

June 18, 2018

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL FINANCIAL AND BUSINESS ADVISORY SERVICES FOR THE GATEWAY PROGRAM DEVELOPMENT CORPORATION AS REQUESTED ON AN AS-NEEDED BASIS (RFP #52678)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is issuing this solicitation on behalf of and in coordination with the Gateway Program Development Corporation (“GDC”), a New Jersey non-profit corporation, and hereby invites your proposal to provide capital infrastructure financial and business advisory services on an as-needed basis for a period of three (3) years, and reserves the right to extend the agreement for three (3) additional one (1) year periods, at its sole discretion. The GDC was formed on November 17, 2016 as a New Jersey non-profit corporation for the purposes of coordinating, developing, operating, financing, managing, owning or otherwise engaging in activities to effectuate the Gateway Program of rail infrastructure projects between Newark, New Jersey, and Pennsylvania Station in New York City (“PSNY”). GDC works closely with stakeholders, including The National Railroad Passenger Corporation (“Amtrak”), New Jersey Transit Corporation (“NJ TRANSIT”), the States of New York and New Jersey, and The Port Authority of New York and New Jersey.

The scope of and the process by which the Authority will issue task orders to be performed by the firm are set forth in Attachment A to the Authority’s Standard Agreement (the “Agreement”), which is attached to this document. You should carefully review this Agreement, as it is the form of agreement that the Authority requires that you sign in the event of acceptance of your Proposal, and forms the basis for the submission of Proposals. The Agreement will be subject to the direction and control of GDC and the Consultant will have a fiduciary duty to GDC.

Proposals from firms (Proposers) who meet the requirements as indicated in Section I below are encouraged to respond to this Request for Proposals (RFP).

Services to be performed by the selected Consultant may be funded in whole or in part through an operating administration of the United States Department of Transportation (“USDOT”), such as the Federal Transit Administration (“FTA”). If federal funding is provided, then federally mandated terms and conditions are required as part of the subject Agreement and are applicable solely for the performance of the services as described in Attachment A. (See Exhibit I, Federal Transit Administration Contract Provisions, for the required clauses.)

I. PROPOSER REQUIREMENTS

The Authority will only consider Proposals from Proposers that are able to demonstrate that they meet the following qualification requirements:

- A. The Proposer shall have had at least three (3) years of continuous experience immediately prior to the date of the submission of its Proposal in providing financial and business advisory services to entities associated with developing optimal business models and financial structures for large-scale transportation-related capital projects.

The Proposer may fulfill this prerequisite if it can demonstrate that the persons or entities owning and controlling the Proposer have had a cumulative total of at least the same number of years and type of direct continuous experience immediately prior to the

submission of this proposal as is required of the Proposal, or has owned and controlled other entities which meet the requirement.

- B. The Proposer shall demonstrate satisfactory performance of at least two (2) agreements for large-scale transportation-related capital projects of similar complexity as the Gateway Program, as described in Attachment A.

The Proposer shall detail the size of the project(s) and whether the project utilized multiple funding sources for each of the large-scale transportation capital project used to satisfy qualification requirements A and B, above.

If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity Proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively) but, in so doing, no single entity may seek to effectuate anti-competitive purposes.

By furnishing this solicitation document to Proposers, the Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that it will be deemed qualified in connection with other proposal requirements included herein.

II. SUBMISSION FORMAT REQUIREMENTS

To respond to this RFP, the Proposer shall submit a concise Proposal complying with the following Proposal format requirements. (The Authority will not accept product brochures and other sales literature as substitutes for written responses to this RFP):

- A. To be acceptable, the Proposal shall be of no more than thirty (30) pages single-sided or fifteen (15) pages double-sided, using 12-point or greater font size. This limit does not include resumes, nor information submitted addressing DBE Participation, nor Section III, items A, B, C, H, I, J, K and L below, nor section and tab dividers. Proposal pages shall be numbered and bound, with “Your Firm Name” and “**RFP Number 52678**” clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All Proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21st Floor, New York, NY 10007, Attention: RFP Custodian. Please include the FULL LEGAL name and address of your firm on the outside of your Proposal package. You are requested to submit one (1) reproducible original and eight (8) copies, along with nine (9) CD copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the CDs.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification shall be turned away and their packages not accepted.

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

- D. In each submission to the Authority, including any return address label, information on the USB, and information on the reproducible original and copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- E. Provide the address of your firm to which any written correspondence should be sent.

Your Proposals should be forwarded in sufficient time so that the Authority receives them **no later than 2:00 p.m. on Tuesday, July 17, 2018**. The outermost cover of your Proposal must be labeled to include the RFP Number and the RFP title, both as stated above. The Authority assumes no responsibility for delays caused by any delivery services.

III. SUBMISSION REQUIREMENTS:

In order for the Authority to consider your Proposal, your Proposal must provide all of the following information in the order listed. Failure to address each question in each Section and subsection shall result in your Proposal being deemed non-responsive, and it shall not be considered for this Agreement:

A. AGREEMENT ON TERMS OF DISCUSSION

In accordance with Authority policy, you are required to include at the front of your Proposal, a copy of Attachment B, Agreement on Terms of Discussion, signed by an officer of your company.

