

# THE PORT AUTHORITY OF NY & NJ

**PROCUREMENT DEPARTMENT  
4 WORLD TRADE CENTER  
150 GREENWICH STREET, 21<sup>ST</sup> FLOOR  
NEW YORK, NY 10007**

## **INVITATION FOR BID/PUBLIC BID OPENING**

### **BID INFORMATION**

**ISSUED DATE: 12/13/2019**

**TITLE: LANDSCAPE MAINTENANCE SERVICES AT NEW JERSEY MARINE  
TERMINAL (NJMT)**

**BID NO.: 59862**

**SUBMIT SEALED BIDS BEFORE THE DUE DATE AND TIME TO THE ABOVE ADDRESS  
WHERE THEY WILL BE PUBLICLY OPENED AND READ**

**FACILITY INSPECTION: DECEMBER 19, 2019**

**TIME 9:00 AM**

**BID DUE DATE: DECEMBER 27, 2019**

**TIME: 11:00 AM**

**BUYER NAME: LUZ SANTANA**

**PHONE NO.: (212) 435-4625**

**FAX NO.: (212) 435-4697**

**EMAIL: LSANTANA@PANYNJ.GOV**

### **BIDDER INFORMATION (TO BE COMPLETED BY THE BIDDER) (PLEASE PRINT)**

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**(NAME OF BIDDING ENTITY)**

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**(ADDRESS)**

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**(CITY, STATE AND ZIP CODE)**

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**(REPRESENTATIVE TO CONTACT-NAME & TITLE**

**(TELEPHONE)**

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**(FEDERAL TAX I.D. NO.)**

**(FAX NO.)**

**\_\_\_\_\_ BUSINESS CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ INDIVIDUAL  
\_\_\_\_\_ OTHER (SPECIFY): \_\_\_\_\_**

## **INVITATION FOR BID**

- COVER PAGE: BID AND BIDDER INFORMATION
- PART I – STANDARD INFORMATION FOR BIDDERS
- PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS
- PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS
- PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS AND PRICING SHEET(S)
- PART V – SPECIFICATIONS
- STANDARD CONTRACT TERMS AND CONDITIONS

## **PART I - STANDARD INFORMATION FOR BIDDERS, TABLE OF CONTENTS**

1. General Information: The Port Authority of New York and New Jersey.....	3
2. Form and Submission of Bid .....	3
3. Vendor Profile.....	4
4. Acknowledgment of Addenda .....	4
5. Firm Offer .....	4
6. Acceptance or Rejection of Bids.....	4
7. Bidder's Questions.....	4
8. Additional Information To and From Bidders .....	5
9. Union Jurisdiction.....	5
10. Assessment of Bid Requirements .....	5
11. Bidder's Prerequisites .....	5
12. Qualification Information .....	5
13. Contractor's Integrity Provisions.....	7
14. Code of Ethics for Port Authority Vendors .....	7
15. Facility Inspection.....	7
16. Available Documents - General.....	7
17. Pre-award Meeting.....	8
18. Price Preference .....	8
19. MBE/WBE/SDVOB Subcontracting Provisions .....	8
20. Certification of Recycled Materials .....	8
21. City Payroll Tax.....	9
22. Automated Clearing House Enrollment.....	9
23. Additional Bidder Information .....	10
24. Safe Vehicle Operation .....	10
ATTACHMENT I A - Certified Environmentally Preferable Products/Practices .....	11

## **PART I - STANDARD INFORMATION FOR BIDDERS**

### **1. General Information: The Port Authority of New York and New Jersey**

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

### **2. Form and Submission of Bid**

The Bidder shall review carefully every provision of this document, provide all the information required, and sign and return one entire copy to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained herein must be completed and signed by the Bidder. The Pricing Sheet(s) contained herein must also be completed. The Bid shall be sealed in the enclosed self-addressed envelope conspicuously marked with the Bidder’s name, address, and Vendor Number, if available. In addition, the outside of the package must clearly state the Bid Title, the Bid Collective Number and the Bid Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting this bid, the Bidder offers to assume the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Bids must be received by the bid custodian on or before the due date and time specified on the cover page, at which time they will be publicly opened and read. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery.

Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times.

There is extensive security at the World Trade Center Site. Individuals must present a valid government-issued photo ID to enter 4 WTC. If a Bid is to be hand-delivered or if an individual is planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Port Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages and boxes may be subject to additional security screening.

There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited.

Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.

### **3. Vendor Profile**

To ensure maximum opportunities, it is vitally important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Bidders may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://www.paprocure.com/>.

### **4. Acknowledgment of Addenda**

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

If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any addenda that might have been issued in connection with this solicitation.

### **5. Firm Offer**

The Bidder offers to provide the Port Authority of New York and New Jersey the services and to perform all Work in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the Pricing Sheets provided herein.

**EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS WILL RESULT IN REJECTION OF THE BID.**

### **6. Acceptance or Rejection of Bids**

The acceptance of a Bid will be by a written notice signed by an authorized representative on behalf of the Authority. No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a Bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all Bids or to accept any Bid, which in its judgment will best serve the public interest and to waive defects in any Bid. No rights accrue to any Bidder unless and until its Bid is accepted.

### **7. Bidder's Questions**

Any questions by prospective Bidders concerning the Work to be performed or the terms and conditions of the Contract may be addressed to the Contracts Specialist listed on the Cover Sheet of this document. The Contracts Specialist is only authorized to direct the attention of prospective Bidders to the portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in

addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written addenda issued under the name of the Manager, Commodities & Services Division, Procurement Department of the Port Authority and may be posted on the Port Authority website. Addenda shall be considered part of the Contract.

#### **8. Additional Information To and From Bidders**

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the time frame specified by the Port Authority.

If the Bidder is a corporation, a statement of the names and residences of its officers should be submitted on the Name and Residence of Principals Sheet, directly following the Signature Sheet.

#### **9. Union Jurisdiction**

All prospective Bidders are advised to ascertain whether any union now represented or not represented at the Facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the paragraph entitled “Harmony” in the Standard Contract Terms and Conditions.

#### **10. Assessment of Bid Requirements**

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the services and materials to be supplied and all other things required to be done by the Contractor.

#### **11. Bidder’s Prerequisites**

Only Bids from Bidders that can satisfactorily demonstrate meeting the prerequisites specified within Part II hereof at the time of bid submission will be considered. By furnishing this document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to perform the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

#### **12. Qualification Information**

The Port Authority may give oral or written notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder’s qualifications and ability to fulfill the Contractor’s obligations hereunder. The requested information shall be submitted no later than three (3) days after said notice unless otherwise indicated. Matters upon which the Port Authority may inquire may include, but may not be limited to, the following:

- a. The Bidder may be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder’s financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be required by the Port Authority from time to time including, but not limited to, the following:

1.
  - (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.
  - (ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.
  - (iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the present financial condition of the Bidder.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the bid opening, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or their designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. Bidder's statement of work on hand, including any work on which a bid has been submitted, and containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs.

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

- b. Information relating to the Bidder's Prerequisites, if any, as set forth in this document.
- c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.
- d. A statement setting forth the names of those personnel to be in overall charge of the service and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.

e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."

f. In the event that the Bidder's performance on a current or past Port Authority or Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.

g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority that it in fact can perform the services as called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's Bid. Nothing stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the bid documents.

### **13. Contractor's Integrity Provisions**

By submitting a Bid, Bidders shall be deemed to have made the certifications contained in the clauses entitled "Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information," and "Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees" contained within the Standard Terms and Conditions within these bid documents. If the Bidder is unable to make the certifications contained therein the Bidder shall submit a statement with its Bid explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Bid, clearly marked "CERTIFICATION STATEMENT."

### **14. Code of Ethics for Port Authority Vendors**

Bidder's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors" (the "Code"). The Code of Ethics can be found on the Port Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

### **15. Facility Inspection**

Details regarding the Facility inspection for all parties interested in submitting a bid are stipulated in Part II hereof. All Bidders must present company identification and photo identification for access to the Facility.

### **16. Available Documents - General**

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders either at the Facility Inspection, or during regular business hours. Arrangements to review these documents at a time other than the Facility Inspection may be made by contacting the person listed in Part II as the contact for the Facility Inspection.



These documents were not prepared for the purpose of providing information for Bidders upon this Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Port Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the inferences or conclusions to be drawn there from.

### **17. Pre-award Meeting**

The lowest qualified Bidder may be called for a pre-award meeting prior to award of the Contract.

### **18. Price Preference**

A price preference may be available for Minority/Women Business Enterprises (MBE/WBEs), Small Business Enterprises (SBEs) or Service-disabled Veteran-owned Business Enterprises (SDVOBs) as set forth in the Standard Contract Terms and Conditions.

### **19. MBE/WBE/SDVOB Subcontracting Provisions**

Bidders shall use every good-faith effort to provide for participation by Port Authority certified Minority Business Enterprises (MBEs), Port Authority certified Woman-owned Business Enterprises (WBEs) and Service-disabled Veteran-owned Business Enterprises (SDVOBs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services, in accordance with the “MBE/WBE/SDVOB Subcontracting Provisions” contained within Part III, and the section of the Standard Terms and Conditions entitled “MBE/WBE/SDVOB Good Faith Participation.”

### **20. Certification of Recycled Materials**

Bidders are requested to submit, with their bid, a written certification entitled “Certified Environmentally Preferable Products / Practices” attached hereto as “Attachment I-A”, attesting that the products or items offered by the Bidder contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only.

#### **Recycling Definitions:**

For purposes of this numbered section, the following definitions shall apply:

- a       “Recovered Material” means any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- b       “Post-consumer Material” means any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. “Post-consumer material” is included in the broader category of “Recovered Material”.

- c. "Pre-consumer Material" means any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" means a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" means the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" means any product that will result in less waste generated due to its use rather than another product designed to serve the same function with an greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

## **21. City Payroll Tax**

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

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

These taxes, if applicable, are the sole responsibility of the Contractor. Bidders should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph headed "Sales or Compensating Use Taxes", in the Standard Contract Terms and Conditions included herein, does not apply to these taxes.

## **22. Automated Clearing House Enrollment**

The Port Authority of New York and New Jersey has transitioned to an electronic method of paying its vendors, contractors and consultants via an Automated Clearing House ("ACH") funds transfer. It is the Port Authority's expectation that all vendors, contractors and consultants will be paid via an ACH funds transfer. To avoid delays in payment, vendors, contractors, and consultants should enroll in ACH and complete the Port Authority's "Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)" form, which is available at <https://www.panynj.gov/business-opportunities/pdf/Vendor-ACH-auth-form.pdf>. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the vendor, contractor or consultant of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act

on it. Any questions on this process may be directed to the Comptrollers Department ACH Enrollments contact line at 201 216-6002 or emailed to [ACHENROLLMENT@PANYNJ.GOV](mailto:ACHENROLLMENT@PANYNJ.GOV).

### **23. Additional Bidder Information**

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

### **24. Safe Vehicle Operation**

The Bidder may be required to demonstrate that it has a satisfactory Federal Motor Carrier Safety Administration (FMCSA) safety record and vehicle maintenance program. If applicable, the Bidder shall submit this safety information as may be required by the Port Authority, including, but not limited to:

1. Information about their overall FMCSA safety program;
2. Information about their drivers training program;
3. Information about their vehicle maintenance program;
4. Results of Commercial Vehicle inspections;
5. Information about actions taken to remedy safety issues and violations.

The determination that the Bidder's safety record and safety programs are satisfactory will be made by the Port Authority at its sole discretion.

## ATTACHMENT I A - Certified Environmentally Preferable Products/Practices

Bidder Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

### 1. Packaging

Has the Bidder implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- \_\_\_\_\_ Use of corrugated materials that exceed the required minimum EPA recommended post-consumer recycled content
- \_\_\_\_\_ Use of other packaging materials that contain recycled content and are recyclable in most local programs
- \_\_\_\_\_ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- \_\_\_\_\_ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- \_\_\_\_\_ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

**If yes, a description of the practices being followed should be include with the submission.**

### 2. Business Practices / Operations / Manufacturing

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

- \_\_\_\_\_ Recycles materials in the warehouse or other operations
- \_\_\_\_\_ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- \_\_\_\_\_ Use of energy efficient office equipment or signage or the incorporation of green building design elements
- \_\_\_\_\_ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- \_\_\_\_\_ Other sustainable initiative

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

### 3. Training and Education

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

- ☐ Yes      ☐ No      If yes, Bidder shall attach a description of the training offered and the specific criteria targeted by the training.

### 4. Certifications

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

- \_\_\_\_\_ ISO 14000 or adopted some other equivalent environmental management system
- \_\_\_\_\_ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- \_\_\_\_\_ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

**If yes, Bidders should attach copies of the certificates obtained.**

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

\_\_\_\_\_ Name      \_\_\_\_\_ Date

**PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS,  
TABLE OF CONTENTS**

1. Service(s) Required.....	2
2. Location(s) Services Required.....	2
3. Expected Date of Commencement of Contract .....	2
4. Contract Type.....	2
5. Duration of Contract .....	2
6. Option Period(s).....	2
7. Price Adjustment during Option Period(s) (Index Based).....	2
8. Extension Period .....	2
9. Facility Inspection.....	2
10. Specific Bidder’s Prerequisites .....	3
11. Personnel Assurance Program and Contractor Staff Background Screening .....	4

## **PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS**

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

### **1. Service(s) Required**

Landscaping maintenance services, as more specifically described in Part V (the "Specifications").

