

# THE PORT AUTHORITY OF NY & NJ

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

## INVITATION FOR BID

ISSUE DATE: 4/02/2020

TITLE: TOWING AND MOTORIST ASSISTANCE SERVICES FOR LAGUARDIA  
AIRPORT – THREE-YEAR REQUIREMENTS CONTRACT

BID NO.: 60917

Refer to Part I Section 2 “Form and Submission of Bid” for submission instructions.

BID DUE DATE: 4/22/2020

TIME: 11:00 AM

BUYER NAME: Margaret D’Emic

PHONE NO.: (212) 435-4609

EMAIL: mdemic@panynj.gov

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

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(NAME OF BIDDING ENTITY)

---

(ADDRESS, CITY, STATE, ZIP CODE)

---

(REPRESENTATIVE TO CONTACT - NAME AND TITLE)

---

(EMAIL ADDRESS, PHONE NO. AND FAX NO.)

FEDERAL TAX ID NO.: \_\_\_\_\_ BUSINESS CORPORATION \_\_\_\_\_  
PARTNERSHIP \_\_\_\_\_ INDIVIDUAL \_\_\_\_\_ OTHER: \_\_\_\_\_

## **INVITATION FOR BID**

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## **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 Port Authority has temporarily ceased public bid openings and will allow for the electronic submission of bids.**

Bidders are advised that their bids must be electronically submitted as a readable Adobe PDF or in the format as provided by the Port Authority. The Port Authority shall **only** accept bids in electronic format until 11:00 A.M. ET on the Bid Due Date.

Electronic Bids should be submitted via email only to Bid Custodian at [bidrfpsubmittal@panynj.gov](mailto:bidrfpsubmittal@panynj.gov). Each electronic Bid submission must include all required information. The Port Authority may request an original, signed paper submission at any time following the Bid Due Date.

**Each email submission should include the Due Date, Bid #, and solicitation title.**

If requested by the Port Authority, the paper submission must be identical to the electronic submission that was submitted by the Bid Due Date. In the event of a discrepancy, the electronic submission shall take precedence.

**THERE WILL BE NO PUBLIC BID OPENINGS AND HAND DELIVERIES WILL NOT BE ACCEPTED.** Bid results will be posted to the Port Authority’s website as soon as they are available.

Bidders should anticipate that some emails may take a period to be delivered, and as such, should send them as early as possible to ensure it is received no later than 11:00 A.M. ET in the designated Port Authority’s designated email account.

Bidders should note that there is a limit to the size of attachments that can be received by the Port Authority’s designated email account. That limit is 100MB. Additionally, Bidders must check their files to ensure they have submitted complete documents, i.e. no missing pages.

Bidders’ internal networks may have limits on the size of emails they can send. Therefore, it is incumbent upon the Bidder to determine ahead of time that the file(s) being submitted can both be transmitted by their servers and accepted by Port Authority servers. If the files are too big, the Port Authority will accept Bid in multiple emails, provided all parts which comprise a complete submission are received by the Bid Due Date and time and all emails should include the Bid # and

title. Under this circumstance, Bidders should note in the description of the email that the Bid will be arriving in multiple parts and include in the subject line the total number of components and which component, of the total, the particular transmission represents.

### **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 with your Bid to [bidrfpsubmittal@panynj.gov](mailto:bidrfpsubmittal@panynj.gov).

### **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) or Small Business Enterprises (SBEs) as set forth in the Standard Contract Terms and Conditions.

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

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

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## **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**

On-Airport towing and motorist assistance services.

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

LaGuardia Airport, Queens, NY as more fully described in Part V (the "Specifications").

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

On or about May 13, 2020.

**4. Contract Type**

Unit Price Requirements Contract.

**5. Duration of Contract**

Three (3) years, to expire on or about May 12, 2023.

**6. Option Periods**

There shall be one (1), one-year Option Period.

**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 Applicable.

**9. 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 that provides vehicle towing, storage, and emergency road assistance 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 two (2) contracts requiring similar services of similar scope to those required under this Contract.
- c. At time of Bid submission, the Bidder shall possess a current and valid Tow Truck Company license issued by the New York City Department of Consumer Affairs.
- 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 prerequisites 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 participant performing the Work required under this Contract can meet the requirement. 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.

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

#### **10. Background Qualification Questionnaire (BQQ)**

The Bidder shall submit a completed Background Qualification Questionnaire (BQQ), required for itself and all subcontractors and vendors known to the Bidder at the time of bid submission. Bidders are encouraged to submit these documents in advance of the Bid due date. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link: <http://www.panynj.gov/inspector-general/inspector-general-programs.html>

#### **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.

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Attachment I - MBE/WBE Participation Plan

## 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 tenth (10<sup>th</sup>) day of each month following the month of commencement of this Contract and on or by the tenth (10<sup>th</sup>) 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 including copies of the associated tow receipts. The Contractor shall deduct the total sum collected for storage during each month from its monthly invoice in accordance with the Specifications.

Invoices and supporting documentation shall be sent to:  
The Port Authority of NY & NJ  
LaGuardia Airport  
Att: Mohammed Alshekh Deeb, Supervisor Transportation Services  
Building 30, 2<sup>nd</sup> Floor  
Flushing NY 11371

- c) 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.
- d) 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.

- e) 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 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" in Section 2 of Part III), the Port Authority will 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 one-year Option Period, the Price Index shall be determined for the months of October 2021 and October 2022. The amounts payable in the final year of the Base Term shall be multiplied by a fraction the numerator of which is the Price Index for October 2022 and the denominator of which is the Price Index for October 2021. The resulting product shall be the compensation payable in the first one-year Option Period.

In the event of a change in the basis or the discontinuance of the publication by the United States Department of Labor of the Price Index, such other appropriate index shall be substituted as may be agreed to by the parties hereto as properly reflecting changes in 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 deems appropriate. Notwithstanding the provisions of this section, in no event shall any adjustment hereunder be greater than three percent (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 for such period, then after notification of the change or adjustment, the recomputed amounts shall be in effect and upon demand by the Port Authority, the Contractor shall refund to the Port Authority excess amounts thereof or paid by the Port Authority for such period.

## **5. Liquidated Damages**

- a) 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:
  - i. If the Contractor fails to provide the towing services required within fifteen (15) minutes of the initial call, then the amount payable by the Port Authority to the Contractor shall be reduced by two hundred and fifty dollars (\$250.00) for the non-performance of a towing service requiring a Light Duty Tow Truck or Wrecker or a Medium Duty Tow Truck or Wrecker and/or Five Hundred Dollars (\$500.00) for the non-performance of a towing service requiring a Heavy Duty Tow Truck, multiplied by the number of hours, or partial hours on a pro-rata basis, until the Contractor provides the service.
  - ii. If the Contractor fails to provide a two-way radio in a vehicle operating under the Contract, in accordance with the Specifications, then the amount payable by the Port Authority to the Contractor shall be reduced by one hundred and fifty dollars (\$150.00) for each day, or partial day on a pro-rata basis, until such radio is provided.
  - iii. If the Contractor fails to provide a working camera in a vehicle operating under the Contract, then the amount payable by the Port Authority to the Contractor shall be reduced by one hundred and fifty dollars (\$150.00) for each day, each vehicle, or for any partial day on a pro-rata basis, until such camera is provided.