B. COMPANY PROFILE

A copy of a completed Company Profile, included herewith as Attachment C.

C. TRANSMITTAL LETTER

Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with each of the aforementioned “Proposer Requirements”. For all projects referenced, include the name of the company, a contact person and current telephone number for verification purposes.

Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

1. If a common-law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
2. If the Proposer is a joint venture, the joint venture’s Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture’s proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

D. STAFF QUALIFICATIONS AND EXPERIENCE

Identify the proposed account teams, including any subconsultants, that will be assigned to perform the services described in Attachment A. Include resumes for all proposed team members that demonstrate both professional and educational background. Each resume shall be 2-page maximum, single-sided or 1-page double-sided, using 12- point or greater font size.

Indicate the following for each team member being proposed, highlighting any public sector experience:

1. Provide a brief description of proposed staff (and/or subconsultants) that includes their specific qualifications to provide the scope of services contemplated herein.
2. Length of time with the firm.
3. Length of career in transportation and infrastructure financial advisory services.
4. Extent to which experience includes passenger rail, bridge, tunnel, terminal, or airport-related projects.
5. List the experience that each team member has had with organizations similar to the Authority, NJ TRANSIT, Amtrak, New York State Department of Transportation (“NYSDOT”) or other similar regional transportation agencies, including references and contact information for each similar client. Include billing rates for each proposed account team member. Include names, titles, fully-loaded hourly rates of staff to be assigned to the performance of each task. Please note that allowable out-of-pocket

expenses shall not include daily commutation or housing costs or any relocation costs that may be incurred by proposed staff in performance of the contemplated services.

E. FIRM QUALIFICATIONS AND EXPERIENCE

Indicate the following, highlighting any public sector experience:

1. Length of time firm has provided financial and business advisory services in connection with large-scale infrastructure projects, such as those contemplated in Attachment A.
2. Size and scope of infrastructure projects advised on over the past five (5) years.
3. Level of experience providing infrastructure advisory services on engagements with large-scale rail components.
4. Client experience with exposure to organizations similar to the Authority, NJ TRANSIT, Amtrak, NYSDOT or other similar regional transportation agencies.
5. References and contact information for each similar client.

F. TECHNICAL APPROACH

It is recommended that Proposers tie their responses to this Technical Approach to the tasks identified in Attachment A, and how those tasks will be completed by using the proposed methodology and approaches identified below.

1. Describe the approach and methodology that you will apply to develop and optimize financial models for various types of large-scale infrastructure projects.
2. Provide details on the analytic tools you have used to create and evaluate models and business cases for project financials.
3. Describe how you utilize scenario and sensitivity-based analyses.
4. Describe the approach and methodology that you will apply to reach out to the market to evaluate the market's interest for project participation.
5. Provide at least two case studies to demonstrate your firm's ability to identify and implement creative and alternative financing/funding opportunities for major transportation projects or programs.
6. Explain your approach to how you will assist the GDC in identifying financial risks associated with the Program.
7. Describe your approach for assisting in the development of procurement documents including but not limited to Request for Qualifications (RFQ), RFPs, and other procurement-related documents.
8. Discuss the use of innovative financing and funding tools and grants to deliver transportation infrastructure projects.

G. MANAGEMENT APPROACH

Describe in detail the Management Approach to be taken to perform the required services. Your Management Approach shall include, but is not limited to:

1. An organization chart that identifies the key individuals, their firm, task responsibility, and reporting relationships. Indicate the percentage of time expected to be spent on the GDC's account for each team member.

2. Identify office(s) of your organization that will have primary and secondary responsibility for this account.
3. Describe your firm's commitment to customer service and quality assurance/quality control.
4. Describe your firm's approach to working with and being responsive to the GDC's internal staff and other consultants.
5. Describe your firm's approach to keep the GDC apprised of changes and innovation in the private and public sectors as they relate to the structuring and financing/funding of large-scale infrastructure projects.

H. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Your attention is directed to Paragraph 22 of the Agreement in which the Authority has stated the goal for DBE participation in this project.

Any Agreement awarded as a result of this RFP may be funded in whole or in part through an operating administration of the USDOT, such as the FTA. Accordingly, all Proposers will be obligated to comply with all corresponding federal laws, regulations or other conditions applicable to the federal financing source, this includes the applicable DBE goal.

Individual task orders issued against such Agreement will indicate federal funding source and corresponding DBE goal.

For your reference, please see Attachment I and its Appendices for the DBE Program Requirements and associated forms.

I. FULLY-LOADED HOURLY RATES

Submit a schedule of billing rates in a **separate sealed envelope**, including names, titles and fully-loaded hourly rates, as described in Paragraph 7A of the Agreement, for each of the team members proposed in accordance with Section D, above.