### **2. Location(s) Services Required**

New Jersey Marine Terminals, specifically Port Newark and Port Elizabeth, as more fully described in the definition of "Facility" in the Specifications.

### **3. Expected Date of Commencement of Contract**

On or about January 16, 2020.

### **4. Contract Type**

Service Contract.

### **5. Duration of Contract**

Three (3) years expiring on or about January 15, 2023.

### **6. Option Period(s)**

There shall be up to three (3), one (1) year Option Periods.

### **7. Price Adjustment during Option Period(s) (Index Based)**

Price adjustment during the Option Period(s) shall be pursuant to the clause entitled "Price Adjustment" in Part III hereof.

### **8. Extension Period**

120 Day Extension Period applicable.

### **9. Facility Inspection**

**Date and Time:** Thursday, December 19, 2019 at 9:00 a.m.

**Location:** New Jersey Marine Terminal, 260 Kellogg Street, Port Newark, NJ 07114

Please contact James Coghlan at (973) 518-1951 between 8 a.m. and 2 p.m. (ET) or email [JCoghlan@panynj.gov](mailto:JCoghlan@panynj.gov) to confirm attendance and/or receive travel directions. A valid photo ID is required

## **10. Specific Bidder's Prerequisites**

- a. The Bidder shall have had at least three (3) years of continuous experience immediately prior to the date of submission of its Bid in the management and operation of a business which provides commercial landscaping maintenance services, and during that time shall have actually engaged in providing said or such services to commercial or industrial accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least three (3) years of experience immediately prior to the date of the submission of its Bid in the management and operation of a business actually engaged in providing these services to commercial or industrial accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.
- b. During the time period stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have satisfactorily performed or shall be performing under at least one (1) contract requiring similar services of similar scope to those required under this Contract.
- c. The Bidder shall have had in its last fiscal year, or the last complete calendar year immediately preceding the opening of its Bid, a minimum of \$150,000 annual gross income.
- d. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Bid as follows: The prerequisite in subparagraph (a) and (b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. The prerequisite in subparagraph (c) above, will be considered satisfied if the gross income of the joint venture itself meets the prerequisite or the gross income of the participants in the joint venture cumulatively meets the prerequisite. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants should be listed followed by the words "acting jointly and severally". All joint venture Bidders must provide documentation of their legal status.
- e. The Bidder shall have, at the time of submission of its Bid, and throughout the term of this Contract, a current and valid Pesticide Business Registration from the State of New Jersey Department of Environmental Protection (NJDEP). In the case of joint venture, each entity must have a current and valid Pesticide Business Registration from the NJDEP.

**Proof that the above prerequisites are met should be submitted with the Bid.**

## **11. Personnel Assurance Program and Contractor Staff Background Screening**

The Contractor awarded this Contract may be required to have its staff, and any subcontractor's staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor and any subcontractors may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Contractor and its subcontractors as an out-of-pocket expense. Costs for staff that are rejected for a credential for any reason are not reimbursable.

Such background checks shall be performed through the Authority's personnel assurance program provider. The Secure Worker Access Consortium ("S.W.A.C.") is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and/or regulation. Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922.



**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS,  
TABLE OF CONTENTS**

1.	General Agreement .....	2
2.	Duration .....	2
3.	Payment.....	3
4.	Price Adjustment.....	4
5.	Liquidated Damages .....	6
6.	Insurance Procured by the Contractor.....	7
7.	Increase and Decrease in Areas or Frequencies.....	11
8.	Extra Work.....	12
9.	MBE/WBE Subcontracting Provisions.....	14

## PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

### 1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter called the “Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract as specified in Part II, and fully set forth in the Part V, (the “Specifications,”) at the location(s) listed in Part II and as more fully set forth in the Specifications, and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the provisions of the Contract Documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

### 2. Duration

- a) The initial term of this Contract (hereinafter called the “Base Term”) shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority’s written notice of bid acceptance (hereinafter called the “Commencement Date”), and unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire as specified in Part II hereof (hereinafter called the “Expiration Date”).
- b) If specified as applicable to this Contract and set forth in Part II hereof, the Port Authority shall have the right to extend this Contract for additional period(s), either through an extension or an option (hereinafter collectively referred to as the “Option Period(s)”) following the Expiration Date, upon the same terms and conditions subject only to adjustments of charges, if applicable to this Contract, as may be hereinafter provided in the paragraph entitled “Price Adjustments”. If the Port Authority shall elect to exercise the Option(s) to extend this Contract, then, no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.
- c) Unless specified as not applicable to this Contract in Part II hereof, the Port Authority shall have the absolute right to extend the Base Term for an additional period of up to one hundred and twenty (120) days subsequent to the Expiration Date of the Base Term, or the Expiration Date of the final exercised Option Period (hereinafter called the “Extension Period”), subject to the same terms and conditions as the previous contract period. The prices quoted by the Contractor

for the previous contract period shall remain in effect during this Extension Period without adjustment. If it so elects to extend the term of Contract, the Port Authority will advise the Contractor, in writing, that the term is so extended, and will stipulate the length of the extended term, at least thirty (30) days prior to the expiration date of the previous contract period.

### **3. Payment**

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder, a compensation calculated from the actual quantities of services performed and the respective prices inserted by the Contractor in the Pricing Sheet(s), forming a part of this Contract, exclusive of compensation under the clause hereof entitled "Extra Work". The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures:

- a) Payment shall be made in accordance with the prices for the applicable service (during the applicable Contract year) as they appear on the Pricing Sheet(s), as the same may be adjusted from time to time as specified herein, minus any deductions for services not performed and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified, or as designated by the Manager.
- b) The Contractor shall submit to the Manager by the fifth day of each month following the month of commencement of this Contract and on or by the fifth day of each month thereafter (including the month following the termination, revocation or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Manager for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice. K

Invoices shall be sent to:

The Port Authority of New York & New Jersey  
New Jersey Marine Terminal  
260 Kellogg street  
Port Newark, NJ 07114

- c) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to (1) release the Contractor from any obligation under or upon this Contract, or to (2) estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or

omission was incorrect or to (3) preclude the Port Authority from recovering any monies (a) paid in excess of those lawfully due or (b) to which the Port Authority may be entitled on account of and any damage sustained by the Port Authority.

- d) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

"Final Payment", as the term is used throughout this Contract, means the final payment made for services rendered in the last month of the Base Term or any extended term. However, should this Contract be terminated for any reason prior to the last month of the Base Term or any extended term, then Final Payment shall be the payment made for services rendered in the month during which such termination becomes effective. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment, however, final or otherwise shall operate to release the Contractor from any obligations in connection with this Contract.

#### **4. Price Adjustment**

All Contract prices submitted by the Contractor and agreed to by The Port Authority, shall be applicable to the three (3) years of the Base Term. For the Option Period(s) that are applicable to this Contract and are exercised hereunder, (excluding the 120 day Extension Period as described in the paragraph entitled "Duration", hereof) The Port Authority shall adjust the compensation due to the Contractor utilizing the Consumer Price Index for CPI-All Urban Consumers (Current Series) **Series Id:**CUURS12ASA0L2,CUUSS12ASA0L2 Not Seasonally Adjusted **Series Title:** All items less shelter in New York-Newark-Jersey City, NY-NJ-PA, all urban consumers, not seasonally adjusted **Area:** New York-Newark-Jersey City, NY-NJ-PA **Item:** All items less shelter **Base Period:**1982-84=100, published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Price Index").

For the first one (1) year Option Period of the Contract, the Price Index shall be determined for the months of July 2021 and July 2022. The amounts payable to the Contractor in the final year of the Base Term shall be multiplied by a fraction the numerator of which is the Price Index for July 2022 and the denominator of which is the Price Index for July 2021. The resulting product shall be the amounts payable to the Contractor in the first, one (1) year Option Period.

For the second one (1) year Option Period of the Contract, the Price Index shall be determined for the months of July 2022 and July 2023. The amounts payable to the Contractor in the first Option Period shall be multiplied by a fraction the numerator of which is the Price Index for July 2023 and the denominator of which is the Price Index for July 2022. The resulting product shall be the amounts payable to the Contractor in the second one (1) year Option Period.

For the third one (1) year Option Period of the Contract, the Price Index shall be determined for the months of July 2023 and July 2024. The amounts payable to the Contractor in the second Option Period shall be multiplied by a fraction the numerator of which is the Price Index for July 2024 and the denominator of which is the Price Index for July 2023. The resulting product shall be the amounts payable to the Contractor in the third one (1) year Option Period.

In the event the amounts payable to the Contractor as set forth on the Cost Proposal Form or Pricing Sheet(s), as applicable shall be adjusted hereunder, then, simultaneously with such adjustment, the Average Hourly Direct Wages and the Supplemental Benefits shall also be adjusted by multiplying said amounts, as the same may have been previously adjusted hereunder, by the same fraction set forth in the applicable paragraph above, which was used to adjust the amounts payable to the Contractor in the corresponding year in the Base Term or Option Period, as applicable, and thereafter such adjusted employee payments shall be in effect and payable as though set forth in this Contract. The Contractor shall pay and provide the same to employees hereunder and shall comply with all the terms and provisions of the section of the Contract entitled "Wages, Health and Supplemental Benefits". At the commencement of each Option Period, if any, the Contractor shall submit to Port Authority its plan to insure its compliance with the employee payments requirement in effect during such coming Option Period. In the event that the Consumer Price Index is not available for any specified month as herein above set forth within the time set forth for payment, such Consumer Price Index for the last month then published shall be used to constitute the Consumer Price Index. In the event that adjustment is calculated to be zero or negative, the effective adjustment shall be zero for that period with respect to the Average Hourly Direct Wages and the Supplemental Benefits required herein. Nothing herein shall prevent a contractor from raising wages or increasing benefits at its own discretion.

In the event of a change in the basis for the computation of the said Index or the discontinuance of its publication, such other appropriate index shall be substituted as may be agreed upon by the Authority and the Contractor as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said Price Index. In the event of the failure of the parties to so agree, the Port Authority may select and use such index, as it seems appropriate. Notwithstanding the provisions of this section, in no event shall any adjustment hereunder be greater than three (3%) per annum.

The amounts payable to the Contractor during the 120-day Extension Period shall not be subject to adjustment.

If, after an adjustment referred to in this Section, the Index used for computing such adjustment shall be changed or adjusted, then the amounts payable to the Contractor for that period shall be recomputed. If such recomputation results in a smaller increase in the amount payable to such period, then after notification of the change or adjustment, the recomputed amounts shall be in effect and upon demand by the Port Authority (or PATH), the Contractor shall refund to Port Authority excess amounts paid by Port Authority for such period.

## **5. Liquidated Damages**

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. In the event that the Contractor fails to satisfactorily perform all or any part of the Work required hereunder in accordance with the requirements set forth in the Specifications (as the same may be modified in accordance with provisions set forth elsewhere herein) then damages for breach by the Contractor may be liquidated, but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy, as follows:

- a) If the Contractor fails to perform all or any part of the services as set forth in the Specifications, as the same may, as hereinafter provided, be revised, satisfactorily or at the frequencies as set forth in the Specifications, then the amount payable to the Contractor for said services shall be reduced by an amount equal to two hundred percent (200%) of the applicable All-Inclusive Unit Price for the applicable service that the Contractor fails to perform, fails to satisfactorily perform, or fails to perform at the required frequencies.
- b) If any Lead Person/Supervisor fails to respond to a cellular phone communication related to performance of his/her services under this Contract within the required fifteen (15) minutes response time, then the amount payable to the Contractor shall be reduced by twenty-five dollars (\$25.00) for the initial failure to respond within the required fifteen (15) minutes response time, and then an additional twenty-five dollars (\$25.00) for each hour, or part thereof, thereafter in which any Lead Person/Supervisor fails to respond, until a response is provided.
- c) If the Contractor fails to provide the Manager with the approved certificates of insurance no less than fifteen (15) days prior to the expiration date of each policy as required under this Contract, then the amount payable to the Contractor shall be reduced by two hundred dollars (\$200) for each day, or part thereof, such certificates are past due.
- d) If any Contractor's personnel fail to comply with the uniform requirements as set forth in the Specifications, then the amount payable to the Contractor shall be reduced by fifty dollars (\$50) for each day, or part thereof, per personnel that fails to comply with the uniform requirement.

- e) If the Contractor fails to provide any invoices, reports, records, information or documentation required or requested under this Contract within the time specified within this Contract, then the amount payable to the Contractor by the Port Authority shall be reduced by fifty (\$50) dollars per day, or part thereof, until the Contractor provides the information invoices, reports, records, information or documentation.
- f) In the event an audit conducted in accordance with this Contract determines that the Contractor has not paid for or provided (or caused any subcontractor to pay or provide) Health Benefits to FTEs and their families as required by the section of the Specifications entitled "Wages, Health Benefits and Supplemental Benefits," the Contractor shall be assessed ten (\$10) dollars, per FTE, per day, that such Health Benefits were not paid for or provided. Such Health Benefits may be considered to not be paid for or provided if any required element was not included.

