. The SWPM shall at all times maintain current and accurate records regarding subcontractors' compliance with the insurance requirements set forth herein and take appropriate steps to ensure that all such policies are continuously in force during the time period for the performance of subcontractors' services.

10.5 **Waiver of Subrogation.** In so far as, and to the extent that, the following provision may be effective without invalidating or making it impossible to obtain insurance, the SWPM and the Port Authority agree that with respect to any hazard, liability, casualty, or other loss or claim which is covered by insurance then being carried by either the Port Authority or the SWPM, (a) the party carrying such insurance and suffering such loss releases the other party of and from any and all claims with respect to such loss to the extent of the insurance proceeds paid with respect thereto and specifically excepting from such release any deductible required to be paid therewith; and (b) their respective insurance companies shall have no right of subrogation against the other or their respective agents, contractors, employees, licensees, or invitees on account thereof.

## **11. INTELLECTUAL PROPERTY**

11.1 **Intellectual Property Rights.** The SWPM shall promptly and fully inform the Port Authority in writing of any intellectual property right(s) disputes, whether existing or potential, of which the SWPM has knowledge, relating to any idea, design, method, material, equipment, or other matter related to the subject matter of this Agreement or coming to the SWPM's attention in connection with this Agreement.

11.2 **Rights of Port Authority.** The SWPM hereby acknowledges that, except as set forth herein, all Intellectual Property Rights (as such term is defined in Section 11.4 below) necessary for the development, operation, and marketing of the Site Wide Managed Areas are owned by, licensed to, or have been otherwise secured by the Port Authority, its separate contractors, consultants, and employees and agents thereof, and that any uses by the SWPM and its agents, employees, and Ancillary Service Contractors are incidental and for the benefit of the Port Authority.

11.3 Defense and Indemnification. In the event that the Port Authority is accused of infringing any Intellectual Property Rights, including, but not limited to, those rights set forth in Section 11.1, as a result of any action taken by the SWPM or the SWPM's officers, consultants, employees, or agents thereof, the SWPM shall defend, indemnify, and hold harmless, and hereby does indemnify and hold harmless the Indemnitees from and against any and all claims, demands, suits, causes of action, damages, losses, costs, and expenses, including reasonable attorneys' and experts' fees and costs, arising directly or indirectly from or out of the design, creation, manufacture, advertising, promotion, distribution, sale, use, or misuse of any third party Intellectual Property Rights or any alleged action or omission by the SWPM or its respective officers, directors, employees, agents, successors, assigns, or customers (collectively, "Intellectual Property Claims"), including, but not limited to, any Intellectual Property Claims that may be asserted by customers, suppliers, Ancillary Service Contractors, consultants, manufacturers, sales representatives (independent and otherwise), employees, and all other persons and entities which may assert any such Intellectual Property Claims. The SWPM shall not settle or otherwise compromise any Intellectual Property Claims naming the Port Authority without the Port Authority's prior written consent, which shall not be unreasonably withheld. The Port Authority shall have the option to assume the defense of any Intellectual Property Claims and to hire counsel of its choice, at the SWPM's expense. The SWPM shall give immediate notice to the Port Authority of any occurrence that might reasonably be expected to result in any Intellectual Property Claim against any one or more of the Indemnitees. All of the SWPM's indemnification obligations hereunder shall survive the expiration or termination of this Agreement.

11.4 Definition of Intellectual Property Rights. For purposes of this Agreement, "Intellectual Property Rights" shall be defined as patents, unpatented inventions, patent applications in process, rights in expired patents, designs, processes, know how, inventions, mask works, common law trademarks and service marks, active, expired, or cancelled trademark or service mark registrations, trade names, slogans, unregistered trade dress, registered and unregistered copyrights, agreements, licenses, trade secrets, rights of publicity, and any tangible media (including film negatives and electronic files) embodying the same.

11.5 Prohibition. Neither the SWPM nor any Ancillary Service Contractor shall use the words "World Trade Center," "Port Authority" or any combination thereof for any purpose whatsoever, including as or for any corporate, firm, or trade name, trademark or designation or description of merchandise or services, except that the foregoing shall not prevent the use (in a conventional manner and without emphasis or display) of the words "World Trade Center" as a part of the address of the Site Wide Managed Areas or by reference in the ordinary course of its business.

11.6 Branding. The SWPM shall not engage in any branding activities that have not been specifically approved in advance by the Port Authority. At the request of the Port Authority, the SWPM shall cooperate in developing, implementing, and enforcing a uniform branding program at the WTC, incorporating such items as stationery, signage, employee, and contractor uniforms, and such other matters as the Port Authority shall designate. The SWPM shall not

publicly advertise itself in any context as the site-wide property manager for the Port Authority or the WTC without the prior written approval of the Port Authority in each instance.

## **12. CONFIDENTIALITY; PUBLIC RELATIONS**

12.1 General Requirement. Except as otherwise required by law or court order, or as authorized or permitted by the Port Authority, the SWPM shall not disclose any confidential information acquired by the SWPM in carrying out its duties under this Agreement to anyone other than the Port Authority, the Port Authority's counsel, or persons designated by the Port Authority, except as reasonably required to carry out the SWPM's duties under this Agreement. The SWPM shall take reasonable measures to avoid any unintentional or inadvertent disclosure of any confidential information to any unauthorized person by its employees, agents, or attorneys. The SWPM shall not use any confidential information for the SWPM's own gain, except as specifically permitted by this Agreement.

12.2 Confidential Information. Without the express written approval of the Port Authority, the SWPM shall keep confidential, and shall require Ancillary Service Contractors and their employees to keep confidential, the information set forth in Sections 12.2A and 12.2B below. Disclosure of any such information shall constitute a material breach of this Agreement.

A. All information identified as confidential, or some other similar identifying mark or statement indicating that such item is confidential, privileged, sensitive security, and/or proprietary information, disclosed to the SWPM by the Port Authority, PATH, or their respective contractors, consultants, or managers, if any.