J. AFFILIATES

Provide a complete list of your firm's affiliates. Affiliates shall be defined as: Two (2) or more firms are affiliates if a parent owns more than fifty percent (50%) of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

K. CONFLICT OF INTEREST

If the Proposer or any employee, agent or subconsultant of the Proposer may have, or may give the appearance of, a possible conflict of interest relating to this Program or its stakeholders, the Proposer shall include in its Proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if any interest disclosed from any source indicates a conflict of interest exists at the time of the submission, or the interest disclosed could create, or give the appearance of, a conflict of interest. The determination regarding any question(s) of conflict of interest shall be final.

L. EXCEPTIONS TO AGREEMENT

The Proposer is expected to agree with the form of Agreement and all of its terms and conditions. The Proposer should therefore not make any changes in the Agreement nor restate any of its provisions in your Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.

IV. SELECTION PROCESS:

The review, rating and ranking of Proposals shall first be based upon the technical qualifications as indicated below (listed in order of importance), and subsequently cost, as appropriate, in the Authority's discretion.

- A. Staff Qualifications and Experience
- B. Firm's Qualifications and Experience
- C. Technical Approach
- D. Management Approach

After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified in terms of the foregoing factors to perform the required services.

The Authority will conduct negotiations with the Proposer's designated contact person as identified in the Proposer's Attachment C.

V. ORAL PRESENTATIONS:

The Authority may invite Proposers who have met the requirements set forth in Section I, to interview with the selection committee and others, as appropriate. The Authority may give those Proposers selected to make presentations short advance notice. The Proposer's presentation shall be approximately sixty (60) minutes long, and shall address the material contained in the Proposal. A forty-five (45) minute question and answer session will follow the Proposer's presentation. Proposer's staff participating in the presentation, and giving the presentation, shall be led by the proposed Project Manager, who may be supported by no more than five (5) other proposed project staff members. The Authority will notify Proposers via email if they have been selected to interview, and to give a presentation.

VI. ADDITIONAL INFORMATION

If your firm is selected for performance of the subject services, you may be required to have your employees, subconsultants, and their employees execute Authority-approved Non-Disclosure and Confidentiality Agreements and Acknowledgements. No documents, studies, or information provided to you by the Authority may be used by your firm or its employees or subconsultants for any purposes.

If your firm is selected for performance of the subject services, the Agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing And Code Of Ethics Certification;

Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a Proposal, the firm shall be deemed to have made the certifications contained therein unless said firm submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked “CERTIFICATION STATEMENT.”

It is Authority policy that its consultants, contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State’s requirements that certain consultants, contractors, affiliates, subcontractors/subconsultants’ affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State’s Department of the Treasury.

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

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

Should you have any questions, please contact Ms. Jessica Smith by email at JLSmith@panynj.gov. All such emails must have “**RFP 52678**” in the subject line. The Authority must receive all questions no later than 4:00 P.M., seven (7) working days before the RFP due date. Neither Ms. Smith nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. Addenda to the RFP, if any, will be posted at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should therefore monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

You may not communicate with the GDC, its stakeholders, or any of their representatives (including their Commissioners, Trustees, Officers or employees, as applicable) and any member of the selection committee about this procurement during the procurement period. Contacting anyone other than Ms. Smith (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) with respect to this procurement: (1) may result in a proposer being deemed a non-responsible offeror, and (2) may result in the proposer not being awarded a contract.

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

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

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

more Consultants, to waive defects in Proposals, and to proceed with that Proposal(s) or modified Proposal(s), if any, which in its judgment will, under all the circumstances, best serve the public interest.

VII. BACKGROUND QUALIFICATIONS QUESTIONNAIRE (BQQ)

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

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

A BQQ may also be requested for any subcontractor, sub-consultant or vendor the Proposer, at the time of proposal submission, has contracted to perform any of the work under Attachment A.

Sincerely,

David Gutiérrez, CPPO
Assistant Director
Procurement Department

Attachments

ATTACHMENT A

THE PERFORMANCE OF EXPERT PROFESSIONAL FINANCIAL AND BUSINESS ADVISORY SERVICES FOR THE GATEWAY PROGRAM DEVELOPMENT CORPORATION AS REQUESTED ON AN AS-NEEDED BASIS

I. BACKGROUND

For background with respect to The Port Authority of New York and New Jersey (the “Authority”), see www.panynj.gov. The Authority is issuing this solicitation on behalf of the Gateway Program Development Corporation (“GDC”), see www.gatewayprogram.org. Consultant, as defined below, will have a fiduciary duty to GDC and take direction from GDC. The GDC’s project stakeholders include the Authority, NJ TRANSIT (<http://www.njtransit.com>), Amtrak (<http://www.amtrak.com>), the States of New York and New Jersey, and others as required.

A. *The Gateway Program Development Corporation*

GDC was formed on November 17, 2016 as a New Jersey non-profit corporation for the purposes of coordinating, developing, operating, financing, managing, owning or otherwise engaging in activities to effectuate the Gateway Program of rail infrastructure projects between Newark, New Jersey, and Pennsylvania Station in New York City (“PSNY”). GDC is responsible for meeting critical transportation infrastructure needs of the region’s people, businesses, and visitors by efficiently undertaking the Gateway Program.