The Manager shall determine whether the Contractor has performed in a satisfactory manner and their determination shall be final, binding and conclusive upon the Contractor.

Failure of the Manager or the Port Authority to impose liquidated damages shall not be deemed Port Authority acceptance of unsatisfactory performance or a failure to perform on the part of the Contractor or a waiver of its remedies hereunder.

#### **6. Insurance Procured by the Contractor**

The Contractor and its subcontractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the Contract and such Insurance and shall be written on an ISO occurrence from CG 00 01 0413 or its equivalent covering the obligations assumed by the Contractor under this Contract including but not limited to premise-operations, products and completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering any autos in the following minimum limits:

Commercial General Liability Insurance - \$ 3 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - \$ 3 million combined single limit per accident for bodily injury property damage liability.

Environmental Liability Insurance - The Contractor shall procure and maintain in force an Environmental Liability Insurance Policy covering the Contractor and its subcontractors' pollution legal liability, including cleanup, with limits not less than \$ 1 million per occurrence for bodily injury and property damage tailored to the specific exposures as they relate to the scope of this Contract. Such policy(ies) and any certificate of insurance submitted hereunder in relation to such policy(ies) shall

(I) be expressly endorsed for this Contract and each transfer location, travel route and material disposition location selected by the Contractor, (II) state that claims disputes and coverage shall be litigated in United States courts having jurisdiction, and not be limited to arbitration, and (III) acknowledge the Contractor disclosure to the insurance carrier that the material may be considered a hazardous substance/waste under applicable law including, but not limited to, RCRA and/or CERCLA and/or the Toxic Substance Control Act (TSCA). It should be noted that the substances may be considered “hazardous” under CERCLA, but not necessarily “hazardous” under RCRA and that such materials if RCRA “hazardous” would require a manifest and disposal certificate under RCRA at a Subtitle C hazardous waste disposal facility. A copy of this Contract, including all schedules and documents shall be provided to the insurance carrier. The insurance coverage shall be on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions on land, in air, and on water. The policy will be in effect commencing on the effective date of the Contract and include coverage for completed operations for 5 years after the close of the Contract.

The policy shall provide transportation coverage by or on the behalf of the Contractor for the loading and unloading and hauling of related waste materials, including but not limited to asbestos material and lead paint (if applicable), from the site to the final disposition location. Deductible are subject to the approval of the Authority and shall not reduce the limit of liability. The policy form must “pay on behalf of” rather than “indemnify the insured”. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy.

The insurance shall be written on an occurrence basis, as distinguished from a “claims made” basis, and shall not include any exclusions for “action over claims” (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under this Contract;
- Independent Contractor’s Coverage;
- Premise-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policy;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or



provisions, such language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;

- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law.

In addition, the liability policy (ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorsed to and name "The Port Authority of New York and New Jersey and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns" as Insured (as defined in the policy or in an additional insured endorsement amending the policy's "Who is An Insured" language as the particular policy may provide). The "Insured" shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between the parties. The liability policy(ies) and certificates of insurance shall contain separation of insured and severability of interests clauses for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Contractor is responsible for all deductibles and losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Contractor is subject to the review and approval of the General Manager, Risk Finance. If any part of the insurance is self-insured, Contractor and its subcontractors agrees to treat all losses within the self-insured retention as though commercial insurance is in place, including provide defense to the Additional Insured. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

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

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

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

***The contractor, its subcontractors and its insurers shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.***

The Contractor and its subcontractor(s) shall also take out, maintain, and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than \$1 million per each accident.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without (30) days' prior written notice to the Port Authority Att: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance.

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

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not effect as above required, then the Contractor and all subcontractors shall suspend performance of the Contract at the premises until a satisfactory insurance policy (ies) and certificate of insurance is provided to and

approved by Risk Finance, unless the Facility or Project Manager directs the Contractor, in writing, to continue to performing work under the Contract. If the Contract is so suspended, no extension of time shall be due on account thereof.

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

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

The requirements for insurance procured by the Contractor and subcontractor(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract. **CITS#6120N**

## **7. Increase and Decrease in Areas or Frequencies**

The Manager shall have the right, at any time and from time to time in their sole discretion, to increase or decrease the frequencies of all or any part of the services required hereunder and/or to add areas not described herein in the Specifications or to remove areas or parts of areas which are hereunder so described. In the event the Manager decides to change any frequencies or areas such change shall be by written notice given to the Contractor not less than five (5) business days prior to the effective date of said changes, said changes to be effective upon the date specified in said notice.

In the event of an increase or decrease in areas or frequencies, the Contractor's compensation will be adjusted to reflect such change in areas or frequencies utilizing the applicable Unit Price for such services (for the applicable Contract year) as set forth on the Pricing Sheet(s).

Where no specific Unit Price has been quoted for the type of services to be increased or decreased, the Manager shall have the right to negotiate the compensation to reflect such change, whether an increase or decrease in areas or frequencies, which, in the opinion of the Manager, are necessary to complete the work, by multiplying the increased or decreased amount by the negotiated rate.

In the event of a decrease, the Contractor shall not be entitled to compensation for Work not performed.

No such change in areas or frequency will be implemented which results in a total increase or decrease in compensation that is greater than fifty percent (50%) of the Total Estimated Contract Price for the Base Term or, if changes are to be implemented during an Option Period, fifty percent (50%) for that Option Period.

Any increases in frequencies or areas shall not constitute Extra Work and, as such, shall not be limited by the Extra Work provisions of this Contract.

## **8. Extra Work**

The Contractor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Manager. "Extra Work" as used herein shall be defined as work which differs from that expressly or impliedly required by the Specifications in their present form. Total Extra Work performed by the Contractor shall not exceed six percent (6%) of the Total Estimated Contract Price of this Contract for the entire Term of this Contract including extensions thereof, or six percent (6%) of the Total Estimated Contract Price of each Section if this Contract is awarded by separate Sections.

An increase in area or frequency does not constitute Extra Work, but shall be compensable based on the prices in the Pricing Sheet(s) and the paragraph herein titled "Increase or Decrease in Areas or Frequencies".

The Contractor is required to perform Extra Work pursuant to a written order of the Manager expressly recognizing such work as Extra Work. If Lump Sum or Unit Price compensation cannot be agreed upon by the parties in writing prior to the start of Work, the Contractor shall perform such Extra Work and the Contractor's compensation shall be increased by the sum of the following amounts and such amounts only: (1) the actual net cost, in money, of the labor, and material, required for such Extra Work; (2) ten percent (10%) of the amount under (1) above; (3) such rental as the Manager deems reasonable for plant and equipment (other than small tools) required for such Extra Work; (4) if the Extra Work is performed by a subcontractor, an additional five percent (5%) of the sum of the amounts under (1) through (3) above.

As used in this numbered clause (and in this clause only):

"Labor" means laborers, mechanics, and other employees below the rank of supervisor, directly employed at the Site of the Work subject to the Manager or their designee's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (b) taxes actually paid by the employer pursuant to law upon the basis of such wages and workers' compensation premiums paid pursuant to law. "Employees" as used above means only the employees of one employer.

“Net Cost” means the Contractor’s actual cost after deducting all permitted cash and trade discounts, rebates, allowances, credits, sales taxes, commissions, and refunds (whether or not any or all of the same shall have been taken by the Contractor) of all parts and materials purchased by the Contractor solely for the use in performing its obligation hereunder provided, where such purchase has received the prior written approval of the Manager as required herein. The Contractor shall promptly furnish to the Manager such bills of sale and other instruments as the Manager may require, executed, acknowledged and delivered, assuring to the Manager title to such materials, supplies, equipment, parts, and tools free of encumbrances.

“Materials” means temporarily-installed and consumable materials as well as permanently-installed materials; and “cost of materials” means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the Site of the Work in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporarily-installed materials, less their salvage value, if any.

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

The Contractor shall submit all reports, records and receipts as are requested by the Manager so as to enable him/her to ascertain the time expended in the performance of the Extra Work, the quantity of labor and materials used therein and the cost of said labor and materials to the Contractor.

The provisions of this Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

If the Contractor deems work to be Extra Work, the Contractor shall give written notice to the Manager within twenty-four (24) hours of performing the work that it so considers as Extra Work, and failure of the Contractor to provide said notice shall constitute a waiver of any claim to an increase in compensation for such work and a conclusive and binding determination that it is not Extra Work.

The Contractor shall supply the amount of materials, supplies, equipment and personnel required by the Manager within five (5) business days following the receipt of written or verbal notice from the Manager, or in the case of an emergency as determined by the Manager, within twenty four (24) hours following the receipt by the Contractor of the Manager’s written or oral notification. Where oral notification is provided hereunder, the Manager will thereafter confirm the same in writing.

All Extra Work shall be billed to the Port Authority on a separate invoice on a monthly basis.

## **9. MBE/WBE Subcontracting Provisions**

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority Business Enterprises (MBEs) and Port Authority Certified Women-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

The Contractor shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Contract price for Port Authority certified MBEs and ten percent (10%) of the total Contract price for Port Authority certified WBEs.

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

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

Bidders are directed to use form PA3760A as the recording mechanism for the MBE/WBE Participation Plan, or which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

Bidders shall include with their bids, a MBE/WBE Participation Plan for each MBE/WBE subcontractor, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

Each MBE/WBE Participation Plan submitted by the Contractor to the Port Authority shall contain, at a minimum, the following:

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

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

Subsequent to Contract award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the MBE/WBE Participation Plans, Contractors are directed to use form PA3760B, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, a Statement of Subcontractor Payments (PA3968) which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

### **Prompt Payment/Retainage**

The Contractor agrees to pay each subcontractor under this Contract, for satisfactory performance of its subcontract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return retainage payments, if any, to each subcontractor within ten days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment

from the above referenced timeframe may occur only for good cause following written approval of the Authority.

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

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

A. Commercially Useful Function. An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Contractor shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

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

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

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



## **Counting MBE/WBE Participation**

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

- A. Subcontractors. One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subcontractor will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Contractor, other Subcontractors or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE goals only if the MBE/WBE subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.
- B. Manufacturers/Fabricators. One hundred percent (100%) of the expenditure to an MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.
- C. Material Suppliers. Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.
- D. Broker's/Manufacturer's Representatives. One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.
- E. Services. One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- F. Trucking Operations. If using an MBE/WBE firm for trucking operations, the MBE/WBE trucking firm of record is the firm that is listed on the MBE/WBE Participation Plan. The MBE/WBE trucking firm shall own and operate at least one registered, insured, and fully operational truck used for the performance of the Work and

shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the MBE/WBE goal. The MBE/WBE trucking firm of record shall control the day-to-day MBE/WBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.

1. MBE/WBE Owned/Leased Trucks. One hundred percent (100%) of the value of the trucking operations the MBE/WBE provides for the performance of the Work using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the MBE/WBE using drivers it employs, will be counted toward the MBE/WBE goal.

2. MBE/WBE Short-Term Leased Trucks. The MBE/WBE may lease trucks on a short-term basis from another MBE/WBE, including an owner/operator who is Port Authority certified as an MBE/WBE. One hundred percent (100%) of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.

3. Non-MBE/WBE Trucks. The MBE/WBE may lease trucks on a short-term basis from a non-MBE/WBE, including an owner-operator. One hundred percent (100%) of the fee or commission the MBE/WBE receives as a result of the lease arrangement will be counted toward the MBE/WBE goal. The value of the trucking operations provided by the lessee will not be counted toward the MBE/WBE goal.

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

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT

PA 3760A /3-16

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

**BID NUMBER AND TITLE:** \_\_\_\_\_

**BIDDER:**

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

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

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

**MBE/WBE:**

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

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

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

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

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

**AFFIRMATION of MBE/WBE**

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

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

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

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the PA 3760A MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Bidder \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

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

**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**PA 3760A**

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

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

S.S.:

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print)

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

(Notary Signature)

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

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND PRICING SHEET(S), TABLE OF CONTENTS**

1. SIGNATURE SHEET .....	2
2. NAME AND RESIDENCE OF PRINCIPALS SHEET.....	3
3. PRICING SHEET(S) .....	4

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND PRICING SHEET(S)**

**1. SIGNATURE SHEET**

OFFER: The undersigned offers and agrees to furnish to the Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and addenda of the Contract. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions. This offer shall be irrevocable for one hundred twenty (120) days after the date on which the Port Authority opens this Bid.

**ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL  
RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS  
INDICATED ON THE COVER SHEET.**

Bidding Entity's Legal Business Name \_\_\_\_\_

Bidder's Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_

Email \_\_\_\_\_ EIN# \_\_\_\_\_

SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_

**ACKNOWLEDGEMENT:**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally came before me, \_\_\_\_\_, who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated, that they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

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

NOTE: If a joint venture is bidding, duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions, Part III. Indicate below if a signed, explanatory statement in connection with this section is attached hereto.

If certified by the Port Authority as an SBE or MWBE: \_\_\_\_\_ (indicate which one and date of the certification).