B. All information developed by the SWPM or Ancillary Service Contractors in the performance of the Services.

12.3 Execution of Non-Disclosure and Confidentiality Agreement and Acknowledgments by the SWPM and Ancillary Service Contractors. The SWPM shall execute and shall cause employees of the SWPM and Ancillary Service Contractors and the employees of Ancillary Service Contractors, to execute non-disclosure agreements as directed by the Port Authority concerning intellectual property and proprietary information of the Port Authority, PATH, and any third person. Disclosure of any information covered under such non-disclosure agreements shall constitute a material breach of this Agreement.

12.4 Port Authority's Access to Port Authority Public Records Policy. Notwithstanding anything in this Agreement, the SWPM acknowledges that the Port Authority's obligations under this Agreement are subject to the provisions of the Access to Port Authority Public Records Policy, and any amendments thereto. The Port Authority's Access to Port Authority Public Records Policy can be found at <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The Port Authority shall notify the SWPM promptly, in writing, of any and all public records requests or similar requests received. The SWPM shall respond within five (5) business days and inform the Port Authority of the SWPM's approval or disapproval of disclosure, explaining the grounds for any disapproval. In the event that the SWPM disapproves of disclosure, the Port

Authority shall not object to the SWPM contesting such disclosure through legal proceedings, including seeking a protective order with respect thereto.

12.5 Exclusions. The obligation of confidentiality under this Section 12 shall not pertain to:

- A. information in the public domain;
- B. information lawfully received from a third party;
- C. information independently developed or obtained by the SWPM or the Ancillary Service Contractors prior to any disclosure or development contemplated in Sections 12.212.2A and 12.212.2B above; or
- D. information that must be disclosed under applicable Legal Requirements; provided that (i) the Port Authority is given reasonable notice of the legal obligation or legal process to disclose the same and (ii) the SWPM is permitted to give such notice by applicable law.

12.6 Media Communications. The SWPM shall not communicate with the media regarding any matter related to this Agreement or the performance of the Services hereunder without the prior written approval of the Port Authority and shall comply with the requirements of this Section 12 regarding confidentiality at all times with respect to any communication whatsoever. The SWPM shall not issue or permit to be issued any press release, advertisement, or literature of any kind that refers to the Port Authority or the Services performed in connection with this Agreement, unless the SWPM obtains prior written approval from the Port Authority. Such approvals may be withheld at the sole discretion of the Port Authority if, for any reason, the Port Authority believes that publication of such information could or would be harmful to the public interest or is in any way undesirable.

12.7 No Communication. Under no circumstances shall the SWPM or Ancillary Service Contractors communicate in any way with any contractor, Governmental Authority, any other organization, or any person, whether governmental, quasi-governmental, or private, in connection with the Services unless required by law, except upon prior written approval and instruction of the Port Authority; provided, however, that data from manufacturers and suppliers of material shall be obtained by the SWPM when the SWPM finds such data necessary, unless otherwise instructed by the Port Authority.

### **13. SECURITY REQUIREMENTS**

13.1 Information Security Handbook.

A. By its execution of this Agreement, the SWPM agrees to (a) comply with the Information Security Handbook, and (b) require all of its employees, consultants, and contractors and all Ancillary Service Contractors (and any other parties required by the

Information Security Handbook) to comply with the Information Security Handbook and the terms of this Section.

B. The SWPM and all entities dealing with the SWPM (including any contractors and consultants) that have access to information with respect to the WTC shall be obligated, prior to any access thereby to such information, to (i) execute and deliver the Port Authority's then standard form of Non-Disclosure and Confidentiality Agreement and (ii) fully complete a background qualification questionnaire. Any individual employed by the SWPM or by any entity dealing with the SWPM (including any contractors and consultants) that has access to information with respect to the WTC shall be obligated, prior to any access thereby to such information, to (a) execute and deliver the Port Authority's then standard form of Non-Disclosure and Confidentiality Agreement, (b) attend any required training classes regarding the handling of confidential information and (c) obtain a SWAC Badge, which shall include a background check.

13.2 Imposition of Levels of Security. The SWPM acknowledges and agrees that the Port Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructure. The Port Authority reserves the right to impose multiple layers of security requirements on the SWPM, its staff, Ancillary Service Contractors and their staffs, and all others participating completing the Services, depending upon the level of security required, as determined by the Port Authority, in its sole, absolute discretion. Accordingly, the SWPM, if requested after execution of this Agreement, shall execute and comply with any security agreement or new security provision required by the Port Authority or with any new Legal Requirement; or with any modification, increase, or upgrade to existing security requirements or Legal Requirement, which modification, increase, or update is imposed after execution of this Agreement; provided that the compensation received by the SWPM for performing the Services may be subject to equitable adjustment in accordance with Section 6 of this Agreement to the extent of any increase or decrease in the Services; and the SWPM shall create an obligation and shall require that all Ancillary Service Contractors and their respective staffs do the same and the SWPM shall cause Ancillary Service Contractors to comply with the provisions therein.

13.3 Security Requirements Include Attached Exhibit. Security requirements include those attached hereto as **Exhibit 11** (WTC Division 1 Security Article (with Background Screening Criteria)).

13.4 Conflict in Security Provisions. In addition to the obligations set forth in Sections 13.1 through 13.3 above, the SWPM shall comply with Sections 13.5 through 13.7 below unless a requirement of any such provision conflicts with a requirement set forth in the security requirements described in Section 13.3 above. In the event of such a conflict, the most stringent requirement upon the SWPM shall apply. In the event there is a dispute, or it cannot be determined which provision is most stringent upon the SWPM, then the Port Authority shall select the requirement with which the SWPM must comply.