B. *The Gateway Program*

The Gateway Program (“Program”) consists of numerous rail infrastructure improvement projects between Newark and Penn Station New York. The Gateway Program focuses on a 10-mile segment of the Northeast Corridor (“NEC”), and includes a program of projects that would replace and update rail infrastructure assets that, in many cases, are over 100 years old, as well as increase track, tunnel, bridge and station capacity. This segment of the NEC carries over 200,000 Amtrak and NJ TRANSIT riders daily on approximately 450 trains.

The Gateway Program’s first phase includes the construction of a new tunnel under the Hudson River, the rehabilitation of the existing tunnel, the completion of a concrete casing on the West Side of Manhattan to preserve right-of-way for the future tunnel to PSNY, and the replacement of the Portal Bridge.

II. SCOPE OF SERVICES

The financial advisor consultant(s) (the “Consultant”) will be a key consultant to GDC in developing the optimal business model and financial structure for the Program and the projects comprising the Program. In general, the Consultant will be expected to provide advice in respect to structuring, analysis, procurement, evaluation, negotiation and documentation, development and negotiation of the projects that comprise the Program pursuant to one or more acceptable project delivery options, including, but not limited to Design-Bid-Build (“DBB”), Design-Build (“DB”), Design-Build-Operate- Maintain (“DBOM”), Construction Manager at Risk (“CMR”) and Public Private Partnerships (“PPPs” or “P3”).

III. DESCRIPTION OF CONSULTANT'S TASKS

The services and tasks to be performed by the Consultant shall include, but are not limited to:

- A. Research, advise, develop, and assist in the design and implementation of financial strategies, plans, and processes for the Program and develop and recommend optimal financing and transactional structures for certain Gateway Program project/program initiatives, based on applicable industry best practices and industry-recognized commercial and financial terms.
- B. Identify and advise on potential federal, non-federal, state and private financing and funding sources for GDC projects such as Private Activity Bonds (“PABs”), Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loans, Railroad Rehabilitation and Improvement Financing (“RRIF”) loans and other public and private loan and grant programs, as appropriate.
- C. Advise GDC on matters relating to the financing of major project initiatives, including the availability of appropriate federal grants and loan programs, as well as sources of private capital.
- D. Evaluate, analyze and report various financing structures, credit alternatives and propose financing methods.
- E. Submit reports and attend meetings as directed by GDC.
- F. Review and comment on the Program’s current financial models and assumptions that have been used to establish existing models. Develop a refined financial model and utilize the refined model to assess various Program sensitivities, including various cost, revenue, and financing assumptions.
- G. Assist with providing research and specific financial information to assist GDC in the formation of financial policies for the implementation of the Projects.
- H. Assist in the development and comparison of procurement alternatives, including comparison of value for money of different alternative procurements.
- I. Propose a procurement outreach strategy that optimizes competition during the procurement phase.
- J. Assist with developing evaluation criteria and submission requirements for Project procurements.
- K. Assist in the evaluation of financial elements of the proposals received pursuant to the procurement alternatives chosen.
- L. Develop a detailed and optimum financial structure based on financial delivery options, including but not limited to PPP, DBB, DBOM and CMR models. Assess and advise on expected capital structure, financing instruments and opportunity for innovative financing.
- M. Assist the GDC with the preparation of applications to any Federal, State or Local Agency(ies) for grants or financing related to the Program.
- N. Assist the GDC with preparing presentation and other materials for rating agencies, as well as helping respond to questions and requests for further information from those agencies.

- O. Assist with the development of evaluation methods and the evaluation of proposals received in response to procurements. Provide a report in order to communicate this evaluation and assessment.
- P. Assist GDC and GDC's advisors in developing the financial requirements and elements of documents relating to the Gateway Program.
- Q. Assist GDC and GDC's advisors in connection with the negotiation of the terms of any Project agreements or arrangements.
- R. Develop, prepare, and present financial briefing materials and reports as necessary to ensure proper communication to the GDC Board, key stakeholders including GDC Project stakeholders, and other audiences.
- S. Provide analysis and advice in respect to different revenue generation methods.
- T. Assist with transition planning and development of appropriate financial oversight procedures to administer any Project agreement.
- U. Coordinate and communicate with other GDC consultants and advisors, including but not limited to, legal, insurance, general engineering consultants, other financial consultants, rating agencies, and traffic and revenue consultants.
- V. As requested by GDC, support administrative tasks necessary to complete the procurement processes.
- W. Provide other advice, reports, and deliverables as required to meet the Gateway Program's objectives.
- X. Perform other duties as assigned related to the financial analysis of the components that comprise the Gateway Program.