## **2. NAME AND RESIDENCE OF PRINCIPALS SHEET**

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

NAME	TITLE	ADDRESS OF RESIDENCE (Do not give business address)
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### **3. PRICING SHEET(S)**

#### **Entry of Prices**

- a. The prices quoted shall be written in figures, in ink, preferably in black ink where required in the spaces provided on the Pricing Sheet(s) attached hereto and made a part hereof. Prices must be quoted in United States Dollars. All figures inserted will be interpreted as being quoted in United States Dollars.
- b. All Bidders are asked to ensure that all charges quoted for similar operations in the Contract are consistent.
- c. Prices must be submitted for each Item required on the Pricing Sheet(s). Bidders are advised that the Items on the Pricing Sheet(s) correspond to the required services set forth in the Specifications.
- d. Bidders must insert all figures as required and verify all computations for accuracy. The Port Authority in its sole judgment reserves the right to: (1) reject Bids without checking them for mathematical errors or omissions, (2) reject Bids that contain or appear to contain errors or omissions, and (3) supply corrections to Bids that contain or appear to contain mathematical errors and omissions, and in this case the Port Authority reserves the right to recompute the Total Estimated Contract Price based upon the Unit Prices inserted by the Bidder, which amount shall govern in all cases.
- e. In the event that a Bidder quotes an amount in the Total Estimated column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.
- f. The Total Estimated Contract Price is solely for the purpose of facilitating the comparisons of Bids. Compensation shall be in accordance with the section of this Contract entitled "Payment."



## Contractor's Pricing Sheet A – Year One

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
1	Trim trees	212	trees	x	\$	=	\$
2	Mow grass	21,970,800	square feet	x	\$	=	\$
3	Edging	192,600	linear feet	x	\$	=	\$
4	Apply fertilizer	1,830,900	square feet	x	\$	=	\$
5	Apply lime	610,300	square feet	x	\$	=	\$
6	Apply pesticides and herbicide	610,300	square feet	x	\$	=	\$
7	Weed control	1,220,600	square feet	x	\$	=	\$
8	Repair and seed lawn	1,220,600	square feet	x	\$	=	\$
9	Cultivate and weed beds	756,000	square feet	x	\$	=	\$
10	Supply and plant red hyacinths	50	each	x	\$	=	\$
11	Supply and plant white hyacinths	35	each	x	\$	=	\$
12	Supply and plant blue hyacinths	35	each	x	\$	=	\$
13	Supply and plant yellow tulips	200	each	x	\$	=	\$
14	Supply and plant red tulips	200	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
15	Supply and plant purple tulips	100	each	x	\$	=	\$
16	Supply and plant pink oxford tulips	50	each	x	\$	=	\$
17	Supply and plant yellow daffodils	50	each	x	\$	=	\$
18	Supply and plant white daffodils	50	each	x	\$	=	\$
19	Supply and plant white vinca	100	each	x	\$	=	\$
20	Supply and plant purple vinca	100	each	x	\$	=	\$
21	Supply and plant white impatience	25	each	x	\$	=	\$
22	Supply and plant red impatience	25	each	x	\$	=	\$
23	Supply and plant salmon impatience	25	each	x	\$	=	\$
24	Supply and plant purple impatience	25	each	x	\$	=	\$
25	Supply and plant yellow marigolds	300	each	x	\$	=	\$
26	Supply and plant orange marigolds	250	each	x	\$	=	\$
27	Supply and plant red geraniums	50	each	x	\$	=	\$
28	Supply and plant white mums	50	each	x	\$	=	\$
29	Supply and plant brown mums	50	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
30	Supply and plant red mums	50	each	x	\$	=	\$
31	Supply and plant yellow mums	100	each	x	\$	=	\$
32	Supply and plant purple kale	62	each	x	\$	=	\$
33	Supply and plant white cabbage	62	each	x	\$	=	\$
34	Trim shrubs	12,000	square feet	x	\$	=	\$
35	Supply and plant Locust Trees	20	tree	x	\$	=	\$
36	Supply and plant Japanese Black Pine	5	tree	x	\$	=	\$
37	Supply and plant Ginkgo Biloba Trees	5	tree	x	\$	=	\$
38	Supply and plant Japanese Zelkova	15	tree	X	\$	=	\$
39	Bradford Pear-Aristocrat	15	tree	x	\$	=	\$
40	Supply and plant Juniper Shrubs	12	each	x	\$	=	\$
41	Supply and plant Azaleas	30	each	x	\$	=	\$
42	Supply and plant Taxus Capitata	12	each	x	\$	=	\$
43	Supply and plant Ilex shrubs	50	each	x	\$	=	\$
44	Supply and plant Everblooming Daylillies	50	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
45	Supply and plant Gold Coast Juniper	11	each	x	\$	=	\$
46	Supply and plant Japanese Garden Juniper	19	each	x	\$	=	\$
47	Supply and plant Maiden Grass	4	each	x	\$	=	\$
48	Supply and plant Dwarf Fountain Grass	9	each	\$	=	\$	
49	Supply and spread topsoil	100	cubic yards	\$	=	\$	
50	Remove and replace mulch	20	cubic yards	\$	=	\$	
51	Apply dormant oil to fruit trees	15	trees	\$	=	\$	
52	Spring clean up	1	each	\$	=	\$	
53	Winter clean up	1	each	\$	=	\$	
54	Litter removal	300	hours	\$	=	\$	
55	Mow grass and remove growth at Inner Port St Hill	12,000	square feet	\$	=	\$	
56	Mow grass and remove growth at North Ave and Earhart Drive	2,000	square feet	\$	=	\$	
57	Tree removal to ground	2	trees	\$	=	\$	
	Total Estimated Year One (1) Contract Price: (Sum of items 1 through 57)  *The "All-Inclusive Unit Price" includes but is not limited to labor, inspection, maintenance, incidental materials, Contractor's overhead, including tolls, travel time, cost of vehicle use, and profit.						\$

## Contractor's Pricing Sheet B – Year Two

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
1	Trim trees	212	trees	x	\$	=	\$
2	Mow grass	21,970,800	square feet	x	\$	=	\$
3	Edging	192,600	linear feet	x	\$	=	\$
4	Apply fertilizer	1,830,900	square feet	x	\$	=	\$
5	Apply lime	610,300	square feet	x	\$	=	\$
6	Apply pesticides and herbicide	610,300	square feet	x	\$	=	\$
7	Weed control	1,220,600	square feet	x	\$	=	\$
8	Repair and seed lawn	1,220,600	square feet	x	\$	=	\$
9	Cultivate and weed beds	756,000	square feet	x	\$	=	\$
10	Supply and plant red hyacinths	50	each	x	\$	=	\$
11	Supply and plant white hyacinths	35	each	x	\$	=	\$
12	Supply and plant blue hyacinths	35	each	x	\$	=	\$
13	Supply and plant yellow tulips	200	each	x	\$	=	\$
14	Supply and plant red tulips	200	each	x	\$	=	\$

**PART IV – (PA/PATH) SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING SHEET(S) Rev. 1/28/19**

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
15	Supply and plant purple tulips	100	each	x	\$	=	\$
16	Supply and plant pink oxford tulips	50	each	x	\$	=	\$
17	Supply and plant yellow daffodils	50	each	x	\$	=	\$
18	Supply and plant white daffodils	50	each	x	\$	=	\$
19	Supply and plant white vinca	100	each	x	\$	=	\$
20	Supply and plant purple vinca	100	each	x	\$	=	\$
21	Supply and plant white impatience	25	each	x	\$	=	\$
22	Supply and plant red impatience	25	each	x	\$	=	\$
23	Supply and plant salmon impatience	25	each	x	\$	=	\$
24	Supply and plant purple impatience	25	each	x	\$	=	\$
25	Supply and plant yellow marigolds	300	each	x	\$	=	\$
26	Supply and plant orange marigolds	250	each	x	\$	=	\$
27	Supply and plant red geraniums	50	each	x	\$	=	\$
28	Supply and plant white mums	50	each	x	\$	=	\$
29	Supply and plant brown mums	50	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
30	Supply and plant red mums	50	each	x	\$	=	\$
31	Supply and plant yellow mums	100	each	x	\$	=	\$
32	Supply and plant purple kale	62	each	x	\$	=	\$
33	Supply and plant white cabbage	62	each	x	\$	=	\$
34	Trim shrubs	12,000	square feet	x	\$	=	\$
35	Supply and plant Locust Trees	20	tree	x	\$	=	\$
36	Supply and plant Japanese Black Pine	5	tree	x	\$	=	\$
37	Supply and plant Ginkgo Biloba Trees	5	tree	x	\$	=	\$
38	Supply and plant Japanese Zelkova	15	tree	X	\$	=	\$
39	Bradford Pear-Aristocrat	15	tree	x	\$	=	\$
40	Supply and plant Juniper Shrubs	12	each	x	\$	=	\$
41	Supply and plant Azaleas	30	each	x	\$	=	\$
42	Supply and plant Taxus Capitata	12	each	x	\$	=	\$
43	Supply and plant Ilex shrubs	50	each	x	\$	=	\$
44	Supply and plant Everblooming Daylillies	50	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
45	Supply and plant Gold Coast Juniper	11	each	x	\$	=	\$
46	Supply and plant Japanese Garden Juniper	19	each	x	\$	=	\$
47	Supply and plant Maiden Grass	4	each	x	\$	=	\$
48	Supply and plant Dwarf Fountain Grass	9	each	\$	=	\$	
49	Supply and spread topsoil	100	cubic yards	\$	=	\$	
50	Remove and replace mulch	20	cubic yards	\$	=	\$	
51	Apply dormant oil to fruit trees	15	trees	\$	=	\$	
52	Spring clean up	1	each	\$	=	\$	
53	Winter clean up	1	each	\$	=	\$	
54	Litter removal	300	hours	\$	=	\$	
55	Mow grass and remove growth at Inner Port St Hill	12,000	square feet	\$	=	\$	
56	Mow grass and remove growth at North Ave and Earhart Drive	2,000	Square feet	\$	=	\$	
57	Tree removal to ground	2	trees	\$	=	\$	
	Total Estimated Year Two (2) Contract Price: (Sum of items 1 through 57)  *The "All-Inclusive Unit Price" includes but is not limited to labor, inspection, maintenance, incidental materials, Contractor's overhead, B. including tolls, travel time, cost of vehicle use, and profit.						\$



## Contractor's Pricing Sheet C – Year Three

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
1	Trim trees	212	trees	x	\$	=	\$
2	Mow grass	21,970,800	square feet	x	\$	=	\$
3	Edging	192,600	linear feet	x	\$	=	\$
4	Apply fertilizer	1,830,900	square feet	x	\$	=	\$
5	Apply lime	610,300	square feet	x	\$	=	\$
6	Apply pesticides and herbicide	610,300	square feet	x	\$	=	\$
7	Weed control	1,220,600	square feet	x	\$	=	\$
8	Repair and seed lawn	1,220,600	square feet	x	\$	=	\$
9	Cultivate and weed beds	756,000	square feet	x	\$	=	\$
10	Supply and plant red hyacinths	50	each	x	\$	=	\$
11	Supply and plant white hyacinths	35	each	x	\$	=	\$
12	Supply and plant blue hyacinths	35	each	x	\$	=	\$
13	Supply and plant yellow tulips	200	each	x	\$	=	\$
14	Supply and plant red tulips	200	each	x	\$	=	\$

**PART IV – (PA/PATH) SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING SHEET(S) Rev. 1/28/19**

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
15	Supply and plant purple tulips	100	each	x	\$	=	\$
16	Supply and plant pink oxford tulips	50	each	x	\$	=	\$
17	Supply and plant yellow daffodils	50	each	x	\$	=	\$
18	Supply and plant white daffodils	50	each	x	\$	=	\$
19	Supply and plant white vinca	100	each	x	\$	=	\$
20	Supply and plant purple vinca	100	each	x	\$	=	\$
21	Supply and plant white impatience	25	each	x	\$	=	\$
22	Supply and plant red impatience	25	each	x	\$	=	\$
23	Supply and plant salmon impatience	25	each	X	\$	=	\$
24	Supply and plant purple impatience	25	each	X	\$	=	\$
25	Supply and plant yellow marigolds	300	each	X	\$	=	\$
26	Supply and plant orange marigolds	250	each	X	\$	=	\$
27	Supply and plant red geraniums	50	each	X	\$	=	\$
28	Supply and plant white mums	50	each	X	\$	=	\$
29	Supply and plant brown mums	50	each	X	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
30	Supply and plant red mums	50	each	X	\$	=	\$
31	Supply and plant yellow mums	100	each	X	\$	=	\$
32	Supply and plant purple kale	62	each	x	\$	=	\$
33	Supply and plant white cabbage	62	each	x	\$	=	\$
34	Trim shrubs	12,000	square feet	x	\$	=	\$
35	Supply and plant Locust Trees	20	tree	x	\$	=	\$
36	Supply and plant Japanese Black Pine	5	tree	x	\$	=	\$
37	Supply and plant Ginkgo Biloba Trees	5	tree	x	\$	=	\$
38	Supply and plant Japanese Zelkova	15	tree	X	\$	=	\$
39	Bradford Pear-Aristocrat	15	tree	x	\$	=	\$
40	Supply and plant Juniper Shrubs	12	each	x	\$	=	\$
41	Supply and plant Azaleas	30	each	x	\$	=	\$
42	Supply and plant Taxus Capitata	12	each	x	\$	=	\$
43	Supply and plant Ilex shrubs	50	each	x	\$	=	\$
44	Supply and plant Everblooming Daylillies	50	each	x	\$	=	\$