- iv. If the Contractor fails to provide a working credit card machine, in accordance with the Specifications, then the amount payable by the Port Authority to the Contractor shall be reduced by two hundred and fifty dollars (\$250.00) for each day, each vehicle, or for any partial day on a pro-rata basis, until such credit-card machine is provided.
- v. If the Contractor fails to equip any Tow Truck with the required Global Positioning System (GPS) system or to have the system functional, in accordance with the Specifications, then the amount payable by the Port Authority to the Contractor shall be reduced by one hundred and fifty dollars (\$150.00) for each day, each Tow Truck, or for any partial day on a pro-rata basis, until such system is provided or functional.
- vi. If the Contractor fails to provide the requisite number of Tow Trucks in accordance with the Specifications, then the amount payable to the Contractor shall be reduced by three hundred and fifty dollars (\$350.00) for each day, or for any partial day on a pro-rata basis, until the requisite number of Tow Trucks are provided.
- vii. If the Contractor fails to provide the number of personnel required in accordance with the Specifications, then the amount payable to the Contractor shall be reduced by three hundred and fifty dollars (\$350.00) for each day, or for any partial day on a pro-rata basis, per personnel, until the requisite number of personnel are provided.
- viii. If the Contractor's employee(s) fail(s) to comply with the uniform and/or identification requirements as set forth in the Specifications, then the amount payable by the Port Authority shall be reduced by one hundred fifty dollars (\$150) per violation, per employee, for each day, or for any partial day on a pro-rata basis, until the Contractor's employee(s) complies.
- ix. If the Contractor fails to provide adequate Management Representative coverage when necessary, as specified in the Specifications, then the amount payable by the Port Authority to the Contractor shall be reduced by two hundred and fifty dollars (\$250.00) for each day, or for any partial day on a pro-rata basis, until a satisfactory Management Representative is provided.
- x. If the Contractor fails to provide the listing of vehicles and equipment being stored in the Space under this Contract, in accordance with the Specifications, then the amount payable by the Port Authority to the Contractor shall be reduced by one hundred fifty dollars (\$150.00) a day, or for any partial day on a pro-rata basis, until such list is provided.
- xi. If the Contractor stores any vehicle(s), equipment and/or other items at the Space that are not attributed to Work performed under this Contract, then the amount payable by the Port Authority to the Contractor shall be reduced by five hundred dollars (\$500.00) per item, per day, or partial day on a pro-rata basis, until such item(s) is removed from the Airport.

- xii. If the Contractor fuels more than forty (40) gallons a day for all of its vehicles, then the amount payable by the Port Authority to the Contractor shall be reduced by the per-gallon price indicated for diesel fuel on the New York State Weekly on-highway diesel prices, NY surrogate region, for the week in question at the time of assessment, multiplied by the number of gallons taken in excess of forty (40) gallons.
- xiii. If the Contractor fails to perform all or any part of the services as specified in this Contract, satisfactorily or at the times required or at the frequencies set forth in the Specifications, the total amount payable by the Port Authority to the Contractor for said period shall be reduced by two hundred percent (200%) of the applicable line item (Proposed Fee) for the applicable Contract year, by the number of times the Contractor fails to perform the service, fails to satisfactorily perform the service, or fails to perform at the service the times required or at the frequencies set forth in the Specifications.
- xiv. If the Contractor fails to provide any monthly invoices, reports, records, and any other information or documentation required under this Contract within the time stipulated in 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 required monthly invoices, reports, records, or any other information and documentation.
- b) 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.
- c) 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 form 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 - \$ 2 million** combined single limit per occurrence for bodily injury and property damage liability.

**Automobile Liability Insurance - \$ 2 million** combined single limit per accident for bodily injury and property damage liability.

**Garagekeepers' Legal Liability - \$100,000 per location in the Comprehensive Form**

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 the 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;
- Coverage for explosion, collapse and underground property damage (XCU);
- Deletion of the pollution exclusion;
- 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 and The City of New York** 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 or 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. 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 thirty (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. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense.

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 in 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 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# 5325N**

## **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) five percent (5%) 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 twenty-four (24) hours 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, annexed hereto as Attachment I 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**

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**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 fees 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. Proposed Fees must be submitted for each Item required on the Pricing Sheet(s), not to exceed the "Maximum Fee" listed. Bidders are advised that the Items on the Pricing Sheet(s) correspond to the required services set forth in the Specifications.
- d. The rates inserted by the Bidder herein must be provided on a rate sheet to each person/patron using the Contractor's services at the Facility. This rate sheet must provide a plainly visible statement so that if the patron was charged in excess of these rates, or wishes to register a complaint regarding pricing or quality of service, the patron may contact the Port Authority of New York and New Jersey directly with a name, email address and phone number of the individual to contact.
- e. 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.
- f. 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.
- g. 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."

**Towing and Motorist Assistance Services at LaGuardia Airport**

**Pricing Sheet – Three Years**

	1	2	3	4	5
ITEM NO.	DESCRIPTION OF SERVICE	EST. THREE (3) YEAR ACTIVITY	PROPOSED FEE	MAXIMUM FEE	ESTIMATED THREE (3) YEAR FEE (Multiply Column 2 X Column 3)
1	Automotive Tows - Light Type Vehicles (Up to 4,500 Pounds) and Medium Type Vehicles (Up to 10,000 Pounds) (All-Inclusive Rate per Tow)	3,600	\$	\$125.00	\$
2	Drops (All-Inclusive Rate per Drop)	1,800	\$	\$55.00	\$
3	Aeronautical Tows (All-Inclusive Rate per Tow)	72	\$	\$55.00	\$
4	Relocations (Parking Lot) (All-Inclusive Rate per Tow)	1,080	\$	\$55.00	\$
5	Heavy Duty Tows (Hourly Rate) Vehicles with Two or More Axels (Any Vehicle Over 10,000 Pounds) (All-Inclusive Rate per Tow)	72	\$	\$300.00	\$
6	Standby (Hourly Rate)	1,080	\$	\$105.00	\$
7	Relocations (Space to Impound) (All-Inclusive Rate per Relocation from Space to Impound)	720	\$	\$75.00	\$
8	Motorist Assistance (All-Inclusive Rate per Occurrence)	4,500	\$	\$25.00	\$
9	Motorist Assistance: Fuel (All-Inclusive Rate per Occurrence)	72	\$	\$25.00	\$

**10. TOTAL ESTIMATED THREE (3) YEAR CONTRACT PRICE:**

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

(Sum of Items 1 - 9)

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

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## **PART V – SPECIFICATIONS**

### **1. Specific Definitions**

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

- a. “Abandoned Vehicle” means (i) any vehicle left on Port Authority property without any license plates; (ii) any vehicle left unattended for such a period of time that it interferes significantly with the operation of an active public or restricted roadway; (iii) any vehicle left unattended beyond allowable time limits as determined by the Airport Manager or a designated representative in an area where unauthorized parking is expressly prohibited; (iv) any vehicle left without any authorization for a period in excess of twenty-four (24) hours in any public parking area not controlled by meters or parking regulations, or for a period of thirty (30) days when parked in a pay lot operated by the Port Authority or its designated agent; or (v) non-motorized equipment (including, but not limited to, containers, pallets, skids and dollies) left unattended on Airport property.
- b. “Airport”, “Facility” or “LGA” mean LaGuardia Airport Queens, NY and includes lands contiguous thereto, which may have been heretofore or may hereafter be acquired by the Port Authority to use for general public transportation and air terminal purposes.
- c. “Drop” means a vehicle that is hooked-up at the request of a duly authorized Port Authority or airline representative, but is released at the Port Authority or airline representative’s request before the aided vehicle reaches its final destination. Within the Central Terminal Area, a Drop requires the release to occur prior to leaving the terminal.
- d. “Emergency” means any situation at the Airport whose nature requires urgent action as determined by the Manager.
- e. “Flatbed Tow Truck” means a specially designed truck used for transporting cars or trucks on the body of the tow vehicle in which the truck operator lowers the truck bed to the ground, winches the disabled vehicle onto the bed, and raises the bed for driving.
- f. “Heavy Duty Tow Truck” means a specially designed truck that uses hydraulic power and/or winches to lift a vehicle with 2 or more axels and over 10,000 pounds.
- g. “Heavy Equipment” means a vehicle capable of recovery and Towing of aeronautical equipment weight over 40,000 pounds.