IV. TASK ORDER PROCESS

All work to be performed under this Agreement will be issued on an as-needed, Task Order basis, which may be specific for a task or be general in nature. Task Order authorizations shall include a not-to-exceed amount for the work to be performed under that task order inclusive of costs and expenses for the services pursuant to the Task Order. The method of compensation will be determined at issuance of each Task Order and paid in accordance with the provisions of the Task Order and this Agreement. The Consultant(s) shall always perform the work in the most expeditious manner and shall complete the required work within a specified term. The Consultant(s) shall not perform any work that has not been previously authorized by a fully executed Task Order, unless otherwise agreed to in advance and in writing by the Authority's representative, the GDC.

Upon determining the scope of work for Task Orders, the GDC will issue the Task Order to the Consultant as follows:

- A. Request for Task Order Proposal:
 - 1. Request for Task Order Proposal – The Authority will transmit the Scope of Work (SOW) via a Task Order Request for Proposal (TRFP) to the Consultant.

2. Task Order Proposal – After receipt of a Task Order, the Consultant(s) shall submit, within the time specified therein, to GDC, a copy of the Technical Proposal and Cost Proposal containing the following items of information, in the order listed below:
 - a. A brief description of the proposed services;
 1. A listing of the proposed Consultant(s) and subconsultant(s) staff, as appropriate. If any technical personnel have not been previously approved by the GDC, the following minimum background information is to be provided: detailed resume including name, individual's area of educational background, expertise, qualification and pertinent experience. For project experience, include a contact person and current telephone number for verification purposes;
 2. The Task Order Proposal shall include: (a) Technical Proposal, inclusive of a management plan and technical approach; (b) Cost Proposal, inclusive of the number of hours proposed by the Consultant(s)' and subconsultant's technical personnel for the completion of the work as outlined in the TRFP, out-of-pocket expenses necessary to complete the Task Order, and total estimated cost to complete the Task Order. All Cost Proposals shall be submitted pursuant to the Compensation provisions outlined in the Agreement or as otherwise described in the Task Order request. The Cost Proposal shall be accompanied by a breakdown of hours and hourly rates for the personnel proposed, as a function of each task/subtask in the TRFP. No deviation from the hourly matrix or reallocation of technical salaries shall be permitted, unless pre-approved in writing by the GDC on a case-by-case basis; and
 3. The Task Order Proposal shall include detailed schedule including all interim submissions and dates.

B. Issuance of Task Order(s):

1. Issuance of Task Order – After review and evaluation of the Task Order Proposals, based on the evaluation criteria specified in each TRFP, the Authority will determine whether it will proceed with a particular task. The Authority reserves the right to negotiate any portion of the Consultant's Task Order Proposal. Once any such negotiations are complete, a Task Order shall be executed by the Authority and a Notice to Proceed (NTP) shall be issued to the Consultant(s) for the Task Order. The Authority is under no obligation to issue Task Orders to the Consultant(s) and no payment shall be made to the Consultant (s) except for Tasks performed under an executed Task Order. No compensation shall be provided for any time, efforts, or costs incurred for bidding, estimating, or negotiations, or any costs that are not directly related to completing the scope and are otherwise considered overhead.
2. After the written NTP for a Task Order has been issued, the Consultant(s) shall complete the work within the scheduled time frame specified in the Task Order.
3. During the course of performing the work, the Consultant(s) shall provide monthly accounts of time billed and daily logs for all positions billed to the Task Order, to be reviewed and approved by the GDC. Any discrepancies shall be mediated by and at the sole discretion of the Authority. Failure to provide monthly account summaries

and logs shall be cause for non-payment for those hours/personnel not justified as described above.

4. Decreasing Scope of Task Order(s) – The Authority will have the right to reduce the Scope of a Task Order, at any time and for any reason, upon written notice by the GDC to the Consultant(s), specifying the nature and extent of such reduction. In such event, the Consultant (s) shall be fully compensated for work already performed under the Task Order prior to receipt of written notification of such reduction.
5. Revisions – If during the performance of a Task Order the scope of work changes, the Consultant(s) will be compensated in accordance with this Agreement. In no event shall an increase in Services that are within the general scope of the Task Order Proposal result in an increase in Consultant’s fee, without the prior written consent of the Authority.
 - a. If the Consultant(s) is requested to perform additional or changed work, the Consultant(s) will receive a written change in scope from the GDC. The Consultant(s) is required to acknowledge the additional or changed work in writing within five (5) days of receipt of the notice. If no written change in scope is provided, the Consultant(s) is responsible to ask for such direction in writing within five (5) days of the change in scope occurring.
 - b. If the Consultant(s) is directed to reduce the scope of work, the GDC will define the nature and impact of the reduction to the scope of work in writing. The Consultant(s) is required to acknowledge the reduction to the scope of work in writing within five (5) days of receipt of the notice. Any invoices for services based on the original scope of work, performed after a written scope reduction is issued, will not be approved. It is the responsibility of the Consultant(s) to obtain written authorization to proceed with the change in scope, prior to commencing with the work.

V. COMMERCIAL GENERAL LIABILITY INSURANCE AND WORKERS’ COMPENSATION INSURANCE PROCURED BY CONSULTANT

A. Commercial Liability Insurance:

1. The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement 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 Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, and Independent Contractor’s coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$5,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage.