13.5 Checks, Screening, and Other Requirements. In accordance with Section 13.4 above, security requirements include as follows:

A. the SWPM criminal background checks, performed by firms acceptable to the Port Authority, and identity checks and background screening, including, but not limited to, inspection of not less than two (2) forms of valid/current government issued identification (at least one having an official photograph) to verify person's name and residence;

B. Screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files;

C. Multi-year check of personal, employment, and/or credit history;

D. Access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;

E. Issuance of photo identification cards;

F. Access control, inspection, and monitoring by security guards, which includes the maintenance of a log of the individuals entering the WTC to complete the Services (including the SWPM and any contractors and consultants); and

G. All personnel of the SWPM, or any other entity for whom it is responsible, shall apply directly to and obtain SWAC Badges prior to such personnel commencing to prosecute the Services. The SWAC Badges shall be displayed at all times by all personnel on the WTC. No personnel shall be allowed access to the WTC without a SWAC Badge. All personnel shall comply with all of the identification and security requirements set forth on the following website (or such other website as the Port Authority from time to time may direct): <http://www.secureworker.com>. The fees to apply for and obtain the SWAC Badges and for any security checks associated or related thereto shall be paid by the SWPM, or entity responsible for such personnel.

13.6 Proof of Background Checks. The SWPM shall require that each of its staff and Ancillary Service Contractors, including their respective staff and employees, undergo a criminal history background check; and the SWPM shall furnish proof to the Port Authority, in a form acceptable to the Port Authority, that such checks have been performed. No staff or employee of the SWPM, nor any Ancillary Service Contractor or its staff or employees, will be permitted to perform the Services under this Agreement without proof that (i) each such check has been performed and (ii) the results have submitted to the Port Authority.

13.7 Enforcement by the SWPM. The Services to be performed by the SWPM shall include managing the enforcement of the security provisions provided for in this Section 13 with all Ancillary Service Contractors and their subcontractors of any tier, Key Personnel, and the staff and employees of all foregoing persons and entities. Such management and enforcement to be documented in appropriate records and logs subject to inspection by the Port Authority.

#### 14. PORT AUTHORITY VENDOR CODE OF ETHICS

14.1 Port Authority Vendor Code of Ethics. The Port Authority has adopted a Code of Ethics for Port Authority Vendors effective December 17, 2019 (the “Port Authority Vendor Code of Ethics”). The Port Authority Vendor Code of Ethics is hereby made a part of this Agreement and can be found at <https://www.panynj.gov/businessopportunities/become-vendor.html>.

#### 15. CERTIFICATIONS OF NO INVESTIGATIONS

15.1 Certification of No Investigation (Criminal or Civil Antitrust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information. By signing this Agreement, the SWPM, and each person signing on behalf of the SWPM, certifies, and in the case of a joint proposal that resulted in formation of this Agreement, each party to such proposal certifies, as to its own organization, that the SWPM and each parent and/or Affiliate of the SWPM 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 Authority or been denied a government agreement for failure to meet standards related to the integrity of the SWPM;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any Governmental Authority for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name, or abbreviated name, or an employer identification number different from those inserted in any such proposal or furnished to the Port Authority;
- F. had any business or professional license suspended or revoked or, within the five (5) years prior to submission of any proposal or execution of this Agreement, whichever occurred earlier, had any sanction imposed in excess of FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00) 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 law, rule, or regulation, including environmental laws, rules, and regulations;
- G. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation, or antitrust, regardless of the dollar amount of the any sanction or the date of its imposition; and
- H. been and is not currently, the subject of an Investigation by any Governmental Authority.

## 16. INTEGRITY CERTIFICATIONS

16.1 Non-Collusive Proposing, and Port Authority Vendor Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fees. By signing this Agreement, the SWPM and each person signing on behalf of the SWPM, certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

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

B. the prices proposed or quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the SWPM or any person identified in this Section prior to the official opening of any such proposal to any other proposer or to any competitor;

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

D. the SWPM or any person identified in this Section has not made and will not make any offer or agreement or taken any other action with respect to any employee of the Port Authority or former employee of the Port Authority, or immediate family member of either (*i.e.*, spouse, domestic partner, child, parent, sibling, grandparent, or grandchild) that would cause any employee of the Port Authority or former employee of the Port Authority to violate any obligations under Administrative Instruction 20-1.15, Conflicts of Interest and Financial Disclosure (Revised September 30, 2019), and Administrative Instruction 20-1.16, Offers of Employment and Post-Employment Obligations (Issued September 30, 2019) (collectively the “Administrative Instructions”), and as the same may be revised from time to time (copies of which are available upon request);

E. the SWPM or any person identified in this Section does not have any knowledge of any act on the part of an employee of the Port Authority or a former employee of the Port Authority relating either directly or indirectly to SWPM or any person identified in this Section that constitutes a breach of any obligations as set forth in the Administrative Instructions, which shall constitute a breach of the ethical standards under the Port Authority Vendor Code of Ethics;

F. no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the SWPM for the purpose of securing business, has been employed or retained by the SWPM 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;

G. the SWPM 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

H. no person or organization has been retained, employed, or designated on behalf of the SWPM to impact any Port 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.

16.2 Certifications Deemed Made. The certifications in this Section 16 shall be deemed to be made by the SWPM as follows:

A. if the SWPM is a corporation, such certification shall be deemed to have been (i) made not only with respect to the SWPM itself, but also with respect to each Affiliate, director, and officer of the SWPM, as well as, to the best of the certifier's knowledge and belief, each stockholder of the SWPM with an ownership interest in excess of ten percent (10%) and (ii) authorized by the board of directors of the SWPM, and such authorization shall be deemed to include the signing and submission of any proposal and the inclusion therein of such certification as the act and deed of the corporation;

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

16.3 Where Certification Cannot be Made. If the SWPM cannot make every certification required under this Section 16, the SWPM shall so state and shall furnish to the Port Authority prior to executing this Agreement a signed statement that sets forth in detail the reasons therefor. If the SWPM is uncertain as to whether it can make the foregoing certifications, it shall so indicate to the Port Authority in a signed statement furnished to the Port Authority prior to executing this Agreement, setting forth in such statement the reasons for its uncertainty.