- h. “Impounded” means a vehicle (i) on Airport property taken and held in custody for safekeeping by Port Authority Police, where the vehicle is reasonably believed to be an Abandoned Vehicle; (ii) reasonably believed to be directly involved in a crime (stolen and listed in a police alarm or used in the commission of a crime); (iii) involved in an accident where there is a fatality or a potential fatality; or (iv) that is immobile because (a) the driver or any designated licensed passenger is incapable of driving or (b) the driver is arrested or unlicensed and arrangements cannot be made for a licensed Tow Truck Driver designated by the owner to remove the vehicle from the Space within ten (10) days. The impounding of a vehicle is at the direction of the Port Authority.
- i. “Impound Lot” means the Port Authority Police Impound Lot located at the LGA Building 137, Flushing, NY.
- j. “Light Duty Tow Truck” or “Light Duty Wrecker” mean a vehicle capable of recovery and Towing of light type vehicles (vehicles weighing up to 4,500 pounds (motorcycles, cars, SUV’s, mini vans).
- k. “Manager” or “Airport Manager” mean the General Manager of the Facility or his/her duly authorized designee.
- l. “Medium Duty Tow Truck” or “Medium Duty Wrecker” mean a vehicle weighing at least 22,000 pounds and capable of recovery and Towing of medium type vehicles (a vehicle weighing between 4,500 and 10,000 pounds).
- m. “On-Site” means the location at the Facility requiring the Contractor’s Towing services.
- n. “Space” or “Contractor’s Space” mean the area that the Port Authority furnishes to the Contractor, only for services provided under this Contract, for administrative office purposes and for the storage of the Contractor’s equipment, materials and supplies, as further described in these Specifications. The lot contiguous to the Space is also included and is for the sole purpose of storage of vehicles towed under this Contract, and should not include any vehicles the Contractor towed, in any capacity, exclusive of this Contract.
- o. “Standby Service” means additional Tow Truck driving and Dispatcher/Administrative personnel as well as Light, Medium and Heavy Duty Tow Truck(s) brought and put into service at the Facility to provide Towing Services that are in addition to those vehicles and personnel requirements listed herein the sections “Minimum Equipment Requirements” and “Contractor’s Personnel Requirements”.
- p. “Towing” and “Towing Service(s)” mean hook-up and removal of a disabled vehicle typically located on Airport property. Towing includes attaching steering locks, chains,

tie-downs, or other safety devices to ensure the towed vehicle cannot be separated from the tow vehicle, and placing lights on the disabled vehicle so it can be moved safely in accordance with all applicable laws, rules, regulations and ordinances, including the traffic laws of New York, as well as the best recommended practices of the towing industry.

- q. “Tow Truck” means a specially designed truck that is equipped with the appropriate and necessary hooks and slings for the operators to use and raise one end of a disabled vehicle.
- r. “Unattended Vehicle” means a vehicle left on Airport terminal frontage without a driver or passenger in the vehicle.
- s. “Vehicle Violation” means (i) leaving a vehicle unattended on terminal frontage, (ii) parking on a restricted roadway, (iii) illegal parking and (iv) any other violation of the Airport Rules and Regulations.
- t. “Wheel-lift Tow Truck” means a specially designed truck that uses hydraulic power and/or winches to lift two or more wheels on one or more axles for towing by directly raising the tire/wheel assemblies on the towed vehicle
- u. “Wrecker” means a motor vehicle with hoisting apparatus and/or other special equipment designed and used for towing or carrying wrecked or disabled vehicles or for freeing vehicles stalled or stuck in snow, mud or sand. As used in this document, Wrecker specifically includes Tow Truck, Wheel-lift Tow Truck, Flatbed Tow Truck, Heavy Duty Tow Truck, and all other vehicles and equipment especially designated for towing or recovering vehicles.

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

The Contractor is required to provide all equipment, materials, supplies and labor to perform Towing and storage services, Emergency services, and motorist assistance services at LGA as further stipulated in these Specifications. The Contractor shall perform all Work in accordance with all applicable federal, state and local laws and regulations. The Contractor shall provide these services seven (7) days a week, twenty-four (24) hours a day, including Holidays. No additional compensation will be provided to the Contractor for services provided on Holidays.

Neither the execution of this Contract, nor anything contained herein, shall be construed to be a grant of any franchise, consent, license, permit, right or privilege of any nature or kind whatsoever to operate Tow Trucks or any other vehicles outside the Airport or over the public

streets or roads in any County of the State of New York. The Contractor shall promptly observe, comply with and execute the provisions of any and all recent and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the services required under this Contract. The Contractor's obligation to comply with governmental requirements is provided herein for the purpose of ensuring proper safeguards for protection of persons and property at the Airport and shall not be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

All payments from patrons to the Contractor shall be made by credit card. The Contractor shall not accept cash for any services performed under this Contract.

The Contractor shall respond with the Tow Truck at the location requiring the tow services within fifteen (15) minutes from the receipt of a call for any and all services, provided that the request for Tow Trucks does not exceed the "Minimum Equipment Requirements" stated herein. If a request is for a type of Tow Truck equipment not specified under this Contract, then the Contractor has up to one (1) hour to supply such equipment, unless otherwise instructed by the Manager. Requests for tows may be made via any Port Authority representative and/or other representative as authorized by an Airport Terminal Operator.

The Contractor's services shall include but not be limited to the following:

A. Motorist Assistance

- a. The Contractor shall provide motorist assistance services consisting of (i) Towing disabled automotive vehicles to the Space or to an on-airport service station at the request of the owner or operator of such vehicle, (ii) provide short-term storage of these vehicles at the Space, generally up to ten (10) days and (iii) assisting airport customers with motorist assistance services, including, but not limited to, flat tire repairs, battery boosts, out of gas assists and lockout assists.
- b. Before performing any required services, the Contractor shall provide to the patron(s) a rate sheet listing the rates for services as inserted in the Pricing Sheets. This rate sheet must include a plainly visible statement that if the patron was charged in excess of these rates or wishes to register a complaint regarding pricing or quality of service he or she may contact the Port Authority directly; and the rate sheet shall provide the name, email, mailing address and phone number of the Port Authority representative to contact. This information will be provided to the Contractor at the commencement of Contract.
- c. All Tow Trucks operating on behalf of the Contractor in accordance with this Contract are also required to display and list, on the vehicles passenger side door, all

rates for services as inserted in the Pricing Sheets. The rate sheet information will be given to the Contractor upon Contract award.

- d. Upon receipt of a call for motorist assistance, the Contractor shall dispatch a Tow Truck to arrive at the location of the disabled vehicle or equipment to perform the required services within fifteen (15) minutes of such call. The Contractor shall clean up and remove any and all oil, grease or other refuse resulting from repairs made to and/or removal of the vehicle. The Contractor shall tow said vehicle to the Contractor's Space, or to an on-Airport service station from which place the patron may arrange for further Towing service.
- e. The Contractor is not permitted to tow any patron's vehicle or Port Authority equipment off of the Facility, unless otherwise authorized by Manager.
- f. At the conclusion of these services, the Contractor shall provide the patron with an itemized tow receipt outlining the services rendered. In no way should the patron understand this receipt to be a bill, in which they are to submit payment for. This receipt should indicate on the upper center portion of the page **"This is Not a Bill"**. This tow receipt shall match the rate sheet that was provided to the patron at the time of the Towing service(s). The format of the tow receipt is further specified herein.
- g. Motorist assistance services consisting of flat-tire change, battery boosts, out-of-gas and lockout assists, shall be performed by the Contractor free of charge to Airport patrons located in official Port Authority parking lots at the Facility only. A list of these parking lot locations will be provided to the Contractor upon commencement of Contract. Fees for these services performed in airport parking lots will be compensated in accordance with the "Proposed Fee" inserted by the Contractor, and accepted by the Port Authority, for Item Nos. 8 and 9, "Motorist Assistance" in the Pricing Sheets.
- h. To be eligible for reimbursement of motorist assistance services performed in airport parking lots, a tow receipt, which must include the patron's name, address, telephone number and vehicle information, shall be completed by the Contractor and signed for by a member of Port Authority Operations or a designee at the direction of the Manager.
- i. Any motorist assistance services performed at the Facility outside of an official Port Authority parking lot must be paid directly to the Contractor by the vehicle's owner.
- j. Any motorist needing Towing Service can use an independent tow-service company and is not required to use the services of the Contractor.