Item #	Description	Estimated Annual Quantity	Unit of Measure		All-Inclusive Unit Price*		Estimated Annual Total
45	Supply and plant Gold Coast Juniper	11	each	x	\$	=	\$
46	Supply and plant Japanese Garden Juniper	19	each	x	\$	=	\$
47	Supply and plant Maiden Grass	4	each	x	\$	=	\$
48	Supply and plant Dwarf Fountain Grass	9	each	\$	=	\$	
49	Supply and spread topsoil	100	cubic yards	\$	=	\$	
50	Remove and replace mulch	20	cubic yards	\$	=	\$	
51	Apply dormant oil to fruit trees	15	trees	\$	=	\$	
52	Spring clean up	1	each	\$	=	\$	
53	Winter clean up	1	each	\$	=	\$	
54	Litter removal	300	hours	\$	=	\$	
55	Mow grass and remove growth at Inner Port St Hill	12,000	square feet	\$	=	\$	
56	Mow grass and remove growth at North Ave and Earhart Drive	2,000	square feet	\$	=	\$	
57	Tree removal to ground	2	trees	\$	=	\$	
	Total Estimated Year Three (3) Contract Price: (Sum of items 1 through 57)  *The "All-Inclusive Unit Price" includes but is not limited to labor, inspection, maintenance, incidental materials, Contractor's overhead, C. including tolls, travel time, cost of vehicle use, and profit.						\$

## **PRICING SUMMARY**

A. Total Estimated YEAR ONE CONTRACT PRICE:     \$ \_\_\_\_\_

B. Total Estimated YEAR TWO CONTRACT PRICE:     \$ \_\_\_\_\_

C. Total Estimated YEAR THREE CONTRACT PRICE:     \$ \_\_\_\_\_

**TOTAL ESTIMATED THREE-YEAR CONTRACT PRICE:**

\$ \_\_\_\_\_

## **PART V – SPECIFICATIONS, TABLE OF CONTENTS**

1. Specific Definitions .....	2
2. Work Required by the Specifications .....	2
3. Transportation Worker Identification Credential (For Services Performed at the Port Authority Marine Terminals) .....	2
4. Wages, Health Benefits and Supplemental Benefits.....	3
5. Personnel Requirements.....	7
6. Work Schedule.....	8
7. Sign In .....	17
8. Uniform Requirement .....	17
9. Communication Device for Personnel .....	18
10. Pesticide/Herbicide Control Records .....	18
11. Equipment List.....	18
12. Lawn and Bed Areas .....	18
13. Tree Requirements .....	19
14. Trash Removal .....	19
15. Gardening and Lawn Care Specifications.....	19
16. Shrubs and Beds.....	20
17. Shrub Planting.....	21
18. May Plantings .....	21
19. Screened Loam Soil .....	21
20. Plants and Trees .....	22
21. Mums .....	22
22. Kale .....	22
23. Cabbage.....	22
24. Litter Removal .....	22
25. Spring and Winter Clean Ups .....	22
26. Cedar Mulch.....	22
27. Apply Dormant Oil to Fruit Trees .....	23
28. Compensation .....	23
29. Safe Vehicle Operation .....	23

## **PART V – SPECIFICATIONS**

### **1. Specific Definitions**

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

- a. “Approved Equal” means Port Authority approved equal.
- b. “Facility” means New Jersey Marine Terminals (NJMT), Port Newark and Port Elizabeth NJ.
- c. “Manager” means the Manager of NJMT or his/her designee and is the person responsible for scheduling and directing the Work.
- d. “Regular Working Hours” means the hours between 7:00 a.m. and 3 p.m., Monday through Friday, except Holidays.

### **2. Work Required by the Specifications**

The Contractor agrees to perform landscaping services at NJMT and to furnish all labor, supervision, equipment, materials, supplies, and do all other things necessary or proper there or incidental thereto, all in strict accordance with the provision of this Contract including these Specifications.

The Contractor shall verify all indicated conditions at the worksite before ordering materials or commencing Work. The Contractor shall notify the Manager of any condition that would prevent the performance of the Work as described herein.

All equipment, operation, labor and material used shall conform to the highest horticultural standards in the opinion of the Manager.

The Contractor shall maintain sufficient staff to furnish, install and maintain all products and services as described herein and as requested by the Manager.

The Contractor shall have a Lead Person/Supervisor, as hereinafter described, at the worksite whenever Work is to be performed under this Contract.

All Work related to pesticide/herbicide control services shall be conducted in accordance with New Jersey State Department of Environmental Protection (NJSDPE) and United States Environmental Protection Agency (EPA) laws, rules and regulations.

### **3. Transportation Worker Identification Credential (For Services Performed at the Port Authority Marine Terminals)**

Pursuant to the Maritime Transportation Security Act of 2006 (MTSA), Congress established the Transportation Worker Identification Credential (TWIC) Program which is administered by the Transportation Security Administration (TSA) and U.S. Coast Guard. TWICs are tamper-resistant biometric credentials that will be issued to workers who require unescorted access to secure areas of ports, vessels, outer continental shelf facilities and all credentialed merchant mariners. Prior to the start of Work, the TWIC credentials will be required in order to gain unescorted access to restricted areas at the Port Authority Marine Terminals. Therefore, the Contractor will be responsible to

ensure that the Contractor and its employees, at any of the Port Authority Marine Terminals, obtain, possess and display a valid TWIC photo identification card at all times. To obtain a TWIC, an employee must provide biographic and biometric information, such as fingerprints, sit for a digital photograph, successfully pass a security threat assessment conducted by TSA and be required to undergo a background screening, which includes a criminal history record check, an immigration status confirmation and a terrorist watch list review. Additional information is available on the TSA website at <http://www.tsa.gov/twic>. Any employee who is unable to obtain and possess a valid TWIC photo identification card will be denied access to the Port Authority Marine Terminals. All costs associated with the TWIC credential shall be borne by the Contractor.

#### **4. Wages, Health Benefits and Supplemental Benefits**

(a) Definitions:

- 1) “Employee” means any person, employed by the Contractor or its subcontractors, to perform any of the Services required under this Contract.
- 2) “Full Time Employee” (FTE) means any Employee who is paid on a straight time hourly basis, working on such a compensation basis for a minimum of thirty (30) hours during a seven (7) day consecutive period continually (including vacation, sick leave, etc.) throughout each Contract Year. Time for which an Employee is paid on an overtime or premium time basis shall not be counted in determining the thirty (30) hours requirement. The Port Authority will not reimburse the Contractor for any overtime without the Port Authority’s prior written consent.
- 3) “Straight-time” means the non-overtime hours actually worked by Employees under this Contract and shall include the time an Employee spends at roll call, whether or not paid; however, meal periods and relief time shall be excluded, whether or not paid.
- 4) “Direct Wages” means monetary amounts paid by Contractor or its subcontractor(s) to its Employees for straight-time (non-overtime) hours worked, including shift differentials, if any. Employee incentive plan payments are not included as Direct Wages.
- 5) “Minimum Hourly Wages” means the levels of fair wages determined by the Port Authority for Employee in each Employee category based on certain benchmarks or other prevailing standards. Employees may not receive Direct Wages lower than the Minimum Hourly Wages stated hereunder.
- 6) “Health Benefits” means benefits paid for by the Contractor, or covered under Contractor-provided health insurance plans, to cover the costs of healthcare for FTEs and their families.



- 7) "Supplemental Benefits" means benefits, other than Health Benefits, provided to Employees, including, but not limited to: fair and reasonable vacation allowance, sick leave, holiday, jury duty, birthday, welfare, retirement and non-occupational disability benefits, life, accident, or other such types of insurance that are not required by law, but excluding Health Benefits.
- 8) "Contract Year", as used in this Agreement means the twelve (12) month period commencing on the Commencement Date of the Contract and each successive twelve (12) month period thereafter or such portion of a twelve (12) month period that the Contract is in effect if the Contract should expire or be terminated on other than the last day of such twelve (12) month period.
- (b) The Contractor is required to pay Employees no less than the Minimum Hourly Wages as set forth in this provision, unless the Contractor proposes a higher Minimum Hourly Wage, and the higher Minimum Hourly Wage is accepted by the Port Authority.
- (c) The Contractor is required to provide reasonable Supplemental Benefits to its Employees.
- (d) The Contractor is required to provide Health Benefits to FTEs and their families that meet the specific requirements set forth in this provision, and to educate and inform each FTE under this Contract as to any and all Health Benefits the FTE is entitled to under this provision.
- (e) Minimum Hourly Wages

The following minimum hourly wages represent the hourly minimum wage(s) for each year of the base period.

Position	Year 1	Year 2	Year 3
Landscaper / Ground Person	\$15.23	\$15.38	\$15.54
Lead Person / Supervisor	\$17.33	\$17.50	\$17.67

- (f) The Contractor, in the performance of the Services herein, shall pay for, or provide (and shall cause any subcontractor to pay for or provide) no less than the Health Benefits set forth below:
- (1) Health Benefits shall be provided to FTEs *and* their families.
  - (2) Health Benefits shall include a health insurance program that includes all of the following components, at no cost to the FTE:
    - i. up to and including family coverage, as applicable
    - ii. inpatient hospital services
    - iii. outpatient surgical facility
    - iv. emergency room services

- v. prenatal services
- vi. well visits/immunizations/routine visits for illness
- vii. prescription drug benefit

- (3) The Contractor shall demonstrate to the satisfaction of the Port Authority that Health Benefits are furnished by the Contractor and all subcontractors through one or more of the following, with **no** Employee contribution to the health coverage premiums:
  - i. The Contractor's and subcontractors' FTEs and their families are covered under a health benefit plan paid for and/or provided by the Contractor;
  - ii. The Contractor's and subcontractors' FTEs and their families are covered by a union benefit plan authorized under the Taft Hartley Act 29 USCA Section 186;
  - iii. FTEs and their families are covered by a government health benefits program, including, but not limited to Healthy New York, Child Health Plus and NJ Family Care.
- (4) Health Benefits shall be provided to FTEs and their families no later than thirty (30) days from the first date of the Employee performance under the Contract.
- (5) The Contractor shall provide each FTE with written information, i.e. documents relating to each Employee's health care coverage, specifically enumerating the coverages the Employee is entitled to, including, but not limited to, those components required under this provision.
- (6) The Contractor shall provide continued Health Benefits to FTEs and their families of the same quality, or better as initially provided under this Contract, throughout the duration of the Contract term.
- (g) In the event that the compensation payable under this Contract is subject to adjustment from time to time as provided in the paragraph entitled "Price Adjustment" in the Contract Specific Terms and Conditions, then the Direct Wages shall be adjusted by multiplying said amounts by the same percentage amount which was used to adjust the compensation payable under this Contract, as the same may have been further adjusted.
- (h) Nothing contained herein shall be construed to prevent the Contractor or any subcontractor from paying or providing any Employee Direct Wages and/or Health Benefits higher than those required and described in this numbered clause. Nothing herein shall be construed to constitute a representation or guarantee by the Port Authority that the Contractor or its subcontractors can obtain Employees for the amounts herein before described.
- (i) Contractors (and its subcontractors) should expect to be audited with respect to Wages, Health Benefits and Supplemental Benefits paid or provided to Employees under this

Contract. All Wage and Benefits requirements under this Contract will be strictly enforced. Failure on the part of the Contractor (and its subcontractors) to comply with any of the requirements under this Contract, including but not limited to the timely submission of payroll certifications and documents related to Health Benefits and Supplemental Benefits provided to Employees may be deemed a substantial breach of this Contract giving rise to the rights and remedies enumerated hereafter in the paragraph entitled “Rights and Remedies of the Port Authority” in the Standard Contract Terms and Conditions, as well as any other rights and remedies the Port Authority would have in the absence of such enumeration and remedies the Port Authority would have in the absence of such enumeration and failure to comply with each of these requirements will be taken into consideration prior to award of future contracts with the Port Authority.

- (j) The Contractor (and any subcontractors) shall maintain records in accordance with the requirements set forth in the paragraph entitled “Records and Reports” in the Standard Contract Terms and Conditions.

For records related to Wages, Health Benefits and Supplemental Benefits, the Contractor and its subcontractors are also required to provide such records and books of account in spreadsheet or other electronic format, as required by the Port Authority.

Upon request by the Port Authority, the Contractor (and its subcontractors) shall have fifteen (15) business days to provide such payroll records, information about Health Benefits, and books of account unless the Port Authority indicates, in writing, that such records and books of account may be provided at a later date. Information about Health Benefits includes, but is not limited to, any documentation issued by the insurance provider or plan administrator to the Contractor or the Employees, as permissible under law.

In the event the Contractor or subcontractor(s) fails to provide the required records, or if the Port Authority determines that the records and books of account provided for audit are incomplete, the Port Authority may, at its sole discretion, estimate wages and non-overtime hours worked in order to determine whether the Contractor (or its subcontractors) was in compliance with the Wages, Health Benefits and Supplemental Benefits provisions of this Contract.