16.4 Obligation to Notify of Any Change. Notwithstanding that the SWPM may be able to make the certifications required under this Section 16 prior to or at the time of executing this Agreement, the SWPM shall immediately notify the Port Authority in writing during the term of this Agreement of any change of circumstances that might make the SWPM unable to continue to make such certifications or require disclosure.

16.5 Certification Part of Record. Certifications or signed statements made pursuant to this Section 16 shall be deemed to have been made by the SWPM with full knowledge that they shall become a part of the records of the Port Authority and that the Port Authority shall rely on their truth and accuracy in awarding this Agreement.

16.6 False Certifications. If the Port Authority determines at any time prior or subsequent to the award of this Agreement that the SWPM has falsely certified as to any material

item in such certifications or statements, or has willfully or fraudulently furnished a certification or signed statement that is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the certifications and statements required to be disclosed, then the Port Authority may determine that the SWPM is not positioned to partner with the Port Authority with respect to its proposal regarding the Services or this Agreement or with respect to future proposals for services or Port Authority agreements, and the Port Authority may exercise such other remedies as are provided to it by this Agreement with respect to these matters.

16.7 Basis for Prosecution. The SWPM acknowledges that knowingly providing a false certification or statement in any proposal for the Services or under this Agreement may be the basis for prosecution for offering a false instrument for filing (*e.g.*, New York Penal Law, Section 175.30 et seq.). The SWPM also acknowledges that the inability to make such certification will not in and of itself disqualify the SWPM, and that in each instance, the Port Authority will evaluate the reasons therefor provided by the SWPM.

## **17. INTEGRITY MONITOR**

17.1 Compliance with Integrity Monitor. In the event that the Port Authority hires an integrity monitor in connection with any work or services being performed at the WTC (the “Integrity Monitor”), then the SWPM, Ancillary Service Contractors, and any other entity the SWPM manages or is otherwise responsible for shall cooperate fully with the Integrity Monitor (who is supervised and managed by the Port Authority’s Inspector General), the New York State Office of the Inspector General, and the Port Authority, by taking the appropriate actions, which include, but are not limited to, providing complete access to all personnel and records related to the performance of this Agreement by all of the foregoing parties. Any and all costs associated with the hiring of the Integrity Monitor shall be borne solely by the SWPM. Failure to comply with this provision shall constitute a material breach of this Agreement.

## **18. NO GIFTS / GRATUITIES / OFFERS OF EMPLOYMENT**

18.1 Cannot Give or Offer Anything of Value. During the term of this Agreement, the SWPM shall not offer, give, or agree to give Anything of Value either to a Port Authority employee, agent, job shopper, or other person or firm representing the Port Authority, nor to a member of the immediate family (*i.e.*, spouse, child, parent, brother, or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, or other person or firm representing the Port Authority of duties involving transactions with the SWPM on behalf of the Port Authority, whether or not such duties are related to this Agreement or any other Port Authority agreement or matter. Any such conduct shall constitute a material breach of this Agreement.

18.2 Description of Term “Anything of Value”. As used herein, the phrase “Anything of Value” shall include, but not be limited to, any (a) favor, such as a meal, entertainment, or transportation (other than that contemplated by this Agreement) that might tend to obligate an employee of the Port Authority to the SWPM, 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 phrase shall not include compensation contemplated by this Agreement. For purposes of this Section 18, the "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

18.3 No Acceptance of Anything of Value. The SWPM and its personnel shall not accept Anything of Value for any reason whatsoever from any subconsultant, Ancillary Service Contractor, vendor, passenger, tenant, customer, or other person with whom the SWPM comes in contact during the course of performing the Services and shall so instruct the personnel of the SWPM.

18.4 Port Authority Employee Code of Ethics. During the term of this Agreement, the SWPM shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics for Port Authority Employees, distributed to all Port Authority employees on January 25, 2018 (a copy of which is available upon request to the Office of the Secretary of Port Authority).

18.5 Inclusion of Provisions in Ancillary Service Contract. The SWPM shall include the provisions of this Section 18 in each Ancillary Service Contract it enters into under this Agreement and shall cause Ancillary Service Contractors to so include such provisions in its subcontracts.

## **19. CONFLICT OF INTEREST**

19.1 Prohibited Actions. During the term of this Agreement, the SWPM shall not do any of the following:

A. participate in any way in the preparation, negotiation, or award of any contract (other than a contract for the SWPM's own services or for those of potential contractors to the Port Authority) to which it is contemplated the Port Authority may become a party;

B. participate in any way in the review or resolution of any claim under any contract described in Section 19.1A above if the SWPM has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the SWPM has an arrangement for future employment or for any other business relationship with said contractor or potential contractor; or

C. take any other action that might be viewed as or give the appearance of a conflict of interest on the part of the SWPM.

19.2 Notification of Port Authority. If any of the following situations exist, then the SWPM shall inform the Port Authority immediately in writing of such situation, giving the full details thereof:

A. if the possibility of an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion between the

SWPM and a contractor or the SWPM has a business relationship with or has entered into a contract with the Port Authority;

B. if the SWPM has reason to believe an arrangement as described in Section 19.2A above may be the subject of future discussion;

C. if the SWPM has any financial interest, substantial or not, in a contractor, or potential contractor of the Port Authority or an Ancillary Service Contractor or potential Ancillary Service Contractor under this Agreement; or

D. if the SWPM has reason to believe any situation exists that might be viewed as or give the appearance of a conflict of interest.

19.3 No Action Without Notice and Mitigation Plan. Unless the SWPM gives the Port Authority (i) specific prior written advice of the SWPM's intent to take any action that might be viewed as or give the appearance of a conflict of interest, including, without limitation, performing any work or services for any of the other projects involving the area surrounding the WTC, and (ii) a mitigation plan acceptable to the Port Authority, the SWPM shall not take any such action.