- k. The Contractor's NYC Consumer Affairs Tow Truck Company License must remain valid for the duration of this Contract and any options and extensions, if exercised.
- l. The Contractor's services shall include Towing in the Facility's airside locations. Port Authority staff will escort the Contractor when services are performed airside.

#### B. Towing Services

The Contractor shall tow vehicles located on the Airport that are abandoned, disabled, unattended or in Vehicle Violation to the Space, unless otherwise directed by the Manager. The Contractor shall also provide short-term storage of these vehicles at the Space if needed. The Contractor shall Tow vehicles only when a representative of the Port Authority is present, unless otherwise instructed by the Manager. The Contractor shall require its drivers to comply with the directions of said Port Authority representative. The Contractor shall use such roads, route ways and other areas at the Airport designated by the Airport Manager for use in connection with the Towing to be provided by the Contractor hereunder.

Types of Towing/Facility Services required under this Contract include, but are not limited to:

- a. Vehicle Towing: Towing of a vehicle to the Space not requiring a Heavy-Duty Tow Truck.
- b. Aeronautical Towing: Towing of motorized and non-motorized equipment (including, but not limited to snow equipment, fuel trucks, and dollies) from the aeronautical area to the Space.
- c. Drops as defined in the "Specific Definitions" herein.
- d. Relocation of vehicles and equipment within and/or between Airport parking lots, including, but not limited to, relocation of unclaimed vehicles and equipment from the Space to an Impound Lot, which shall occur generally after a vehicle remains unclaimed for ten (10) days.
- e. Standby services as further described herein.
- f. Heavy Duty Tow: services provided for Towing of heavy vehicles including, but not limited to trucks, buses etc.

#### C. Emergency Services

- a. Upon receipt of a call from the Port Authority requiring Emergency service, the Contractor shall respond On-Site within fifteen (15) minutes, or sooner if possible, and provide the required number of Tow Trucks to the location at the Airport as directed by the Manager to tow any vehicles. The Manager may require a Port

Authority representative(s) to sit inside the Tow Truck(s), and the Contractor shall require its drivers to comply with the directions of the Port Authority representative.

- b. In an Emergency, the Port Authority may employ the Contractor's Tow Trucks twenty-four (24) hours a day and for a consecutive number of days as may be required. The Contractor shall at all times have drivers available to operate the Tow Trucks to be used during an Emergency. The Contractor shall have a sufficient number of drivers available so that rested drivers will be available at all times and that no driver shall work more than twelve (12) consecutive hours, unless approved by the Port Authority. During an Emergency, the Port Authority shall have the right to use the Contractor's radio equipment if needed.
- c. The Contractor shall tow vehicle(s) to a location as directed by the Port Authority representative. If the vehicle is towed to the Contractor's Space, the Contractor shall keep and store said vehicle(s) there until the vehicle is released or relocated at the direction of the Manager.
- d. Compensation to the Contractor for Emergency Service will be in accordance with the fees inserted by the Contractor in the Pricing Sheets.

### **3. Minimum Equipment Requirements**

The Contractor shall keep on the Airport at all times for use under this Contract a minimum of:

- a. Two (2) Light Duty Wreckers capable of recovery and Towing of light-type vehicles (up to 4,500 pounds gross vehicle weight rating (GVWR)).
- b. One (1) Medium Duty Wrecker capable of recovery and Towing of medium type vehicles (up to 10,000 pounds GVWR).
- c. One (1) Heavy Duty Wrecker capable of recovery and Towing of vehicles with two (2) or more axels (any vehicle over 10,000 pounds GVWR).

The Wreckers described above must include units of the wheel-lift type and flatbed type, to tow cars and other light vehicles without hooks, chains, slings or other devices.

Wreckers must be dispatched for all vehicles in which these types of Towing methods are recommended or required by OEM vehicle manufacturers. Any restrictions including but not limited to speed, distance, and disconnecting drive shafts applicable to Towing these vehicles with one or more sets of wheels on the ground must be observed.

At no time during the term of this Contract shall any vehicle utilized to perform Work pursuant to this Contract be more than five (5) model years old relative to the year in which

this Contract commenced.

All Wreckers as listed within this section must be employed exclusively on Airport twenty-four (24) hours a day, seven (7) days a week.

The Contractor's Heavy-duty wreckers must be capable of Towing new-style buses and trucks with fiberglass front ends.

#### **4. Contractor's Vehicles**

1. The Contractor's vehicles used under this Contract shall be of a type and shall be so constructed and equipped to properly fulfill the Contract requirements. All vehicles used under this Contract shall be legally registered, licensed by the New York City Department of Consumer Affairs and possess a valid medallion. The Contractor shall at all times keep the Tow Trucks and all other vehicles and equipment used under this Contract clean and well maintained.
2. All the Contractor's vehicles used under this Contract shall be clearly labeled on both sides of the vehicle with the Contractor's name and address in lettering having a minimum dimension of 2" high with ½" thick lines. Each Tow Truck used under this Contract shall be assigned a decal with a unique number which shall be displayed by the Contractor on both sides of the vehicle. These decals shall be returned to the Port Authority upon termination of Contract.
3. All Contractor's Tow Trucks shall also display a visible list, on the vehicles passenger side door, listing all rates for services as inserted in the Pricing Sheets, having a minimum dimension of 1.5" high with ½" thick lines. The Contractor shall also place decals on any replacement Tow Truck not assigned to the Airport, when said Tow Truck is being used to replace a primary Tow Truck assigned to the Airport or for purposes of providing services under this Contract. Decals shall be placed on both sides of the vehicle and must be a minimum of 2" in height and 1/2" in length. Regardless of type, all vehicles used under this Contract shall have such lights as the Port Authority shall prescribe, and shall be equipped with emergency lighting, including SAE-approved amber warning lights, high mounted turn, stop, tail, marker and identification lights and work lights to facilitate hookup and recovery.
4. In all cases, operators shall attach steering locks, chains, and/or lights to disabled vehicles so they can be moved easily.
5. The Tow Trucks shall contain such automotive equipment as is appropriate and necessary for performing motorist assistance to disabled vehicles and for performing safe and

proper Towing operations.

6. The Tow Trucks shall carry two-way radio equipment, as further described herein, tuned to a frequency which shall enable them to maintain contact with the other vehicles as well as with the Dispatcher, and such communication shall be maintained at all times. In addition, the Tow Trucks shall be equipped with a functional Global Positioning Satellite (GPS) technology in order for both the Contractor and the Authority to track the equipment. Such system shall be a Grey Island Systems Model G56224UJZZ, or Port Authority approved equal. This system shall include web-based access. Upon Contract commencement and before start of Work, the Contractor shall provide links to this system to Port Authority staff as required.
  7. Every truck used by the Contractor under this Contract shall be equipped with a functional in-vehicle dashboard and rear-facing camera capable of taking pictures of a vehicle prior to Towing in order to verify any claims that may arise against the Contractor in case of dispute or claim of wrongdoing as further described in the section “Contractor’s Personnel Requirements” herein.
  8. All Tow Trucks must be equipped with the ability to accept all major credit cards at no additional cost to the Authority.
  9. The Port Authority shall have the right at any time to inspect the Tow Trucks and all other vehicles and equipment furnished or used by the Contractor. Upon request of the Manager, the Contractor shall demonstrate the capacity of the vehicles and equipment used under this Contract.
  10. Upon notification by the Port Authority of any deficiency in any Tow Truck or any other vehicle or item of equipment used by the Contractor in its operation hereunder, the Contractor shall immediately withdraw the same from service and immediately provide a substitute satisfactory to the Airport Manager until the deficiency is corrected. In the event of permanent removal, the Contractor shall replace said removed Tow Truck or other item of equipment with another vehicle or item of equipment of substantially the same capacity and type as the one removed, which is subject to the approval of the Manager.
  11. The Contractor shall maintain all equipment used in performing the Towing and storage services under this Contract in good and safe condition, and to the satisfaction of the Manager.
5. **Space Provided to The Contractor**
- The Port Authority will furnish the Contractor, without charge to the Contractor, Space at

the Facility for administrative office and personnel purposes in connection with this Contract and for temporary storage of towed vehicles as well as the Contractor's equipment, materials and supplies necessary to perform the Work under this Contract. The Tow Truck drivers shall take all breaks in the break room located at the Space. The Contractor does not have authority to use this Space for any other purpose except that performed under this Contract. The use of such Space for any other purpose will result in the Port Authority assessing liquidated damages in accordance with Part III of this Contract.