- (k) Further, the Contractor shall submit to the Port Authority on the fifteenth day of the seventh month following the month in which the Commencement date of the Contract falls and every six months thereafter, and the month following the month in which the terminate date of this Contractor falls, a certified statement signed by an executive officer of the Contractor based upon the Contractor’s payroll records which indicated that the Wages and Health Benefits requirements were met during the six month period ending on the last day of the month preceding the date of the submission of the said statement, together with such other detailed information as the Port Authority may request from time to time regarding Wages and Health Benefits paid or provided by the Contractor or its subcontractors to Employees engaged in providing the Contractor’s Services under the Contract. The Contractor shall impose all obligations within this clause upon its subcontractors.

- (l) In the event that an audit of the Contractor's (or Subcontractors) books and records or the aforesaid monthly statements submitted by the Contractor (or subcontractor) to the Port Authority should disclose that for any Contract Year, either the Contractor or a subcontractor has not paid to the Employee the appropriate Direct Wages, (including any adjustments, if provided for, reflecting changes in the Consumer Price Index or other indices or instruments as identified by the Port Authority), the Contractor shall pay to the Contractor's affected Employees an amount equivalent to the product obtained by multiplying the difference between the amounts actually paid by the number of non-overtime hours worked by the Employee during such Contract year, calculated for each position category (hereinafter referred to as the "Underpayment Amount"). The Port Authority may, in its discretion, elect to deduct the Underpayment Amount due from the Contractor in accordance with the provisions of this Section from any subsequent payment payable to the Contractor under this Contract plus an amount equal to any payroll and associated taxes which would have been paid on the Underpayment Amount from any subsequent payment payable to the Contractor under this Contract.
- (m) In addition to the underpayment payable by the Contractor, the Port Authority may deduct interest on the underpayment amount calculated at 19.2% annual interests from any subsequent payment to the Contractor.
- (n) If requested by the Port Authority, the Contractor shall submit to the Port Authority for approval, a plan for the Contractor's or subcontractor's return of the Underpayment Amount to each affected Employee, including a deadline for compliance. In approving such a plan, the Authority may require the Contractor or a subcontractor to return the Underpayment Amount to the affected Employees in cash and the Contractor or the subcontractor is responsible for any additional payroll taxes resulting from this payment.

## **5. Personnel Requirements**

The Contractor is strongly encouraged to retain current employees for this Contract and to provide for a stable workforce. The Contractor and any subcontractor shall furnish competent and sufficiently trained personnel to perform the services required under this Contract. All Contractor's personnel performing any of the Work shall be qualified to perform their respective work duties. If, in the opinion of the Manager, any employee assigned to the Work is performing an assigned function unsatisfactorily, the Contractor shall replace that employee within one (1) day following the Contractor's receipt of the Manager's request for such replacement.

- A. Lead Person/Supervisor shall have a minimum of three (3) continuous years of experience in the horticultural maintenance field, one (1) year of which shall have been with this Contractor. The Lead Person/Supervisor must be physically present whenever Work is performed at the Facility and shall report to the Manager's office prior to commencing Work. The Lead Person/Supervisor shall furnish a worksheet to the Manager's office containing, at a minimum, the following information for each working day:

- a. Date;
  - b. Type of equipment used to perform Work that day;
  - c. Schedule of Work;
  - d. Work completed;
  - e. Full names of Contractor's personnel working on Site; and
  - f. Lead Person/Supervisor's signature.
- B. Landscaper/Ground Person with a minimum of two (2) continuous years performing similar work and be qualified to perform horticultural tasks required by these Specifications. All cost for the Lead Person/Supervisor and the Landscaper/Ground Person shall be included in Pricing Sheets Items 2, 3, 8 through 34, 40 through 50, and 52 through 56.
- C. The Contractor shall provide at least one (1) licensed and certified commercial pesticide applicator ("Applicator") at all times to provide pest control services at the Facility. The Applicator must have a valid certification and registration from the New Jersey State Department of Environmental Protection as a Commercial Applicator in the applicable categories identified as Category 3A (Ornamental), 3B (Turf) and 7B (Termites and other wood destroying insects). The Applicator must have at least three (3) years of work experience as a certified and registered Commercial Applicator and during such time shall not have had their certification suspended or revoked. The Contractor is required to document the aforementioned experience for all the Applicator(s) it proposes to use in performing the Work required herein and provide such records to the Manager prior to the Applicator performing Work under this Contract. Provisional Certified Pesticide Applicators are not acceptable. No pest control services shall be performed or any pesticide applied without a Certified Applicator being present at the Facility. The Contractor must provide a copy of the active, valid and current license to the Manager, and such license must remain valid throughout the term of the Contract and any extensions or options. All cost for the Applicator shall be included in the pricing sheets in Pricing Sheet Items 4, 5, 6 and 7.
- D. The Contractor shall have a Certified Arborist, certified by the International Society of Arboriculture, or a Licensed Tree Expert, licensed by the New Jersey Board of Tree Experts, available within twenty-four (24) hours upon request. All cost for the Certified Arborist shall be included in the pricing sheets in Pricing Sheet Items 1, 35, 36, 37, 38, 39, 51 and 57.

Within ten (10) calendar days of the Contract award, the Contractor shall submit, in writing, for the Manager's review, a list containing the names, length of service and qualifications of all personnel who will perform Work under this Contract. In the event there are changes to personnel during the term of this Contract, the Contractor shall submit a revised list to the Manager.

## 6. **Work Schedule**

Within ten (10) calendar days of Contract award the Contractor shall submit, in writing, for the Manager's approval, an annual schedule of all Work. If the Contractor is unable to complete the Work as scheduled, the Contractor shall notify the Manager at least twenty-

four (24) hours in advance and provide a revised schedule for the Manager's approval prior to implementing any schedule change.

All Work shall be performed during Regular Working Hours. In the event of a Holiday the Work shall be performed on the next business day. No Work shall be performed outside these hours or on a Holiday unless permitted or directed by the Manager.

The Contractor shall use the following tables when creating the schedule of Work for Manager review and approval:

Item # 1	# of trees	Annual Frequency	Time of year	Comments
TRIM TREES	212	1	December	Average 2 hours per tree

Item # 2	square feet	Annual Frequency	Time of year	Comments
MOW GRASS				
Building 111	15,000	36	March to November	9 months x 4 weeks Weekly Cut = 36 cuts a year
Building 170	6,500	36		
Building 260	14,000	36		
Building 1160	10,000	36		
Building 1170	10,000	36		
Building 1180	10,000	36		
Building 1900	14,000	36		
Building 270	2,300	36		
Inner and Outer Port Street	191,000	36		
Corbin Street	36,000	36		
North Avenue South to EWR	43,000	36		
North Avenue at Dowd Street	65,000	36		
Building 166	40,000	36		
Building 189	20,000	36		
Building 1400	10,000	36		
Polaris and McClester Island	65,000	36		
Tripoli and McClester Island	55,000	36		

Item # 3	linear feet	Annual Frequency	Time of year	Comments
EDGING				
Building 114	100	18	March to November	9 months x twice a month = 18 cuts a year
Building 170	100	18		
Building 260	900	18		
Building 1160	1,000	18		
Building 1170	1,000	18		

Building 1180	1,000	18		All Sidewalks and curb entrances where lawn meets concrete.  All shrub and Flower beds where lawn meets beds.
Inner and Outer Port Street	1,000	18		
North Avenue South to EWR	500	18		
North Avenue at Dowd Street	500	18		
Building 166	1,200	18		
Building 189	1,000	18		
Building 1400	500	18		
Polaris and McClester Island	1,200	18		
Tripoli and McClester Island	1,200	18		

Item # 4 APPLY FERTILIZER	square feet	Annual Frequency	Time of year	Comments
Building 111	15,000	3	April, June and September	
Building 114	14,000	3		
Building 170	6,500	3		
Building 260	14,000	3		
Building 1160	10,000	3		
Building 1170	10,000	3		
Building 1180	10,000	3		
Building 1900	14,000	3		
Building 270	2,300	3		
Inner and Outer Port Street	191,000	3		
Corbin Street	36,000	3		
North Avenue South to EWR	43,000	3		
North Avenue at Dowd Street	65,000	3		
Building 166	40,000	3		
Building 189	20,000	3		
Building 1400	10,000	3		
Polaris and McClester Island	65,000	3		
Tripoli and McClester Island	55,000	3		

Item # 5 APPLY LIME	square feet	Annual Frequency	Time of year	Comments
Building 111	15,000	1	December	All Grass areas
Building 114	14,000	1		

Building 170	6,500	1		
Building 260	14,000	1		
Building 1160	10,000	1		
Building 1170	10,000	1		
Building 1180	10,000	1		
Building 1900	14,000	1		
Building 270	2,300	1		
Inner and Outer Port Street	191,000	1		
Corbin Street	36,000	1		
North Avenue South to EWR	43,000	1		
North Avenue at Dowd Street	65,000	1		
Building 166	40,000	1		
Building 189	20,000	1		
Building 1400	10,000	1		
Polaris and McClester Island	65,000	1		
Tripoli and McClester Island	55,000	1		

Item # 6 APPLY PESTICIDES AND HERBICIDES	square feet	Annual Frequency	Time of year	Comments
Building 111	15,000	1	May	All Grass areas
Building 114	14,000	1		
Building 170	6,500	1		
Building 260	14,000	1		
Building 1160	10,000	1		
Building 1170	10,000	1		
Building 1180	10,000	1		
Building 1900	14,000	1		
Building 270	2,300	1		
Inner and Outer Port Street	191,000	1		
Corbin Street	36,000	1		
North Avenue South to EWR	43,000	1		
North Avenue at Dowd Street	65,000	1		
Building 166	40,000	1		
Building 189	20,000	1		
Building 1400	10,000	1		



Polaris and McClester Island	65,000	1		
Tripoli and McClester Island	55,000	1		

Item # 7 WEED CONTROL	square feet	Annual Frequency	Time of year	Comments
Building 111	15,000	2	April and September	All Grass areas
Building 114	14,000	2		
Building 170	6,500	2		
Building 260	14,000	2		
Building 1160	10,000	2		
Building 1170	10,000	2		
Building 1180	10,000	2		
Building 1900	14,000	2		
Building 270	2,300	2		
Inner and Outer Port Street	191,000	2		
Corbin Street	36,000	2		
North Avenue South to EWR	43,000	2		
North Avenue at Dowd Street	65,000	2		
Building 166	40,000	2		
Building 189	20,000	2		
Building 1400	10,000	2		
Polaris and McClester Island	65,000	2		
Tripoli and McClester Island	55,000	2		

Item # 8 REPAIR AND SEED LAWN	square feet	Annual Frequency	Time of year	Comments
Building 111	15,000	2	March and September	All Grass areas
Building 114	14,000	2		
Building 170	6,500	2		
Building 260	14,000	2		
Building 1160	10,000	2		
Building 1170	10,000	2		
Building 1180	10,000	2		
Building 1900	14,000	2		
Building 270	2,300	2		
Inner and Outer Port Street	191,000	2		

Corbin Street	36,000	2		
North Avenue South to EWR	43,000	2		
North Avenue at Dowd Street	65,000	2		
Building 166	40,000	2		
Building 189	20,000	2		
Building 1400	10,000	2		
Polaris and McClester Island	65,000	2		
Tripoli and McClester Island	55,000	2		

Item # 9 CULTIVATE AND WEED BEDS	square feet	Annual Frequency	Time of year	Comments
Building 111	2,000	18	March to November	9 months x twice a month = 18 cuts a year  Cultivate and weed shrub and flower beds.
Building 114	2,000	18		
Building 170	2,000	18		
Building 260	2,000	18		
Building 1160	2,000	18		
Building 1170	2,000	18		
Building 1180	2,000	18		
Building 1900	500	18		
Building 270	2,000	18		
Building 166	2,000	18		
Building 189	2,000	18		
Building 1400	2,000	18		
Polaris and McClester Island	2,000	18		
Tripoli and McClester Island	2,000	18		

Item # 10 - 18 SUPPLY AND PLANT BULBS	each	Annual Frequency	Time of year	Comments
Red Hyacinths	50	1	Between November 15 and November 30	Do not plant in mud  Plant at Buildings 260, 1160, 1170 and 1180
White Hyacinths	35	1		
Blue Hyacinths	35	1		
Yellow Tulips	200	1		
Red Tulips	200	1		
Purple Tulips	100	1		
Pink Oxford Tulips	50	1		
Yellow Daffodils	50	1		
White Daffodils	50	1		

Item # 19 - 27 SUPPLY AND PLANT FLOWERS	each	Annual Frequency	Time of year	Comments
White Vinca	100	1	Late May	Do not plant in mud  Plant at Buildings 260, 1160, 1170 and 1180
Purple Vinca	100	1		
White Impatience	25	1		
Red Impatience	25	1		
Salmon Impatience	25	1		
Purple Impatience	25	1		
Yellow Marigolds	300	1		
Orange Marigolds	250	1		
Red Geraniums	50	1		