19.4 Port Authority's Authority and Reservation of Right. If the Port Authority determines that the SWPM's performance of a portion of the Services (a) is precluded by any provision of this Section 19, or (b) is no longer appropriate because of such preclusion, then the Port Authority shall have full authority on behalf of the SWPM to order that such portion of the Services not be performed by the SWPM; provided, however, that the Port Authority reserves the right to have the Services performed by others, and any compensation payable hereunder that is applicable to the deleted work shall be equitably modified as agreed to by both the SWPM and the Port Authority.

19.5 Representation Regarding Conflict of Interest. The SWPM's execution of this Agreement shall constitute a representation by the SWPM that, at the time of such execution, except as set forth in written disclosures by the SWPM to the Port Authority prior to execution of this Agreement, the SWPM knows of no circumstances, present or anticipated, that come within the provisions of this Section 19 or that might otherwise be viewed as or give the appearance of a conflict of interest on the SWPM's part.

19.6 Preclusion from Initiatives or Transactions. The SWPM acknowledges that the Port Authority may preclude the SWPM from involvement in certain disposition or privatization initiatives or transactions that result from the findings of the Port Authority's evaluations hereunder or from participation in any agreements that result, directly or indirectly, from the Services provided by the SWPM.

19.7 Potential or Perceived Conflicts. The SWPM acknowledges that it is the opinion of the Port Authority that any entity performing property management or general contracting services for the Port Authority or other Stakeholders, where such entity is responsible for building and maintaining portions of the WTC, has a potential conflict of interest with the SWPM under

this Agreement during its pendency, except as expressly disclosed in writing and approved by the Port Authority.

A. If the SWPM desires to enter into a third party relationship with an entity described in this Section, and the SWPM believes it can provide a mitigation plan that addresses the Port Authority's perceived conflict of interest, then the SWPM, before entering into such relationship, shall give written notice of the SWPM's interest to the Port Authority and submit such plan for evaluation to the Port Authority.

B. The Port Authority will evaluate the mitigation plan submitted under the provisions of this Section and shall notify the SWPM of the Port Authority's decision as to whether the Port Authority will permit the SWPM to enter into the third party relationship described in such mitigation plan. If the Port Authority determines that a conflict of interest exists, in the Port Authority's sole opinion, and such third party relationship inappropriate, then the SWPM agrees not to enter into such relationship. This provision is of the essence of this Agreement.

19.8 Conflicts Provisions to be Included in All Contracts. The SWPM shall include provisions substantially similar to this Section 19 in all Ancillary Service Contracts and any other contracts for repairs, improvements, and goods and services entered into in connection with the performance of the Services and shall cause all Ancillary Service Contractors and all other vendors and contracts involved in the performance of services to do the same.

## **20. BANK ACCOUNTS**

### 20.1 Revenue Account and Operating Account.

A. The SWPM will deposit all Stakeholder Payments and any other funds collected from the operation of the Site Wide Managed Areas (other than the amounts funded by the Port Authority for operations pursuant to Section 7.2 hereof) in an account in the name of the Port Authority and designated by the Port Authority (the "Revenue Account") for such purpose. Funds in the Revenue Account shall not be accessible to the SWPM, the SWPM shall have no legal, beneficial, or equitable interest in the Revenue Account, and the only signatories on the Revenue Account shall be Port Authority employees.

B. The SWPM shall deposit all amounts funded by the Port Authority for operations of the WTC pursuant to Section 7.2 hereof in an interest-bearing account (the "Operating Account") in a bank approved by the Port Authority. The Operating Account shall be in the name of the Port Authority. The SWPM shall give the Port Authority written notice of the account number and location of the Operating Account. The SWPM shall pay out of the Operating Account the operating expenses of the Site Wide Managed Areas and any other payments relating to the Site Wide Managed Areas required by the terms of this Agreement. If more than one Operating Account is required to operate the Site Wide Managed Areas, each Operating Account shall have a distinct name. The Operating Account(s) will not be commingled with other funds of the SWPM. In no event shall any Operating Account established hereunder, or any amounts at any time deposited therein, be for the benefit of the SWPM, nor commingled or combined with



any other account(s) of the SWPM or the Port Authority. Any Operating Accounts opened and maintained by the SWPM pursuant to this provision shall be owned or held by the SWPM in trust in the name of and for the sole benefit of the Port Authority and the Port Authority shall, at all times, retain all equitable interest in and/or beneficial ownership of, such accounts and all amounts deposited therein. The interest of the SWPM in any Operating Accounts or other accounts opened and maintained by the SWPM pursuant to this Agreement and in any amounts deposited therein shall consist only of legal title, and the SWPM shall not have any equitable or beneficial interest therein. The Port Authority shall at all times have the sole right to possession, control, and management of any Operating Accounts and all amounts deposited in those Operating Accounts. The SWPM shall only have those limited rights in the Operating Account(s) provided to the SWPM pursuant to this Agreement. Each of the Operating Accounts shall be, if available, interest bearing at the highest available rates and shall be insured by the Federal Deposit Insurance Corporation. The designation and selection of the banking institution(s), the title(s) of the account(s), and the necessary signatory(ies) to each of the Operating Account(s) shall be subject to the prior written approval of the Port Authority, it being understood that all accounts shall require the signature of two (2) signatories so approved by the Port Authority. Any party having access to any Operating Account shall be subject to the Port Authority's prior written approval in its sole discretion, and the Port Authority may impose bonding or other requirements with respect to such persons.

20.2 Change of Banks. The Port Authority may direct the SWPM to change any depository bank or depository arrangement. The SWPM shall not change any depository bank or arrangement or other banking relationship or procedure without the prior written approval of the Port Authority.