The Space is presently located at LaGuardia's Parking Lot 10 (P10). The Port Authority shall have the right from time to time to move the location of the Space, and the Contractor shall, at its own expense, comply with this relocation within the time frame allocated by the Manager.

At all times, Contractor's minimum number of Tow Trucks shall be stationed at the Space until called into use by the Port Authority, unless otherwise directed by the Manager. The Contractor's Tow Truck operators shall also be stationed at the Space at all times until called into service.

Also to be located and operated at the Space by the Contractor shall be the Contractor's radio equipment permitting the Contractor to maintain radio communication with the Tow Trucks seven (7) days a week, twenty-four (24) hours a day.

The Contractor is strictly forbidden to store any vehicles or equipment, or any other items, at the Space that are not towed or required under this Contract.

The Port Authority, its officers, employees and representatives shall have the right at all times to enter upon the Space provided the Contractor for the purpose of inspecting it, for observing the performance of the Contractor of its obligations under this Contract, and for the doing of any act or duty which the Port Authority may be obligated or have the right to do under this Contract or otherwise. In addition, in the event of a life-safety emergency at the Space, the Port Authority can take action therein as may be required for the protection of persons and property.

A. The Contractor shall, at its own expense:

- (1) Keep the Space at all times in a clean and orderly condition and appearance, including all the Contractor's fixtures, equipment and personal property that are located in any part of the Space.
- (2) Perform all necessary preventive maintenance required to maintain the premises and structure in good condition, including but not limited to building maintenance including but necessarily limited to cleaning the office and sweeping the exterior of the Space. Replacement materials shall be in quality and class not inferior to the

original in materials and workmanship All preventive maintenance should be approved by the Port Authority, in writing, prior to the start or completion of any Work.

- (3) Provide and maintain all lights (internal) and similar devices and provide and maintain any other equipment needed for operations.
  - (4) Repair any damage to the paving or other surface of the Space caused by any oil, gasoline, grease, lubricants or other liquids and substances having a corrosive or detrimental effect thereon caused by vehicles located at the Space.
- B. The Contractor shall not erect any structures, make any structural improvements or do any other construction work, improvements, alterations, modifications or replacements at the Space without prior written approval of the Port Authority. In the event any structures, improvements, alterations, modifications, or replacements are made without such approval, then upon notice so to do, the Contractor shall immediately remove the same or, at the option of the Port Authority, cause the same to be changed to the satisfaction of the Port Authority. In case of any failure on the part of the Contractor to comply with such notice, the Port Authority may affect the removal or change, and the Contractor shall pay the cost thereof to the Port Authority on demand.
- C. Employee parking is limited to one (1) personal vehicle for each of the Contractor's employees while actually on duty under the Contract, subject to availability, and be available in Lot P10. The Contractor is not to provide storage for employees' personal vehicles/equipment when they are not performing Work under this Contract.
- D. The only vehicles allowed in the Space shall be as a result of this Contract only. No other vehicles, with the exception of one vehicle per employee performing Work at the Facility as stipulated above, shall be parked in the Space without prior authorization from the Airport Manager.
- E. Upon the expiration or early termination or revocation of this Contract or upon a change of Space, the Contractor shall remove its equipment, materials, supplies, and any other of its property from the Space within fifteen (15) calendar days of the Manager's notification of such change. If the Contractor fails to remove its property on or before such expiration, termination or revocation, or change to Space, the Port Authority retains the right to dispose of such property, to remove such property to a public warehouse for deposit or to retain the same in its own possession, and to sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Contractor. If the expenses of such removal, storage and sale exceed the proceeds of sale, the Contractor shall pay such excess to the Port

Authority upon demand. The Contractor shall leave the vacated Space in the same in the condition existing when it was made available to the Contractor, reasonable wear and tear excepted.

- F. The Contractor shall not sell, or permit to be sold, any merchandise at or on the Space.
- G. Risk of loss or damages to all vehicles held in the Space shall be the Contractor's.
- H. The Contractor shall have radio equipment located at the Space in order for the Contractor to maintain radio communication with the Tow Trucks seven (7) days a week, twenty-four (24) hours a day.
- I. The Contractor shall provide and maintain landline telephone service at its own expense at the Space. The Contractor's telephone number at the Space shall be displayed on the Tow Trucks for the public to call for Towing and motorist assistance. Any technical problems with the phone system must be reported directly to the Port Authority representative immediately and the Contractor is required to provide an alternative phone number(s) until the phone service is restored. Failure to satisfy this condition may result in liquidated damages being assessed.
- J. The Contractor shall have a working credit card machine at the Space for accepting payments. The Contractor shall not accept cash for services performed under this Contract.

## **6. Contractor's Tow Receipt**

- a. When performing motorist assistance services listed in the section "Fees Payable by Patrons to the Contractor for Towing Services" herein, the Contractor shall execute and deliver to patron(s) tow receipts for all services provided.
- b. When performing the services listed in the section "Fees Payable by the Port Authority for Towing Services" herein, the Contractor shall execute and deliver to the Port Authority's representative a tow receipt reflecting the services performed.
- c. All tow receipts executed by the driver of the Tow Truck, or by any other Contractor's personnel, shall be deemed duly executed and authorized on behalf of the Contractor and the Contractor shall be bound thereby.
- d. One copy of the receipt shall be provided to the patron, one copy of the receipt shall be provided to the Port Authority representative, one copy shall be submitted to the Port Authority with its monthly invoice as further specified in Part III, Section 3 entitled "Payment," and one copy shall be retained by the Contractor for its records.

- e. The Contractor's tow receipt shall, at minimum, include the following information:
  - i. Invoice number;
  - ii. Name and address of the person to whom the vehicle is being released;
  - iii. License plate number of vehicle being released;
  - iv. Year and model of vehicle being released;
  - v. Mileage of vehicle, if available;
  - vi. Color of vehicle;
  - vii. Date the vehicle was towed/serviced;
  - viii. Date the vehicle was retrieved;
  - ix. Patron's or Port Authority representative's signature as appropriate.
  - x. All costs charged to the patron directly attributed to the Towing and storage of said vehicle.

The receipt should indicate on its upper center portion the words "This is Not a Bill".

- f. Each copy of the tow receipt shall also include or be accompanied by the rate sheet listing the rates for services as inserted by the Contractor in the Pricing Sheets. This rate sheet must include a plainly visible statement that if the patron was charged in excess of these rates or wishes to register a complaint regarding pricing or quality of service, he or she may contact the Port Authority directly; and the rate sheet shall include a name, email, mailing address and phone number of the Port Authority employee to contact, such information to be given to the Contractor upon Contract award.
- g. In the event that a tow receipt for a Towing Service does not contain all of the required information, the Port Authority shall have the right to withhold compensation for said service.

## **7. Fees Payable by Patrons to the Contractor for Towing Services**

- a. Fees to and charges payable by Airport patrons for the Contractor's services shall be in accordance with the fees inserted by the Contractor in the Pricing Sheets. The Contractor shall post such fees at the Space and at Facility locations as designated by the Manager and on the Contractor's tow receipts.
- b. Fees payable by the patron shall include:
  - i. Towing of patrons' vehicle(s) to the Space or an on-airport service station (Pricing Sheet Item 1);
  - ii. Drop fees in situations when a vehicle is picked up by the tow truck's lift forks ("hooked") at the request of a duly authorized Port Authority representative but released before the tow vehicle reaches its final destination (Pricing Sheet Item 2).