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 Agreement;
- Independent Contractor’s Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains “Other Insurance” 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 Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- 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 endorses to 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”, The Gateway Program Development Corporation, and its related entities, their trustees, Directors, Superintendents, officers, partners, employees, agents, thier affiliates, successors or assigns," NJ TRANSIT , Amtrak, Silverstein Properties Inc; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations in the World Trade Center Site (If Applicable) 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) on its liabilities policies with respect to liability arising out of work or operations performed by or on

behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. 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 premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are 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 Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), 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 Authority herein, along with all the insurance requirements in this “Insurance” section.

Further, it is the Consultant’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Authority requirement. All certificates of insurance shall be turned over to the Authority prior to the start of work, and upon completion of the Agreement.

“The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”

2. Workers' Compensation Insurance:

The Consultant(s) and its/their Sub-consultant(s) shall 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 \$1,000,000 each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

3. Professional Liability Insurance:

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than \$50,000,000 each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

4. Commercial Crime insurance

Using a loss discovered form, including Employee Dishonesty (Fidelity Bond), computer fraud, forgery, fund transfer fraud, money order and counterfeit, credit card fraud, with coverage in an amount that is not less than \$10,000,000.

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 Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Authority's Project Manager and Exigis email: certificates-portauthority@riskworks.com 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 title of this Agreement, the Authority's Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, 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 Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Authority.

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 Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Authority.

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

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

VI. CONDITIONS AND PRECAUTIONS

A. General:

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

B. Work Areas:

Limit work to the areas necessary for the performance of such work and do not interfere with the operation of the facility without first obtaining specific approval from the Director.

C. Work Hours:

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

P.A. AGREEMENT #*****

DATE

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ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL FINANCIAL AND BUSINESS ADVISORY SERVICES FOR THE GATEWAY PROGRAM DEVELOPMENT CORPORATION AS REQUESTED ON AN AS NEEDED BASIS

WHEREAS, the Port Authority of New York and New Jersey (the “Authority” or “Port Authority”) is a stakeholder in the Hudson River tunnel projects included in the Gateway Program which is being coordinated by the Gateway Program Development Corporation (“GDC”), a New Jersey non-profit corporation;

WHEREAS, in order to protect and preserve the potential for federal funding for certain Gateway Projects, the Port Authority, a federal grant-eligible entity, intends to enter into this Agreement with <FIRM NAME> (“Consultant” or “you”) which shall be for the performance of services on behalf of and in coordination with GDC.

WHEREAS, Consultant will have a fiduciary duty to GDC and take direction from GDC.

WHEREAS, the Port Authority may, at such time as the issue of federal funding eligibility has been satisfactorily resolved, assign and transfer any and all interest it has in this Agreement to GDC, and the Consultant shall continue to perform such services, under the same terms and conditions as originally agreed thereto.

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, and other good and valuable consideration, the Authority and the Consultant hereby agree as follows:

1. The Port Authority of New York and New Jersey, on behalf of and in coordination with GDC, hereby offers to retain Consultant provide expert professional financial and business advisory services for a period of three (3) years. GDC works closely with stakeholders, including The National Railroad Passenger Corporation (“Amtrak”), New Jersey Transit Corporation (“NJ TRANSIT”), the States of New York and New Jersey, and The Port Authority of New York and New Jersey. Any references herein to the “Authority” refer equally to GDC and their permitted assigns. The Authority reserves the right to extend the agreement for three (3) additional one (1) year periods at its sole discretion. The Authority does not guarantee the ordering of any services

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under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

For the purpose of administering this Agreement, the Authority has designated DAR NAME, TITLE, to act as their duly authorized representative. The Project Manager for this project is NAME, at (***) ***-****, or e-mail address ***@panynj.gov.

This Agreement shall be signed by you, and the Authority's Chief Procurement Officer.

As used herein:

“Agreement” or “Contract” mean the writings setting forth the Scope of Services, terms and conditions for the procurement, and the performance, of Services, as defined hereunder and shall include, but not be limited to, the documents set forth in clause**** hereof entitled “List of Attachments and Exhibits” and, if included, any other attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Assistant Director, Procurement Department.

“Authority Representative” means the Authority's designee, or his/her duly authorized representative for the purpose of administering this Agreement.

“Change Order” means a written modification to a Contract impacting the requirements set forth in the Agreement.

“Chief Procurement Officer” means the Chief Procurement Officer of the Authority, or her duly authorized representatives acting within the scope of the particular authority vested in him/her.

“Manager” means the Authority's Program Manager or his/her designee or his/her successor in duties for the purpose of this Contract, or his/her duly authorized representative for the purpose of this Agreement.

“Port Authority of New York and New Jersey” means shall mean 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, including PATH.

2. The base term of this Agreement is for a three (3) year period commencing upon execution (“Effective Date”). The Authority reserves the right to extend this Agreement three (3) additional one (1) year periods at its sole discretion (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Authority's Representative, with Procurement's concurrence.