20.3 Access to Account. Through the use of signature cards, authorized representatives of the Port Authority will be permitted access to any and all funds in any Operating Accounts described in Sections 20.1 and 20.2 without the joinder of the SWPM. The SWPM's authority to draw against such Operating Accounts may be terminated at any time by the Port Authority without notice to the SWPM. No borrowing authority shall be permitted on any bank accounts established pursuant to this Section 20.

## **21. MANAGEMENT REPORTING**

21.1 Monthly Reports. Within five (5) business days following the end of each calendar month during the term of this Agreement, the SWPM shall provide the following reports prepared on an accrual basis and disclosing all income and expenses (both received and accrued), and cash flow for the immediately preceding month:

A. A transmittal letter which summarizes key operational and financial matters, highlighting all significant occurrences and anticipated problems, and includes explanations for all material variances of income and expense items (actual compared to Operating Budget) for current month and year-to-date comparisons;

B. A summary operating statement and detail operating statement showing actual expenditures as compared to Operating Budget, including forecasts for the balance of the period;

C. A statement of disbursements, itemizing each disbursement made during the monthly period by check number, amount and payee;

D. Bank account reconciliations;

E. A report for the WTC and for each cost center in aggregate as well as in detail for each Stakeholder's consumption and demand determinants for all associated utility costs, including explanations for any discrepancies in Stakeholder's consumption and demand that is outside of a pre-determined band (such report shall also include by cost center, year over year variances and same month last year to this year and last month); and

F. A summary of amounts invoiced for each Stakeholder.

21.2 Quarterly Reports. The SWPM shall provide quarterly financial forecasts of income and expenses for a 15-year period, within fifteen (15) days following request by the Port Authority.

21.3 Annual Reports. The SWPM shall provide:

A. An operating expense or common area maintenance escalation reconciliation or other annual calculation or statement for the subject year for all applicable Stakeholders. All supporting documentation to be provided within ninety (90) days following each Stakeholder's subject operating year-end (calendar or fiscal) (or such earlier time period as may be required under any applicable Project Document);

B. A schedule of all actual (paid) expenses once all year-end accruals have been reconciled, by category, as compared to annual budgeted and forecasted amounts with explanations for all variances, within thirty (30) business days following prior calendar year end; and

C. Within fifteen (15) days prior to subject calendar year-end, an accrued expenses schedule enumerating all items of expenses incurred in the subject calendar year to be paid in the subsequent calendar year.

21.4 Back-Up Documentation. As additional support to the monthly and annual reports, the SWPM shall make back-up documentation readily available electronically for the Port Authority's web-based "view and print" access. Such "view and print" electronic access shall be consistent with that of other major software providers of such services. In addition, the SWPM shall be responsible for electronically transmitting and/or uploading all applicable reports, as deemed necessary by the Port Authority, to the Port Authority's server for viewing/and or downloading capability.

21.5 Other Reports. The reports required pursuant to this Section 21 are in addition to any other reports, invoices, reconciliations, or other statements required elsewhere in this Agreement or in the Scope of Services.

## **22. PORT AUTHORITY'S RIGHT TO AUDIT**

22.1 Right to Audit. During the term of this Agreement and for a period of four (4) years thereafter, the Port Authority (and the Integrity Monitor if hired pursuant to Section 17.1) shall at all times and without prior notification have the right to conduct audits and examinations and to (a) make copies of (i) the books and records maintained for the Port Authority by the SWPM and (ii) the books and records of the SWPM, each Ancillary Service Contractor, and all other vendors and contractors providing goods or services in connection with the Services, in each case no matter where such books and records are located and (b) have access to all personnel who perform or have performed the Services under the Agreement pursuant to Section 4.10C and Section 17.1 of this Agreement. Such rights may be exercised through any agent or employee of the Port Authority, or any certified public accountant designated by the Port Authority. The Port Authority will also have the right to perform any and all additional audit tests relating to the SWPM's activities either at the Site Wide Managed Areas or at any office of the SWPM. Should the Port Authority discover either weaknesses in internal control or errors in record keeping, the SWPM shall correct such discrepancies promptly upon the Port Authority's request and shall inform the Port Authority, in writing, of the action taken to correct such audit discrepancies. Notwithstanding the Port Authority's right to audit the SWPM's procedures, operations, and records, every two (2) years the SWPM shall perform an internal audit of its procedures, operations, source documents, and records for the Site Wide Managed Areas and provide the Port Authority with a summary of exceptions and weaknesses and proposed resolutions. The SWPM shall provide (and if applicable, cause its contractors and subcontractors to provide) system access and reasonable assistance in the performance of financial, system, and operational reviews including producing specific requested information and extraction of data and reports. The Port Authority reserves the right to use and load security and system software to evaluate the level of security and vulnerabilities in all systems utilized to perform the services under this agreement.

22.2 Deficiencies. If any such audit discloses a deficiency in the amount of funds that should have been turned over by the SWPM to the Port Authority, the SWPM shall immediately, upon demand by the Port Authority, pay such deficiency to the Port Authority, together with interest at the rate of ten percent (10%) per annum.

22.3 Document Retention. The SWPM shall comply (and shall cause all Ancillary Service Contractors and all other vendors and contractors providing goods or services in connection with the Services to comply) with the Port Authority's document retention requirements set forth on **Exhibit 13** (Port Authority Document Retention Requirements) annexed hereto from time to time, as the same may be modified by the Port Authority from time to time in its sole discretion.

## 23. REPRESENTATIONS

23.1 Qualification and Other Matters. The SWPM represents and warrants that it is fully qualified and licensed, to the extent required by law, to manage real estate and perform all of the obligations to be performed by the SWPM hereunder. The SWPM agrees to comply with all such laws now or hereafter in effect. The SWPM further represents and warrants that neither it nor (to the best of the SWPM's knowledge) any of its employees have ever been convicted or faced criminal penalties for robbery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony drug offense, murder, rape, kidnapping, perjury, assault with intent to kill, a violation of ERISA, or any other crimes. These representations and warranties shall be a continuing representation during the term of this Agreement, and the SWPM shall promptly notify the Port Authority in writing of any change as to the truth, completeness, or accuracy thereof.