- iii. Motorist assistance services consisting of flat tire change, battery boosts, and lockouts, and out of gas assists performed by the Contractor **outside of official Port Authority Airport parking lots** (Pricing Sheet 8).
  - iv. Motorist assistance fuel fee for Towing vehicles **located outside of official Port Authority Airport Parking Lots** to the nearest on-airport gas station (Pricing Sheet Item 9).
- c. The Port Authority reserves the right to waive the payment of any of the service fees listed above by Airport patrons upon notice given by an authorized representative of the Port Authority. In this case, the Contractor will be compensated by the Port Authority for the services provided in accordance with the clause of these Specifications entitled “Fees Payable by the Port Authority for Towing Services.”
- 1. A storage fee of thirty dollars (\$30.00) per day shall be charged to the patron for any vehicle remaining in the Space beyond the first twenty-four (24) hours. There shall be no charge to patrons for any storage under twenty-four (24) hours. Storage fees shall accumulate for each calendar day.
  - 2. All storage fees collected by the Contractor shall be given to the Port Authority in accordance with the section entitled “Reporting” herein. The Contractor shall not be entitled to any fees generated for storage of vehicles or equipment towed to the Space, Port Authority Police Impound Lot or any other storage area designated by the Port Authority under this Contract.

## **8. Fees Payable by the Port Authority for Towing Services**

The Port Authority will pay the Contractor only fees for services provided at the request of the Manager or his/her duly authorized representative. All services that will be billed to the Port Authority must include a Port Authority representative’s signature on the tow receipt to be eligible for payment. These services will be paid at the rate inserted by the Contractor, and accepted by the Port Authority, in the Pricing Sheets and shall not exceed the “Maximum Rates” listed therein. Services payable by the Port Authority include the following:

- a. Tow fees for automotive towing (equipment not requiring a Heavy-Duty Tow Truck), to the Space (Pricing Sheet Item 1).
- b. Tow fees for Towing of vehicles or equipment requiring a Heavy-Duty Tow Truck to the Space (Pricing Sheet Item 5).
- c. Aeronautical tow fees for Towing non-motorized equipment (including, but not limited to, container, pallets, skids and dollies) from the Aeronautical Area to the Space (Pricing

Sheet Item 3).

- d. Relocation (Parking Lot) fee for relocation of vehicles and equipment within and/or between Airport parking lots (Pricing Sheet Item 4).
- e. Standby service charge for each hour that a Light/Medium/Heavy Duty vehicle is required to tow cars, vans, etc. requested by the Port Authority. Fractional payments will be made for portions of an hour in use in fifteen (15) minute increments. The calculation of the hourly rate will commence at the time that the Contractor's Towing equipment arrives at the requested location until such time as a duly authorized representative of the Port Authority releases the truck. No payments will be made for periods when the truck is not in use due to meal periods or for any other reason (Pricing Sheet Item 6).
- f. Relocation fee for Towing any vehicle or equipment, motorized or non-motorized, from the Space to the LGA Impound Lot or to another location at LGA including removal of vehicles to a safety shoulder in order to perform Motorist Assistant services, as directed by the Manager (Pricing Sheet Item 7).
- g. Motorist assistance fee for patrons **located inside official Airport parking lots**, including flat tire change, battery boosts, and lockout assistance service performed by the Contractor, with the exception of fueling (Pricing Sheet Item 8).
- h. Motorist assistance fuel fee for Towing vehicles **located inside official Airport parking lots** to the nearest on-airport gas station (Pricing Sheet Item 9).

#### **9. Unclaimed Vehicles and Non-Vehicular Equipment**

If a vehicle remains unclaimed for more than ten (10) consecutive days, the Port Authority will assume legal possession of said vehicle. At that time, the Manager will notify the Contractor to transport such vehicle(s) to the Port Authority Police Impound Lot.

In the event that non-vehicular equipment towed from the Aeronautical Area is not redeemed after a period of ten (10) consecutive calendar days, the Port Authority will assume legal possession of said equipment and, if requested by the Manager, the Contractor shall dispose of said non-vehicular equipment within ten (10) calendar days of such request.

#### **10. Complaints and Suggestions**

The Contractor, within forty-eight (48) hours of its receipt of a complaint, suggestion or observation by any user of the Contractor's services under this Contract, shall respond to the sender via mail or email and mail or email a copy thereof, together with a copy of the correspondence to which the Contractor is replying, to the Manager. If such response indicates that a further response may be forthcoming, or reasonably raises the expectation of a further response, the Contractor shall make such additional response(s) whenever the situation requires such action (with simultaneous copy to the Port Authority as aforesaid). In addition, the Contractor agrees to make such response(s), including written, electronic and/or

oral communications as the Manager may direct with respect to the nature of such response(s). No response by the Contractor shall be in the name of or imply that it has the approval of or has been authorized by the Port Authority.

#### **11. Property of the Port Authority**

Upon the expiration or termination of this Contract, the Contractor shall deliver to the Port Authority any and all equipment, supplies and other personal property supplied to it by the Port Authority or purchased or supplied by the Port Authority for the Contractor's use in the performance of the Work herein, and all such shall be returned in same condition as upon the acquisition thereof by the Contractor, reasonable wear excepted. If any such equipment, materials, supplies or other personal property becomes defective or is lost, stolen, damaged or destroyed by reason of the acts of omission of the Contractor or its officers, agents, employees or representatives, the Contractor shall repair or replace the same, and the cost of such repair or replacement shall be borne by the Contractor without compensation or reimbursement from the Port Authority.

#### **12. Reporting**

- a. The Contractor shall maintain a listing in MS Excel, or otherwise approved spreadsheet, of each vehicle being stored at the Space. This listing shall include, at a minimum, each vehicle's make, model, year, color, license plate number and state, and vehicle registration number; the Facility location towed from; and the date towed. Upon request, the Contractor shall hand-deliver the list to the Airport Manager within twenty-four (24) hours of said request, unless otherwise approved by the Manager. The Contractor also may be required to email this listing to the Manager when requested.
- b. The Contractor shall also submit to the Manager on or by the tenth (10<sup>th</sup>) day of the calendar month following the commencement of this Contract and on or by the tenth (10<sup>th</sup>) day of each month thereafter (including the month following the termination, revocation or expiration of this Contract) a statement setting forth the following:
  - (1) An Excel spreadsheet listing the number of vehicles and equipment towed, assisted or relocated by the Contractor sorted by type of service. This report shall include the license plate numbers, make and model of said vehicles or equipment, dates of tows, dates of release, and storage fees incurred), for the proceeding calendar month. In the event that this information is not available, then the Contractor shall define said vehicles or equipment by type and provide any other identifying information (e.g., VIN number, airline or company requesting services) as may be available.
  - (2) Copies of the numbered tow receipts and receipts for each Towing and motorist assistance service performed during the associated billing period. Each tow bill must be completed as required by the Port Authority. In the event that a tow receipt for a Towing service does not contain all of the required information; the Port Authority shall have the right to withhold compensation for said service.

- (3) A computation of the amounts due to the Contractor from the Port Authority for the Towing Services provided during the preceding calendar month, if any, which amounts shall be computed in accordance with the schedule of fees set forth in the Part IV Pricing Sheets.
- (4) A computation of the amount due to the Port Authority for the fees collected by the Contractor from patrons for storage at the Space provided during the preceding calendar month, if any, which amounts shall be computed in accordance with the storage fee set forth in the section entitled "Fees Payable by Patrons to the Contractor for Towing Services" herein. The Contractor shall deduct the total sum collected for storage during each billing period from its monthly invoice.

### **13. Contractor's Refueling**

Upon Contract commencement, the Contractor will be issued a key card that will permit the refueling at no charge of its vehicles being used in performing the Work under this Contract. The refueling pumps are located at LGA, near Building 84. Personal vehicles cannot be refueled using these refueling pumps.