Item # 28-31 SUPPLY AND PLANT MUMS	each	Annual Frequency	Time of year	Comments
White Mums	50	1	Early September	Do not plant in mud  Plant at Buildings 260, 1160, 1170 and 1180  1 Gallon Containers
Brown Mums	50	1		
Red Mums	50	1		
Yellow Mums	100	1		

Item # 32-33 SUPPLY AND PLANT KALE AND CABBAGE	each	Annual Frequency	Time of year	Comments
Purple Kale	62	1	Early December	Do not plant in mud  Plant at Buildings 260, 1160, 1170 and 1180  6" Pots
White Cabbage	62	1		

Item # 34 TRIM SHRUBS	square feet	Annual Frequency	Time of year	Comments
Building 260	3,000	1	Late June	
Building 1160	3,000	1		
Building 1170	3,000	1		
Building 1180	3,000	1		
Building 166	3,000	1		
Building 189	3,000	1		
Building 1400	3,000	1		

Polaris and McClester Island	3,000	1		
Tripoli and McClester Island	3,000	1		

Item # 35-39 SUPPLY AND PLANT VARIOUS TREES	# of Trees	Annual Frequency	Time of year	Comments
Locust Trees	20	1	October	All trees must be 3” to 3.5” Caliper.  Locations of trees instructed by Manager.  Locations are B/260, 1160, 1170, 1180 and various roadways, such as Corbin St, McLester St, North Ave, and Port St.
Japanese Black Pine	5	1		
Ginkgo Biloba Trees	5	1		
Japanese Zelkova	5	1		
Bradford Pear – Aristocrat	5	1		

Item # 40-48 SUPPLY AND PLANT VARIOUS SHRUBS	each	Annual Frequency	Time of year	Comments
Juniper Shrubs – 1 Gallon	12	1	May	Locations of shrubs and plants instructed by Manager.  Locations at B/260, 1160, 1170, 1180 and anyplace else requested by the Manager.
Azaleas – 1 Gallon	30	1		
Taxus Capitata 4’	12	1		
Ilex Shrubs – 1 Gallon	50	1		
Ever-blooming Daylilies – 2 Gallon 18” – 24”	50	1		
Gold Coast Juniper – 2 Gallon 21” – 24”	11	1		
Japanese Garden Juniper – 2 Gallon 15”- 18”	13	1		
Maiden Grass - 3 Gallon 2’ – 3’	4	1		

Dwarf Fountain Grass – 3 Gallon 1'- 2'	9	1		
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Item # 49 SUPPLY AND SPREAD TOPSOIL	cubic yards	Annual Frequency	Time of year	Comments
Topsoil / Screened Loam Soil	100	1	Spring	

Item # 50 REMOVE AND REPLACE MULCH	Cubic yards	Annual Frequency	Time of Year	Comments
Mulch	50	1	Spring	

Item # 51 APPLY DORMANT OIL TO FRUIT TREES	# of Trees	Annual Frequency	Time of year	Comments
Apply Dormant Oil to Fruit Trees	25	1	December	See Specifications in Section 27 below.

Item # 52 and 53 SPRING AND WINTER CLEAN UP	Annual Frequency	Time of year	Comments
Spring Clean Up	1	Spring and Winter	See details as stated in Section 25 below.
Winter Clean Up	1		

Item # 54 LITTER REMOVAL	Hours	Annual Frequency	Time of year	Comments
Litter Removal	300	As needed	Throughout the Year	Various Locations

Item # 55 INNER PORT STREET HILL	square feet	Annual Frequency	Time of year	Comments
Mow Grass and Remove Growth	12,000	8	April through October	Cut once at the start of Contract and then every month from April through October

Item # 56 NORTH AVENUE AND EARHART DRIVE	square feet	Annual Frequency	Time of year	Comments
Mow Grass and Remove Growth	2,000	8	April through October	Cut once at the start of Contract and then every month from April through October

Item # 57 TREE REMOVAL	# of Trees	Annual Frequency	Time of year	Comments
Tree Removal flush to ground	2	1	As needed	Requested by Manager

## 7. Sign In

The Contractor's personnel shall report to the Facility Manager at the start and completion of each service visit and must sign-in and out in the logbook located at Building 260 Kellogg Street, Newark, NJ, 07114. Before performing any Work, and at each and every service visit, the Contractor's employees shall report to the Manager that he/she is on the site and is about to perform the Work. Upon completion of the Work for each day, the Contractor's employees will report to the Manager that he/she is leaving the site and sign out with the Manager.

## 8. Uniform Requirement

Within ten (10) calendar days of Contract, the Contractor shall provide its personnel all necessary safety vests and distinctive uniforms with woven company logo or identification insignia with the Contractor's name of a type, style and color, which shall be subject to the prior and continuing approval of the Manager. The Contractor's personnel shall wear these safety vests and uniforms when performing Work under this Contract. A company issued photo identification badge shall be worn in a conspicuous and clearly visible position by all Contractor's personnel whenever engaged in Work under this Contract. The Contractor's personnel without proper identification or uniforms shall not be permitted to Work. The Contractor shall also be responsible to ensure that its

personnel are wearing proper protective equipment including footwear, for the task being performed.

The Manager shall have the right to require removal of any personnel who fails to wear the proper uniform, safety equipment and identification. If any employee is removed, the Contractor shall replace that employee within one (1) day following the Contractor's receipt of the Manager's request for removal. The exercise of this right shall not limit the obligations of the Contractor to perform the Work.

#### **9. Communication Device for Personnel**

The Contractor shall provide the Lead Person/Supervisor assigned to Work under this Contract with a cellular telephone with email capabilities at no additional cost to the Port Authority. The Lead Person/Supervisor must always have said cellular telephones in working order and shall respond to a cellular phone communication related to performance within fifteen (15) minutes when performing Work under this Contract.

#### **10. Pesticide/Herbicide Control Records**

The Contractor shall keep all records that are or may be required by Federal, State or Local laws. Copies of these records shall be made available to the Manager within five (5) calendar days when requested by the Manager. Forty-eight (48) hours prior to a proposed spray operation, the Contractor shall submit to the Manager, for his/her approval, a list indicating the area to be treated, the chemical trade name and quantity of mix being prepared. The Contractor shall not proceed with treatment until the Manager issues approval in writing of this operation.

#### **11. Equipment List**

Within fifteen (15) calendar days of the Contract award, the Contractor shall submit, in writing, for the Manager's approval a complete list of all equipment to be used in the execution of this Contract. The Contractor shall not commence Work until the Manager has approved, in writing the list of equipment.

#### **12. Lawn and Bed Areas**

Building # or Location	Estimated Lawn Sq. Ft	Estimated Flower and Shrub Beds, Sq. Ft
111	15,000	3,000
166	40,000	2,000
170	6,500	6,000
189	20,000	10,000
260	14,000	3,000
270	2,300	2,000
Public Restroom Kellogg St.		2,000
1160	10,000	2,000
1170	10,000	2,000
1180	10,000	2,000
1400	10,000	2,000
1900	14,000	

Outer and Inner Port St	191,000	
Port Street Westbound	17,500	
Corbin Street	18,000	
Tyler and Export St. Corner	4,000	2,000
North Ave at EWR	43,000	
North Ave at Dowd	65,000	
Polaris and McClester Island	65,000	2,000
Tripoli and McClester Island	55,000	2,000
Total Lawn Area sq. ft	610,300	
Total Bed Area sq. ft		42,000

### 13. Tree Requirements

- A. Tree Trimming - All trees shall be trimmed once per year in the spring, in accordance with the tables listed in Section 6 of these Specifications.
- B. Tree Planting - The Locust Trees, Japanese Black Pine, Ginkgo Biloba Trees, Japanese Zelkova, and Bradford Pear – Aristocrat Trees supplied and planted by the Contractor shall be of three (3) inch caliper and ten (10) feet in height. Said trees shall be planted in an excavation six (6) feet in diameter by thirty (30) inches deep and filled with fresh topsoil. Such topsoil shall be included in the All-Inclusive Unit Price in the Pricing Sheets.

### 14. Trash Removal

The Contractor's personnel shall remove all waste, rubbish, refuse grass cuttings, tree limbs and other debris or trash generated by the Contractor's operations which shall be lawfully disposed offsite.

### 15. Gardening and Lawn Care Specifications

Prior to commencing any Work such as mowing, application of fertilizer, etc., the Contractor's personnel shall remove all litter and debris and transport it to a dumpster provided by the Port Authority.

#### a) Mowing

Grass shall be cut to the following heights:

March, April, October and November	1-1/2 inch
June to August	2-3/4 inches
May and September	2 inches

Grass in all lawn areas shall be cut once per week and the Contractor shall allow at least four days but no more than eight days to elapse between cuttings.



b) Insect Protection / Pesticide

Insect protection shall consist of an application(s) of OFTANOL 2F by Terre, or its Port Authority Approved Equal, in mid to late May of each year (weather dependent).

c) Seeding

Seeding shall consist of an application(s) of Shade Tree by Terre or Fine Fescue by Terre, or their Port Authority Approved Equals.

d) Fertilizer Application

Fertilizer applications shall be done with the following products or their Port Authority Approved Equal at the following frequencies:

April	Turfspur II 25-3-5 by Terre
June	Super Lawnsur 20-3-10 by Terre
September	Winterspur 10-19-18 by Terre

All of the above are slow release fertilizers.

Fertilizer application shall consist of Turfspur by Terre or its Port Authority Approved Equal in April and June and September.

e) Lime

Lime shall be applied at 50 lb. per 2,000 square feet of surface once per year in December.

f) Weed Control

Weed control shall consist of the application Trimec or Port Authority Approved Equal in early April and September on all grass areas.

g) Edging

Edging shall be performed twice a month from March through November on all sidewalks, curbs and where all beds meet the lawn areas.

h) Repair and Seed Lawn

With regard to the item on the Contractors Price Sheet, "Repair and Seed Lawn" included in the All-Inclusive Unit Price is the cost of seed, top soil, transportation and all other things necessary to perform the Work.

## 16. Shrubs and Beds

All shrubs shall be trimmed each year in June.

All shrubs and flowerbeds shall be cultivated and weeded twice per month from March to November.

Mulch shall be removed and renewed each spring and fall, no later than May 1<sup>st</sup> and November 15<sup>th</sup>. Mulch shall be put down to a height of three (3) inches (compressed).

Mulch shall be shredded hardwood bark mulch 100% organic, weed free, non-splintering, non-toxic, cambium-free and black mulch colored.

With regard to the planting of flowerbeds, trees and shrubs, all plantings shall be arranged as directed by the Manager.

All tulips, hyacinths and daffodils must be planted between November 15th and November 30th.

#### 17. Shrub Planting

The following shrubs: Juniper, Azaleas, Taxus Capitata and Ilex supplied and planted by the Contractor shall be of the one (1) gallon size. The Taxus Capitata shall be four (4) feet in height.

#### 18. May Plantings

The following plants shall be supplied and planted by the Contractor in May: Everblooming Daylilies 18"-24" 2 gallon, Gold Coast Juniper 21"-24" 2 gallon, Japanese Garden Juniper 15"-18" 2 gallon, Maiden Grass 2'-3' 3 gallon, and Dwarf Fountain Grass 1'-2' 3 gallon. Said plants shall be arranged in designated flowerbeds as per the Manager's instruction.

#### 19. Screened Loam Soil

Screened loam soil shall be in accordance with the following topsoil specifications:

Fertile, friable, natural loam soil, free of subsoil, supplier-certified as having been obtained from an area that has never been treated with herbicide and conforming to the following:

- A. Screened loam soil shall be of uniform quality, free from hard clods, stiff clay, hard pan, sods, partially disintegrated stone, lime, cement, ashes, slag, concrete, tar residues, tarred paper, boards, chips, sticks, glass or any other undesirable material.
- B. Screened loam soil shall contain a minimum of 5 percent organic matter and a maximum of 8 percent organic matter as determined by loss on ignition of moisture-free samples.
- C. pH range shall be 5.0 to 7.0, inclusive.
- D. The range of soluble salts shall be equal to or less than 500 micromhos per centimeter.
- E. Screened loam soil shall be graded as follows:

PASSING	RETAINED ON	PERCENTAGE
1" screen		100%
1" screen	2 mm (No. 10) Sieve	Not more than 40%*

\*The portion retained shall be no larger than 3/8" in size and composed of homogeneous clods and/or stones.

- F. The portion of screened loam soil passing the 2 mm sieve, based on the mechanical analysis of the soil as determined by the Bouyoucous Hydrometer method, shall consist of the following, based on dry (air-dried only) weight of sample:
  - a. Sand 40% - 60% inclusive;
  - b. Silt 30% - 40% inclusive;
  - c. Clay 10% - 30% inclusive.

Screened loam soil failing to meet these Specifications shall be rejected and replaced by vendor with acceptable screened loam soil within 24-hours at no additional cost.

Soil Testing Procedures shall be as per “Recommended Soil Testing Procedures For The Northeastern United States”, Current Edition, Northeastern Regional Publication No. 493 as provided by the Agricultural Experiment Stations of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and West Virginia.

## **20. Plants and Trees**

The Contractor is required to supply and plant all plants and trees. Said items will be arranged in the beds as per the Manager’s instruction.