### 23.2 Office Of Foreign Asset Control Regulatory Compliance.

A. OFAC Representations. The SWPM hereby represents and warrants to the Port Authority that the SWPM (x) is not and shall not become a person or entity with whom U.S. persons or entities (including the Port Authority) is restricted from doing business under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including, without limitation, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order, or other regulation relating to national security or foreign policy (including, without limitation, Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism), or other governmental action related to national security, the violation of which would also constitute a violation of law, such persons being referred to herein as "*Blocked Persons*" and such regulations, statutes, executive orders, and governmental actions being referred to herein as "*Blocked Persons Laws*") and (y) is not engaging, in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. The SWPM acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of the foregoing representations and warranties by the SWPM, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement, or at law or in equity, to immediately terminate this Agreement upon written notice to the SWPM. In the event of any such termination by the Port Authority, the SWPM, immediately upon receipt of the said termination notice, shall have no further right to access the Site Wide Managed Areas and shall turn over to the Port Authority all books and records in the SWPM's possession or control with respect to the Site Wide Managed Areas and its services under this Agreement. Termination on the aforesaid basis shall be a termination for cause.

B. SWPM OFAC Covenant. The SWPM covenants that during the term of this Agreement it shall not become a Blocked Person and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws.

C. SWPM's OFAC Indemnification Obligation. The SWPM shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents, and representatives from and against any and all claims, damages, losses, risks, liabilities, and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the SWPM's breach of any of its representations and warranties made under this Section. Upon the request of the Port Authority, the SWPM shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false, or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents, or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

D. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement.

## 24. NOTICES

24.1 Addresses for Notices. All notices, approvals, and consents required or desired to be given under this Agreement shall be addressed and delivered as follows:

If to the Port Authority:

The Port Authority of New York and New Jersey  
4 World Trade Center  
150 Greenwich Street  
New York, New York 10007  
Attention: Director of World Trade Center Department

With a copy to:

The Port Authority of New York and New Jersey  
4 World Trade Center  
150 Greenwich Street  
New York, New York 10007  
Attention: General Counsel

If to the SWPM:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

24.2 Method of Delivery. All notices or other communications under this Agreement shall be mailed by United States registered, certified mail, return receipt requested, postage prepaid and deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the post office; or delivered by hand, by telecopy (with concurrent delivery by United States mail) or by any commercial overnight delivery service. For purposes of this Agreement notices will be deemed to have been given upon personal delivery thereof or receipt of a telecopy thereof (provided proof of successful transmission is retained by sender) or 48 hours after having been deposited in the United States mail as provided above.

**25. MISCELLANEOUS**

25.1 Signage. The SWPM shall not place or affix or otherwise permit any signage of any nature to be placed upon or otherwise affixed to the Site Wide Managed Areas without the express written consent of the Port Authority. All signage must comply with the Port Authority approved specifications, the terms and conditions of the Port Authority approved tenant leases of the Site Wide Managed Areas, and any applicable federal, state, or local ordinances and regulations. Without limiting the foregoing, no signage identifying any Ancillary Service Contractors or any other vendor or contractor (including temporary signage) may be installed in Site Wide Managed Areas without the prior written approval of the Port Authority in each instance, and the SWPM shall cause all Ancillary Service Contractors and all other vendors and contractors performing Services hereunder to comply with this requirement.

25.2 Inspection. The SWPM shall regularly, with such frequency as is consistent with the highest property management standards or more frequently as the Port Authority or any lender or insurer may require, inspect the Site Wide Managed Areas and the various components thereof, shall immediately report any material findings to the Port Authority, and shall in all events, report regularly in writing to the Port Authority as to the condition of the Site Wide Managed Areas in a form required by the Port Authority. In addition, the SWPM shall perform such inspections as required by applicable law, by Governmental Authority, and under loan documentation, insurance policies, ground leases, space leases, and occupancy agreements.

25.3 Acceptance and Other Acts Do Not Constitute Release. No certificate, payment (final or otherwise), or acceptance of any Services nor any other act or omission of the Port Authority or the Port Authority Representative shall operate to release the SWPM from any obligations under or upon this Agreement, or to estop the Port Authority from showing at any time that such certificate, payment, acceptance, act, or omission was incorrect or to preclude the Port

Authority from recovering any 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 Port Authority.

25.4 Time is of the Essence. Time is of the essence with respect to the SWPM's performance of the Services under this Agreement.

25.5 Integration. This Agreement and any written amendment entered into by the Parties from time to time, constitute the entire agreement between the Parties and supersedes all prior negotiations, arrangements, representations, or agreements, either oral or written. 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 such Party's duly authorized representative; provided, however, that termination in a manner expressly provided for in this Agreement shall be effective as so provided.

25.6 No Personal Liability. No recourse shall be had against or liability incurred by any member, director, officer, or employee of the Port Authority or any person executing this Agreement on behalf of the Port Authority for any covenants and provisions hereof or for any claims based hereon. Neither the Commissioners of the Port Authority nor the shareholders, officers, agents, or employees of the Port Authority shall be charged personally by any Party hereto with any liability or held liable to them 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.

25.7 Binding Agreement. This Agreement shall be binding and inure to the benefit of the respective heirs, executors, administrators, and successors of the Parties hereto.

25.8 No Assignment. The SWPM shall not assign or transfer any interest in this Agreement, or delegate any duties hereunder, without the prior written consent of the Port Authority in its sole discretion in each instance.