The Contractor's fueling will be capped at forty (40) gallons a day in total for all of its vehicles being used under this Contract, unless otherwise authorized by the Manager. The Port Authority will run a report monthly showing the gallons of fuel taken by the Contractor to ensure compliance. If this limit is exceeded, the Contractor will be assessed liquidated damages in accordance with Part III, Section 5, "Liquidated Damages".

### **14. Gratuities and Fares**

The Contractor shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from anyone using the services under this Contract. The Contractor shall not impose or collect any charges or fares from those using the services unless explicitly authorized under this Contract.

### **15. Contractor's Personnel Requirements**

The Contractor shall furnish competent and adequately trained personnel to perform the services required under this Contract. The Contractor's employees shall not eat, drink or smoke while performing Towing Services or providing motorist assistance under this Contract. The Contractor's Personnel are prohibited from soliciting or accepting gratuities of any kind or nature whatsoever for any reason.

#### **A. Tow Truck Operators**

The Contractor shall provide and maintain a minimum of one (1) Tow Truck Operator at the Facility at all times (twenty-four 24 hours a day, seven (7) days a week) that must be capable of operating the Light, Medium and Heavy-Duty Tow Trucks.

The Contractor must provide drivers for the Medium Duty Wrecker and the Heavy-Duty Wreckers on an as-needed basis. The Contractor's drivers must be at the Airport to start performing the required services within twenty (20) minutes upon receipt of a call by the Airport. Periods when additional drivers and vehicles may be requested include but are not necessarily limited to, holiday weekends and periods.

The Contractor's Tow Truck operators shall possess a valid government-issued driver's license (to operate a Tow Truck).

The Contractor shall provide copies of all current and valid licenses, including, as applicable, driver's licenses, NYC Consumer Affairs Tow Truck Driver's licenses, NYC Consumer Affairs Tow Truck Company Licenses, and/or any additional training certificates for drivers assigned and designated to perform Work under this Contract. This shall be furnished on a six (6) month basis, starting within ten (10) consecutive days of Contract award, but before beginning Work.

The Contractor shall provide this information on the tenth (10<sup>th</sup>) day of every January and the tenth (10<sup>th</sup>) day of every June for the duration of this Contract, including, but not limited to any and all options and extension periods, if exercised. In addition, this information shall be provided for any Tow Truck Operators assigned and designated to perform Work under this Contract prior to the individual performing such Work.

The Tow Truck Operator shall perform duties which include but are not limited to the following:

- i. Respond to a call and arrive at the specified location to perform services within fifteen (15) minutes from the time a call for any service is received from the Dispatcher.
- ii. When arriving at the designated location, locate the Port Authority representative requesting the vehicle(s) to be removed.
- iii. Inspect the vehicle or unit that is attended prior to being towed; including backseat.
- iv. Take photographs of all four sides of the vehicle and record all damage on the vehicle prior to its being towed. These photos shall be kept on file by the Contractor for the duration of the Contract. The Port Authority reserves the right to request a copy of any photo taken by the Contractor.
- v. Position the Tow Truck, remove the vehicle in a safe manner and return with it to the Space. If the patron responds while his/her vehicle is being moved from its original location, the Drop fee shall be charged to the patron and the vehicle shall be

released.

- vi. Provide a toll receipt to the appropriate individual (patron, Port Authority representative). If providing a free Motorist Assistance service (i.e., battery boosts, lockouts, air, tire changes), a toll receipt shall be completed with patron's name and address, which the customer will need to sign.
- vii. The Contractor shall provide the Manager with a roster listing the names and shift schedule of each Tow Truck operator for every month. This roster shall be provided to the Manager by the 25<sup>th</sup> day of the month prior to the month upcoming.

**B. Dispatcher/Administrator**

The Contractor shall at all times have located at the Space a minimum of one (1) Dispatcher/Administrator, per shift, available and thoroughly trained to dispatch all Tow Truck drivers at the Airport. Said Dispatcher/Administrator should be entirely familiar with the Airport. The Contractor shall have a sufficient number of temporary and backup Dispatchers/Administrators available and trained so as to continue with any and all Towing operations when/if the primary Dispatcher/Administrator is unavailable. The Contractor's Dispatcher/Administrator shall perform duties which include, but are not limited to the following:

- i. Assign Tow Truck operator(s) to calls in order for them to respond and arrive at the specified location to provide Services within 15 minutes;
- ii. Check sign-in sheets located in Building 30 during their shift to make sure Tow Truck operators have properly signed-in and signed-out as further described in the section entitled "Sign-In Sheets" and to advise Port Authority Airport Operations if there is a shortage of drivers for a shift;
- iii. Ensure Tow Truck operators have properly checked their assigned vehicles prior to start of tour;
- iv. Ensure proper documentation is accounted for prior to releasing a vehicle and that all charges incurred are paid in full by the patron before a vehicle is released (this includes airport parking fees, which will be collected by the parking lot operator);
- v. Keep and maintain phone logs of all telephone tow requests. Ensure that these logs are kept up to date;
- vi. Act as Contractor's Management Representative as necessary.

**C. Towing Service Management Representative**

The Contractor shall provide, at the Contractor's expense, a Management Representative for the purpose of coordinating and supervising the activities of the Tow Operators and Dispatcher/Administrator under this Contract. The Management Representative shall have overall responsibility for the Towing Service to be provided by the Contractor under this Contract. The Management Representative shall have a complete and current understanding of the Towing Services required hereunder and shall be fully responsible

for the coordination and implementation of all Port Authority directives in connection with the Towing Service. At Contract's commencement, the Management Representative shall provide his/her cell phone number and any other additional contact information (e.g., email address) to the Manager.

The Management Representative shall perform duties which include, but are not limited to, the following:

- i. On behalf of the Contractor, handle the administration of this Contract, carry out the directions of the Airport Manager, meet and communicate with Port Authority representatives from the Airport from time to time as required.
- ii. Represent the Contractor at meetings with the Airport Manager, as may be directed by the Airport Manager, which concerns the operations of the Contractor under this Contract.
- iii. Continuously identify means to ensure productivity and overall effectiveness.
- iv. Be available on-call by the Airport Manager twenty-four (24) hours a day, to assist and advise the Airport Manager on the operations of the Contractor hereunder.
- v. Prepare written reports that may be required by the Airport Manager.
- vi. Perform off-hour inspections as requested by the Airport Manager.
- vii. Monitor and act upon all issues, to include attendance and discipline. Establish a formal disciplinary program, acceptable to the Airport Manager, which includes specific penalties for failure to follow required rules and procedures.
- viii. Investigate all customer complaints and forward findings to the Airport Manager.
- ix. Investigate all internal complaints by staff regarding such issues as sexual or racial harassment.
- x. Ensure that all the Contractor's staff display a high level of customer service to Airport customers.

The Management Representative shall make his or her presence available to the Airport Manager between 9:00 a.m. and 5:00 p.m. and/or at those times specified by the Airport Manager, for prompt attention to and compliance with orders, instructions, directions and information written or orally given regarding the performance of the work specified in this Contract, and for the inspection tours of the Facility. The Management Representative shall have full power and authority to act on behalf of the Contractor with respect to situational awareness of drivers present and activities at all hours under this

Contract.

The Contractor shall provide an individual to successfully and satisfactorily cover the Management Representative's duties when he/she is absent, who is subject to the continuing review of the Airport Manager. The Management Representative is required to contact the Airport Manager via email of their absence and notify them of the appropriate coverage for this position. Failure to provide an alternate Management Representative as well as failure of the Management Representative to notify the Airport Manager when they are absent and provide notification of an alternate for the duration of the absence, in accordance with this Section, will result in liquidated damages, as set forth in the Contract.

#### **16. Sign-In Sheets**

For every shift worked under this Contract, the Contractor's personnel, including but not limited to all Tow Truck operators as well as Dispatchers and Administrators, are required to report to the Port Authority Operations Office at Building 30 and sign-in on the sign-in sheets provided before going to the P10 Space to begin their shifts. The Contractor's personnel shall sign-out at Building 30 before departing the Airport at the conclusion of their shifts.