## **21. Mums**

All mums supplied under this Contract shall be in one (1) gallon containers. Mums are to be planted in early September at Buildings 260, 1160, 1170 and 1180 and arranged in the flowerbeds as per the Manager’s instruction.

## **22. Kale**

All kale supplied under this Contract shall be in six (6) inch pots. Kale is to be planted in early December at Buildings 260, 1160, 1170 and 1180 and arranged in the flowerbeds as per the Manager’s instruction.

## **23. Cabbage**

All cabbage supplied under this Contract shall be in six (6) inch pots. Cabbage is to be planted in early December at Buildings 260, 1160, 1170 and 1180 and arranged in the flowerbeds as per the Manager’s instruction.

## **24. Litter Removal**

The Contractor shall at the direction of the Manager, provide labor to remove all paper, litter and other debris from the lawn and bed areas covered under this Contract. All such litter, paper and debris shall be placed in a dumpster provided by the Port Authority. The hourly rate shall include the cost of labor, supervision and all other things necessary to perform the Work.

## **25. Spring and Winter Clean Ups**

During each year of the Contract the Contractor shall be required to complete a spring and winter cleanup. Work shall consist of, at a minimum, the removal of all dead plants, branches, leaves, litter and debris and their removal from the Facility and subsequent disposal in a lawful manner. The spring cleanup shall be completed prior to April 1<sup>st</sup> and the winter cleanup shall be completed by November 30<sup>th</sup>.

## **26. Cedar Mulch**

Cedar mulch shall be reddish-brown in color and shredded. Contractor shall purchase in bulk by the cubic yard.

**27. Apply Dormant Oil to Fruit Trees**

Dormant oil shall be applied in late fall and only at the request of the Manager. The oil shall be Bonide All Seasons Horticultural Oil or an Approved Equal.

**28. Compensation**

Compensation for all lime, mulch, fertilizer herbicide, pesticide, grass seed, bulbs, kale or cabbage, annual flowers, mums, locust trees, junipers, topsoil, and all other things necessary for the performance of Work under this Contract shall include, but is not limited to, labor, inspection, maintenance, incidental materials, Contractor's overhead including tolls, travel time, cost of vehicle use and profit shall be deemed included in the All-Inclusive Unit Prices set forth in the Contractor's Pricing Sheets.

**29. Safe Vehicle Operation**

Contractor shall perform services in compliance with all Federal Motor Carrier Safety Administration ("FMCSA") regulations. The Contractor shall have in place an overall safety program, a driver's training program, and vehicle maintenance program. Upon request of the Port Authority, the Contractor must provide a written description of the aforementioned safety, training, and maintenance programs, or any other information relating to safety, including but not limited to, results of inspections and actions taken to remedy safety issues and violations. The Port Authority may evaluate the Contractor's overall safety program, with due regard to the services being performed. The Port Authority reserves the right to request changes in a Contractor's safety, training, and maintenance program to assure that they are rigorous and effective. In the event the Contractor is subject of an investigation, compliance review, and/or enforcement action related to safety, the Contractor must fully disclose said investigation, compliance review, and/or enforcement action(s) in accordance with the Standard Terms and Conditions, Part III.

# STANDARD CONTRACT TERMS AND CONDITIONS

## PART I GENERAL DEFINITIONS..... 3

## PART II GENERAL PROVISIONS..... 4

1.	Facility Rules and Regulations of The Port Authority .....	4
2.	Contractor Not An Agent.....	5
3.	Contractor's Warranties .....	5
4.	Personal Non-Liability.....	6
5.	Non-Discrimination Requirements .....	6
6.	Rights and Remedies of the Port Authority .....	6
7.	Rights and Remedies of the Contractor .....	7
8.	Submission To Jurisdiction.....	7
9.	Harmony .....	7
10.	Claims of Third Persons .....	8
11.	No Third Party Rights.....	8
12.	Provisions of Law Deemed Inserted.....	8
13.	Costs Assumed By The Contractor.....	8
14.	Default, Revocation or Suspension of Contract .....	8
15.	Sales or Compensating Use Taxes.....	11
16.	No Estoppel or Waiver .....	12
17.	Records and Reports .....	12
18.	General Obligations .....	13
19.	Assignments and Subcontracting.....	14
20.	Indemnification and Risks Assumed By The Contractor .....	14
21.	Approval of Methods .....	15
22.	Safety and Cleanliness .....	16
23.	Accident Reports .....	16
24.	Trash Removal.....	16
25.	Lost and Found Property .....	16
26.	Property of the Contractor .....	16
27.	Modification of Contract .....	17
28.	Invalid Clauses.....	17
29.	Approval of Materials, Supplies and Equipment.....	17
30.	Intellectual Property.....	17
31.	Contract Records and Documents – Passwords and Codes.....	18
32.	Designated Secure Areas .....	18
33.	Notification of Security Requirements .....	18
34.	Construction In Progress.....	20
35.	Permit-Required Confined Space Work .....	20
36.	Signs .....	20
37.	Vending Machines, Food Preparation .....	21
38.	Confidential Information/Non-Publication.....	21
39.	Time is of the Essence .....	22
40.	Holidays .....	22
41.	Personnel Standards.....	22
42.	General Uniform Requirements for Contractor's Personnel .....	22
43.	Labor, Equipment and Materials Supplied by the Contractor .....	22
44.	Contractor's Vehicles – Parking - Licenses.....	23

45.	Manager's Authority .....	23
46.	Price Preference .....	23
47.	MBE/WBE/SDVOB Good Faith Participation .....	24
48.	Code of Ethics for Port Authority Vendors .....	24

**PART III CONTRACTOR'S INTEGRITY PROVISIONS..... 24**

1.	Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information .....	24
2.	Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees.....	25
3.	Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts .....	27
4.	Contractor Responsibility, Suspension of Work and Termination .....	27
5.	No Gifts, Gratuities, Offers of Employment, Etc. ....	27
6.	Obligation to Report .....	28
7.	Conflict of Interest.....	28
8.	Integrity Monitor .....	29
9.	Right to Audit .....	29
10.	Definitions .....	29

## **STANDARD CONTRACT TERMS AND CONDITIONS**

### **PART I GENERAL DEFINITIONS**

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

Authority or Port Authority - means the Port Authority of New York and New Jersey.

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

Days or Calendar Days - means consecutive calendar days, Saturdays, Sundays, and Holidays, included.

Week - unless otherwise specified, means seven (7) consecutive calendar days, Saturdays, Sundays, and Holidays.

Month - unless otherwise specified, means a calendar month.

Holiday(s) – means any holiday which is observed at the Site, as further detailed in the section of these Standard Contract Terms and Conditions entitled “Holidays.”

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

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

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

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

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

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;

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

Service-disabled Veteran-owned Business Enterprise (SDVOB) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more service-disabled veteran with a service connected disability, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more service-disabled veteran with a service connected disability, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Service-disabled Veteran, with a service-connected disability" means:

- (a) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.;
- (b) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Site of the Work - or words of similar import mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

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

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

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

## **PART II GENERAL PROVISIONS**

### **1. Facility Rules and Regulations of The Port Authority**

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term



of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.

- b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

## **2. Contractor Not An Agent**

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

## **3. Contractor's Warranties**

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

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

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

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract

prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

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

#### **4. Personal Non-Liability**

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

#### **5. Non-Discrimination Requirements**

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

- A. Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.
- B. Contractor agrees that these "Non-Discrimination Requirements" are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled "Default, Revocation, or Suspension of Contract."
- C. Contractor agrees to cooperate fully with the Authority's investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these "Non-Discrimination Requirements."

#### **6. Rights and Remedies of the Port Authority**

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

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence

which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

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

## **7. Rights and Remedies of the Contractor**

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

## **8. Submission To Jurisdiction**

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

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

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

## **9. Harmony**

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

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform

its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

#### **10. Claims of Third Persons**

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

#### **11. No Third Party Rights**

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

#### **12. Provisions of Law Deemed Inserted**

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

#### **13. Costs Assumed By The Contractor**

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

#### **14. Default, Revocation or Suspension of Contract**

- a. If one or more of the following events shall occur:
  - 1. If fire or other cause shall destroy all or a substantial part of the Facility.

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

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

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

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

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

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

- c. If any of the following shall occur:

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

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

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

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.
- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay

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

- i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

## **15. Sales or Compensating Use Taxes**

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

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

## **16. No Estoppel or Waiver**

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

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

## **17. Records and Reports**

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

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

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

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written



reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.

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

## **18. General Obligations**

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.
- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.
- e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

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

- 1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
- 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
- 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
- 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
- 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire

protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or

6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
- g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.
- h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

## **19. Assignments and Subcontracting**

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

## **20. Indemnification and Risks Assumed By The Contractor**

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

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

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions (negligent or not) of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claims, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind whether just or unjust of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor's operations or its performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

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

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

## **21. Approval of Methods**

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

## **22. Safety and Cleanliness**

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

## **23. Accident Reports**

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

## **24. Trash Removal**

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

## **25. Lost and Found Property**

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

## **26. Property of the Contractor**

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

## **27. Modification of Contract**

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

## **28. Invalid Clauses**

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

## **29. Approval of Materials, Supplies and Equipment**

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

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

## **30. Intellectual Property**

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

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

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

### **31. Contract Records and Documents – Passwords and Codes**

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

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

### **32. Designated Secure Areas**

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

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

### **33. Notification of Security Requirements**

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

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

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

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

- Contractor/ Subcontractor identity checks and background screening

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

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

In accordance with the Port Authority's Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority or PATH facility
- 4) Mission critical system

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

- Issuance of Photo Identification Credential

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

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, un laminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractor shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and

work and that of its subconsultant/subcontractor's and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October 15, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

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

### **34. Construction In Progress**

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

### **35. Permit-Required Confined Space Work**

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

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

### **36. Signs**

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



### **37. Vending Machines, Food Preparation**

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

### **38. Confidential Information/Non-Publication**

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

b. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018, and as may be further amended)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

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

### **39. Time is of the Essence**

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

### **40. Holidays**

The following Holidays will be observed at the Site:

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

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

### **41. Personnel Standards**

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

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

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

### **42. General Uniform Requirements for Contractor's Personnel**

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

### **43. Labor, Equipment and Materials Supplied by the Contractor**

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

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

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

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

#### **44. Contractor's Vehicles – Parking - Licenses**

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

#### **45. Manager's Authority**

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

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

#### **46. Price Preference**

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

- (a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE);
- (b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (MBE/WBE); or
- (c) Services, a price preference of 10% is available for PA certified SDVOBs

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE, SBE or SDVOB, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

#### **47. MBE/WBE/SDVOB Good Faith Participation**

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

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

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

#### **48. Code of Ethics for Port Authority Vendors**

The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the "Code"). The Code is hereby made a part of this Agreement. The Code can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

### **PART III CONTRACTOR'S INTEGRITY PROVISIONS**

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

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

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

- h. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made and will not make any offers or agreements or take any other action with respect to any Authority employee or former employee or immediate family member (i.e. spouse, domestic partner, child, parent, sibling, grandparent or grandchild) of either which would cause any Authority employee or former employee to violate his/her 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), and as the same may be revised from time to time (copies of which are available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former employee relating either directly or indirectly to this organization which constitutes a breach of his/her obligations as set forth in said Administrative Instructions. This organization acknowledges that if awarded this Contract by the Port Authority it will be bound by the provisions of the Port Authority Vendor Code of Ethics prohibiting, among other things, such offers or agreements or other actions giving rise to a breach by an Authority employee or former employee of his/her obligations as set forth in the aforesaid Administrative Instructions;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;
- f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract; and
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

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

- \* if the Bidder is a corporation, such certification shall be deemed to have been made not only with

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

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

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

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

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

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

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

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

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

### **4. Contractor Responsibility, Suspension of Work and Termination**

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

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

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

### **5. No Gifts, Gratuities, Offers of Employment, Etc.**

At all times, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., spouse, domestic partner, child, parent, sibling, grandparent or grandchild) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract. The Bidder acknowledges that if it is awarded this Contract it will be bound by the provisions of the Port Authority Vendor Code of Ethics regarding Gifts, Gratuities and Favors.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by this Contract or any other Port Authority contract), etc., 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, other than as permitted under Administrative Instruction 20-1.06, Gifts, Gratuities, Business Expenses, and Offers of Employment (Revised March 11, 2014), and as the same may be revised from time to time. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries and component units of the Port Authority.

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

## **6. Obligation to Report**

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

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or take any action with respect to a Port Authority employee or former employee that would require or cause such employee or former employee to breach his/her 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), and as may be revised from time to time (copies of which are available upon request to the Port Authority). The Contractor shall not require any former Port Authority employee in its employ to violate his/her post-employment obligations under Administrative Instruction 20-1.16. The Contractor acknowledges that if it is awarded the Contract it will be bound by the Port Authority Vendor Code of Ethics, which prohibits all vendors from taking such actions.

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

## **7. Conflict of Interest**

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



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

## **8. Integrity Monitor**

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

## **9. Right to Audit**

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

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

## **10. Definitions**

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

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

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

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

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

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

Retaliatory Action- Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor;

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer; except and until the Contract has been awarded, then it shall mean Contractor;

Bidding - shall mean executing this Contract.