25.9 Consents or Waivers Not Effective. No consent or waiver by the Port Authority shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any Party to enforce any act or failure to act of the other Party or to declare the other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of any right hereunder. The Port Authority's payment for Services shall not be deemed an approval of the SWPM's Services or a waiver of any rights the Port Authority may have. Except where this Agreement expressly provides that an approval or consent of the Port Authority shall be reasonable (or not unreasonably withheld), such approval or consent may be given or withheld for any reason or for no reason in the Port Authority's sole and absolute discretion, whether or not the provision so states.

25.10 Waiver of Consequential Damages. Anything in this Agreement to the contrary notwithstanding, both Parties agree that neither shall be liable to the other for consequential damages except to the extent such damages are covered by insurance.

25.11 Pronouns. The pronouns used in this Agreement referring to a Party will be understood and construed to apply whether such Party is an individual, partnership, corporation, or any other entity or individual or individuals doing business under a firm or trade name.

25.12 Amendments. This Agreement cannot be amended or modified except by written instrument signed by both the Port Authority and the SWPM.

25.13 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

25.14 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the choice of law rules for the State of New York. Without limiting the generality of the foregoing, with respect to any claim or notice arising hereunder, all Parties hereto (and, with respect to the Port Authority, subject to the terms of the Port Authority Legislation defined below), to the maximum extent permitted by applicable law, irrevocably and unconditionally submit to the jurisdiction of the New York State Supreme Court, County of New York, in connection with any proceedings commenced regarding this Agreement, and all Parties irrevocably submit to the jurisdiction of said court for the determination of all issues in such proceedings, without regard to choice of law principles and irrevocably waive (and, with respect to the Port Authority, subject to the terms of the Port Authority Legislation) to the maximum extent permitted by law, any objection to venue or inconvenient forum. “Port Authority Legislation” shall mean the concurrent legislation of the State of New York and the 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 Sec. 7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. Sec. 32:1-157 to 32:1-168) as amended from time to time.

25.15 Subordination. This Agreement does not constitute an interest in real estate. The Port Authority and the SWPM hereby acknowledge that it is a personal services contract and is not an instrument that runs with the land. This Agreement and the SWPM’s interest and rights hereunder (including all amounts due to the SWPM hereunder) pursuant hereto shall be subject and subordinate in all respects to (i) any mortgage or deed of trust now or hereafter placed upon the Site Wide Managed Areas or any portion thereof and (ii) any collateral assignment of rents due under the leases of space in the Site Wide Managed Areas given to any lender to secure a loan the proceeds of which were used, directly or indirectly, in connection with the Site Wide Managed Areas. This provision shall be self-executing but the SWPM shall, upon request, execute such instruments as may reasonably be requested by the Port Authority or any such mortgagee or lender to evidence such subordination.

25.16 Other Information. Promptly upon request, the SWPM will furnish to the Port Authority such information in addition to that required to be delivered by it under this Agreement on the financial condition and operations of the Site Wide Managed Areas as the Port Authority may from time to time reasonably request.



25.17 Estoppel Certificates. The SWPM agrees to execute and deliver, at the SWPM's sole cost, to the Port Authority, any lender or any prospective transferee, a certificate pursuant to which (a) the SWPM discloses whether the Port Authority is then in default hereunder, (b) the SWPM discloses whether this Agreement has been modified and, if so, enclosing a copy of all modifications, and (c) the SWPM discloses such other and further matters as may be reasonably requested by the Port Authority or such other person or entity.

25.18 Attorneys' Fees. If either Party defaults in the performance of any terms, covenants, or conditions in this Agreement and the non-defaulting Party places the enforcement of this Agreement or the collection of any funds due or to become due hereunder in the hands of an attorney, or either Party files suit upon the same, the non-prevailing Party will pay the prevailing Party's reasonable attorneys' and professionals' fees and expenses and court costs.

25.19 Waiver of Jury Trial. Except as prohibited by law, the Parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or relating to this Agreement. With respect to any matter for which a jury trial cannot be waived, the Parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived.

25.20 Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Each Party agrees that an electronic signature to this Agreement, whether affixed digitally or transmitted by fax, email or other electronic means, is intended to authenticate such Party's writing and to have the same binding and legal effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY

By: \_\_\_\_\_  
Name:  
Title:

[SWPM]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1**  
**SCOPE OF SERVICES**

[To be inserted]

**EXHIBIT 1.A**

**SITE WIDE MANAGED AREAS AND STAKEHOLDER MANAGED AREAS**

[To be inserted]

**EXHIBIT 1.B**

**FREQUENTLY USED TERMS / STAKEHOLDER ABBREVIATIONS**

[To be inserted]

**EXHIBIT 2**  
**EMPLOYEE SCHEDULE**

[To be inserted]

**EXHIBIT 3**

**KEY PERSONNEL AND ORGANIZATIONAL CHART**

[To be inserted]

**EXHIBIT 4**  
**LIST OF PROJECT DOCUMENTS**

[To be inserted]



**EXHIBIT 5**  
**APPLICABLE PROCUREMENT REQUIREMENTS**

[To be inserted]

**EXHIBIT 6**

**MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM**

[To be inserted]

**EXHIBIT 7**

**CALCULATION OF MANAGEMENT FEE**

[To be inserted]

**EXHIBIT 8**

**DIRECT PERSONNEL COSTS**

[To be inserted]

**EXHIBIT 9**  
**INSURANCE REQUIREMENTS**

[To be negotiated]

**EXHIBIT 10**

**PORT AUTHORITY INFORMATION SECURITY HANDBOOK**

[To be inserted]

**EXHIBIT 11**

**WTC DIVISION 1 SECURITY ARTICLE (WITH BACKGROUND SCREENING  
CRITERIA)**

[To be inserted]

**EXHIBIT 12**

**SWPM ONSITE OFFICE**

[To be inserted]



**EXHIBIT 13**

**PORT AUTHORITY DOCUMENT RETENTION REQUIREMENTS**

[To be inserted]

**EXHIBIT 14**  
**OUTLINE OF TRANSITION PLAN**

[To be inserted]