#### **17. Drug Testing**

The Contractor's Tow Truck Operators and Dispatcher/Administrator shall pass drug screening tests, including a comprehensive ten panel drug screen or its equivalent, to include screens for the following:

Amphetamines	Methaqualone	Benzodiazepenes
Barbiturates	Methadone	Opiates
Marijuana	Propoxyphene	Morphine – if indicated
Phencyclidine (PCP)	Cocaine	Codeine – if indicated
		6MAM – if indicated

The test shall be administered by and at the sole cost and expense of the Contractor, prior to hiring of all employees, and randomly thereafter at the written request of the Port Authority. Results of all testing shall be furnished to the Port Authority at their request.

#### **18. Contractor's Personnel Uniform Requirements**

- a. The Contractor shall provide and pay for a distinctive uniform for all their personnel acting as Tow Truck Operators at the Airport. The Contractor's personnel shall not wear any insignia, badges, buttons, patches or embroidered emblems or letters, which identifies the Contractor's company or corporate name. The uniform shall also include

foul weather and winter gear. The Contractor shall be responsible for ensuring that its employees at all times wear their uniforms and appropriate shoes. All uniforms, colors, types and styles shall be subject to the prior and continuing approval of the Airport Manager.

- b. The Contractor shall cause its employees to change to freshly cleaned and proper uniforms at all times. The Tow Truck drivers and all roadway personnel shall wear a reflective safety vest at all times. All uniform shirts and jackets must have Contractor's company name visible on at minimum the back of the garment.
- c. The Contractor shall provide, and its employees shall wear, carry or display as required by the Airport Manager, a badge, number and company-issued picture identification, which will be subject to the prior and continuing consent of the Port Authority in writing. None of the costs of such badges, means of identification and uniforms (or replacements hereof) will be reimbursed to the Contractor. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever engaged in work under this Contract.
- d. The Port Authority may require the Contractor to affix certain distinctive insignia or shields on the uniforms worn by the Contractor's personnel. Such insignia shall be supplied to the Contractor by the Port Authority. All such insignia must be returned to the Port Authority at the termination of the Contract. The Contractor shall be liable for loss of any or all insignia or equipment provided by the Port Authority.
- e. The Contractor shall prohibit its employees from wearing excessive jewelry.
- f. If the Contractor is unable to provide its employees with uniforms as specified above for a period of up to fifteen (15) calendar days after the commencement of the Contract, the Contractor shall not be deemed in default hereunder, provided, however, that all employees during said period shall be properly and uniformly dressed in a style and color uniform utilized regularly by the Contractor and subject to the prior approval of the Airport Manager. However, within fifteen (15) calendar days of commencement of Contract all Contractor personnel must be in proper uniform. Employees will not be permitted to work their assigned shifts unless properly attired in accordance with the provisions of this Section; and liquidated damages, as set forth in the Contract, will be applied.

#### **19. Material, Equipment and Supplies**

The Contractor shall be responsible for all equipment if provided to it by the Port Authority. If any such equipment is damaged or destroyed due to misuse or negligence on the part of the Contractor, the Contractor shall be required to reimburse the Port Authority for the cost or

replacement thereof.

The Contractor shall be required to purchase and maintain, at no cost to the Port Authority, a sufficient supply of all necessary ticket stock supplies and ancillary material as may be required to provide tow receipts and to operate the service and other related items associated with this Contract.

## **20. Safety Equipment**

The Contractor's vehicles shall comply with all applicable state, federal and local laws, regulations and ordinances pertaining to safety, lighting and towing equipment requirements. The following minimum safety equipment shall be carried on all of the Contractor's trucks, at all times:

- i. "J" hooks and chains.
- ii. Snatch block for three-eighths (3/8's) to one-half (1/2) inch cable.
- iii. Two high-test safety chains.
- iv. Auxiliary safety light kit to place on rear of towed vehicles.
- v. Four-lamp or three-lamp revolving amber light or light bar.
- vi. Tool box with an assortment of hand tools.
- vii. Rear working lights, rear marker lights, cab lights and body-clearing lights located to clear towed vehicle.
- viii. Minimum of four safety cones fluorescent-orange-colored with at least one band of reflectorized tape not less than 2' wide and within 6" of the top.
- ix. Steering wheel lock or tie down.
- x. Two-way radio equipment for communication with Contractor's office at the Space.
- xi. Equipment necessary to tow/flatbed disabled or locked vehicles.
- xii. At least one heavy-duty broom, a shovel, a crowbar or prybar, a set of jumper cables, a flashlight, one two-pound or larger fire extinguisher of dry chemical type, one dozen flares or similar warning devices, at least ten pounds of dry sand and/or a drying compound for gasoline and oil spilled onto the roadway.
- xiii. A wheel lift device.
- xiv. Dolly or other equipment necessary to tow vehicles having locked wheels.

## **21. Radio Equipment**

- a. The Contractor shall furnish and install and maintain in working order two-way radios in the Tow Trucks used under this Contract. The Contractor shall operate radios in such manner and use such procedures as shall be specified and directed from time to time by the Airport Manager. This radio equipment shall also be located and operated at the

Space, permitting the Contractor to maintain radio communication with the Tow Trucks operators seven (7) days a week, twenty-four (24) hours a day. In addition, the Contractor shall provide a two-way radio to the Manager in order to maintain communication with the Contractor.

- b. The Contractor shall arrange for all maintenance and repair of the radio equipment and other communication devices to be performed by a service company authorized by the equipment manufacturer to perform repairs on its behalf; and the Contractor shall give the Airport Manager immediate oral notice of any defect, state of disrepair or damage to the radio equipment or any part thereof.
- c. Properly operating radio equipment shall be deemed key to the successful and efficient operation of the Towing Service, and a Tow Truck shall be removed from service at the request of the Airport Manager if it does not have a working radio.
- d. The Contractor shall maintain the radio equipment in good condition and shall instruct his/her personnel in the proper operation and care thereof.
- e. The Contractor shall obtain, at his sole cost and expense, in the name of the Contractor, Federal Communications Commission (FCC) approval and all other licenses, permits or approvals as required to operate said radio equipment at the Facility. The Contractor shall use such radio frequency only in the manner and to the extent directed by the Port Authority so as to ensure that the use of such frequency complies with any and all requirements of the FCC. The Port Authority shall have the right to physically observe the Contractor's use of the radio equipment. Upon the expiration or sooner termination of this Contract, the Port Authority shall have the right to direct the Contractor to surrender any license issued by the FCC to the Contractor which is used in connection with this Contract to the FCC or to seek the consent of the FCC to its assignment to the Port Authority or to such other person as the Port Authority may direct.

## **22. Staging**

The Manager may stage Tow Truck(s) with Operators from the daily allotted tow trucks assigned to the Facility at a Facility location for a period of time to ensure rapid Towing operations during peak or busy travel periods. If a Tow Truck operator needs to leave the assigned staging area, he/she will first call Port Authority Operations at 718-533-3700 and provide the reason for leaving. They shall also call Operations upon their return to the staging area.

## **23. General**

The services under this Contract are not exclusive, and the Port Authority shall have the right

to engage other vendors for the performance of such services.

#### **24. 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.

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## **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 - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean 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 - shall mean consecutive calendar days, Saturdays, Sundays, and Holidays, included.

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

Month - unless otherwise specified, shall mean 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 - shall mean 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 - shall mean 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.

Site of the Work - or words of similar import shall 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 - shall mean 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) - shall mean 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 - shall mean 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, unlaminated 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  
Christmas Day

Day After Thanksgiving

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 or Small Business Enterprises 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); or
- (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),

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

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

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

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. 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/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.

#### **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 any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the 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; and
- 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.
- 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 Chief Procurement Officer of the Procurement Department of the 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., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the 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.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries 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 use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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.