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Authority's Representative. Time is of the essence in the performance of all your services under this Agreement.

4. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which

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case the Authority standard shall be followed, or unless the Consultant will receive a written notification to the contrary signed by the Authority's Representative, in which case the requirements of said notification shall apply.

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

This Agreement may be funded in whole or in part by a federal agency under the U.S. Department of Transportation ("USDOT"). As a result, the Consultant (and its subconsultant(s), regardless of tier) agree to comply with the applicable contract provisions set forth in Exhibit I of this Agreement.

5. The Consultant shall meet and consult with Authority staff as requested by the Authority Representative in connection with any service to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Authority Representative. The Authority Representative may disapprove if, in his sole opinion, said items are not in accordance with the requirements of this Agreement, or accepted professional standards or are impractical, uneconomical or unsuited in any way for the purpose for which the contemplated services is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Authority Representative, but the Consultant will not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

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

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

A. FULLY LOADED HOURLY RATES. Consultant will be reimbursed for the fully loaded hourly rates (which shall include all labor, Overhead, expenses and profit, as allowable under 48 CFR Part 31) of Consultant's full-time employees ("Personnel") for Services on the Project. Attached hereto is the schedule of the fully loaded hourly rates and titles of all Consultant's Personnel assigned to the Project that have been approved by the Port Authority, including an

organizational chart showing the names and titles of all staff working on the Project.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

1) The Port Authority reserves the right to audit and verify the fully loaded hourly rate and time billed for the Services of each such employee. It is understood that such employee shall only bill time to the Project for work actually performed on the Project and shall not bill time to the Project for holidays, vacation days, sick leave, personal days, maternity, medical, or family leave, nor for any other item included in Overhead.

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

B. COST OF SUBCONSULTANTS. Consultant will be reimbursed for the costs of any subconsultants, which shall in each case include only an amount equivalent to the aggregate amount actually paid to the subconsultants by Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

C. REIMBURSABLE EXPENSES. The Consultant will also be compensated at an amount equal to the out-of-pocket expenses, approved in writing and in advance by the Authority's Representative, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

1) Notwithstanding the above, the Authority will pay an amount approved in advance by the Authority's Representative and computed as follows for the reproduction of submittal drawings, specifications and reports:

- a. If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this; or
- b. If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

2) The expenses do not include expenses that are usually and customarily included as part of the Consultant's Overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including fax, emails, text messages, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

3) When the Consultant uses its employee's personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Service) per mile traveled by auto.

4) When the Consultant is asked to provide services outside the Port District, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advance in writing by the Authority's Representative. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

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

6) As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

“Overhead” includes, but is not limited to, the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and collective bargaining, and corporate expenses as otherwise allowed in accordance with 48 CFR Part 31.

"Salaries paid to employees" or words of similar import means salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to professional and technical employees of the Consultant for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead.

All costs under this agreement will be allowed to the extent permitted under 48 CFR Part 31.

8. CHANGES

The Authority reserves the right to make changes to the Scope of Services or schedule. The Consultant shall diligently perform all such service without delay even if the Consultant does not agree with any schedule or cost decision of Authority related to changed services. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The claim will be considered by the Authority and if accepted, in whole or part, the Authority will issue a Change Order. The provisions of the Agreement relating to the services and its performance shall apply without exception to any changed or additional services required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. With Procurement's concurrence, the Authority's Representative must authorize in writing the changed or additional services and/or any change to the Amount obligated under the Agreement before it is performed and before the Consultant can be reimbursed for such services.

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

The Authority reserves the right to delete any item of the Work in whole or in part. Any deletion of Work must be authorized in writing by the Authority's Representative. If an item of Work is deleted, the Consultants compensation, shall be reduced accordingly.

9. DISPUTE RESOLUTION

If disputes develop about the Consultant's fees, or other questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to, or on account of, this Agreement, the Authority may be entitled to bring an arbitration of the dispute under the American Arbitration Association, JAMS, or other appropriate third party arbitration service. The decision of the arbitrator shall be final and binding.

10. SUBCONTRACTING

Consultant may subcontract only with the prior written consent of Port Authority, which consent may be withheld at Port Authority's sole and absolute discretion. Every subcontract must provide that it is subject to all of the covenants, terms, provisions and conditions of this Agreement and must provide that in the event of termination or cancellation of this Agreement for any reason whatsoever, prior to the expiration of such subcontract, the subcontract will automatically terminate on the same date this Agreement is terminated or canceled. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Agreement.

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

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of three (3) years after completion of services to be performed under this Agreement.

12. On or about the fifteenth day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Authority's Representative. Each invoice shall bear your taxpayer number and the purchase order number provided by the Authority. Upon receipt of the foregoing, the Authority's Representative will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority will, within fifteen (15) days after receipt of such certification by the Authority's Representative, advance to you by check the sum certified minus all prior payments to you for your account.

13. TERMINATION

A. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination

by either party shall be by certified letter addressed to the other at its address as set forth herein. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed.

B. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Port Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon five (5) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Consultant from the Port Authority shall be prorated when applicable on a daily basis. If termination is without fault on your part, the Authority will pay you as the full compensation to which you shall be entitled in connection with this Agreement, the amounts computed as above set forth for services completed to the satisfaction of the Authority's Representative, through the date of termination, minus all prior payments to you. 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.

14. Under no circumstances shall you or your subconsultants communicate in any way with any consultant, contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of Authority's Representative, provided, however, that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary, unless otherwise instructed by the Authority's Representative.

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

16. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Authority's Representative shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

17. Originals of estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority will have the right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided herein. The Consultant hereby

warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons, whether such claims presently exist or arise in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, by a subconsultant, or by an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form in which it has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

18. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority will have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either by itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant, the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

19. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees or sub-consultants, which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority will have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets and/or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Authority without express written authorization of the Authority's Representative. The Authority will have the exclusive right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to ensure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and

hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

20. You shall promptly and fully inform the Authority's Representative in writing of any patents or patent disputes, or intellectual property disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

21. This Agreement based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Authority's Representative. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority. All subconsultant agreements of every tier must include all applicable provisions contained herein.

For each proposed subcontractor with a proposed contract value of \$100,000 or more, the Contractor shall ensure that the Background Qualification Questionnaire Package ("BQQP"), available at:

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

22. This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in Attachment D: Disadvantaged Business Enterprise (DBE) Program of this Solicitation. The following goal for DBE participation has been set for this Contract:

17% for firms owned and controlled by socially and economically disadvantaged individuals and certified as DBE's, as approved by the Authority.

23. NON-DISCRIMINATION REQUIREMENTS

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

A. Consultant hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subconsultants and/or vendors under this Agreement. Consultant shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Consultant agrees that these “Non-Discrimination Requirements” are a binding part of this Agreement. Without limiting the generality of any other term or provision of this Agreement, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Agreement in accordance with Section 11 of this Agreement.

C. Consultant agrees to cooperate fully with the Authority’s investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

24. 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 sites and facilities (including rental spaces) to any person who declines to abide by 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 Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority. At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute approved non-disclosure and confidentiality agreements.

25. CONFIDENTIAL INFORMATION/NON-PUBLICATION

A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's and/or the Port Authority Trans Hudson (PATH) Corporation’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 Consultant’s Services under this Agreement.

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (dated October 15, 2008, revised as of April 2, 2018)*, 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 Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, 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 Agreement. The Consultant and the personnel provided by the Consultant 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 Agreement. The Consultant and the personnel provided by the Consultant 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 Consultant shall promptly and fully inform the Authority's Representative in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. The Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the 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 Consultant first obtains the written approval of the Authority. Such approval may be withheld if for any reason the Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

26. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder:

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk of loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or against the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or

against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed by the Authority, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event the Consultant shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way the jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

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

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that the Consultant assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which the Consultant would assume or the claims for which he would be responsible in the absence of such enumerations.

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

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

27. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning services under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certifications must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach

of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Vendor. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Consultant;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- F. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of 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, proposal 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.

31. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

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

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

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

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

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

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

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

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

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

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

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

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

In any case where the Consultant cannot make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “31G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposal and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, 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 Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, 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 Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as

are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances, the Consultant may be required as a condition of award of this Agreement to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor to be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

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

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

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

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

33. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspensions the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must

comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues another written notice authorizing a resumption of performance under the Agreement.

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

34. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

At all times, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or to any other Authority agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or 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 Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

35. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, 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 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 finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Authority).

The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

36. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not take other action which might be viewed as or give the appearance of conflict of interest on its part. If the Consultant has reason to believe that any situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Chief Procurement Officer, the Consultant 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 Consultant 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 Agreement. In the event the Chief Procurement Officer shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the 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 Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others; and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that it may be precluded from performing services for other parties in connection with certain disposition/privatization initiatives or transactions that relate to its Services hereunder or from participation as a contract party in any agreements that result, directly or indirectly, from the Services hereunder. The determination regarding any questions of conflict of interest shall be made by the Authority in its sole discretion and shall be final.

37. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the work under this Agreement, the Consultant and any subcontractors/subconsultants 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 Agreement. Any

failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

38. 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 Consultant with respect to the work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant 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 Consultant or any of its employees, or subcontractors/subconsultants or any of its employees, are discovered. The Consultant 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 Consultant 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).

39. DEFINITIONS

As used in sections 30 to 38 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, 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 Consultant by whatever titles known.

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

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.

40. The entire agreement between the parties is contained herein (including all Attachments and Exhibits, as set forth in Section 43 below) and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his/her duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

41. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

42. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

43. List of Attachment/Exhibits

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

Attachment A: Scope of Services
Attachment D: Consultant’s Disadvantaged Business Enterprise (DBE) Program
Attachment F: Pricing and Compensation
Exhibit I: Federal Transit Administration (FTA) Contract Provisions

44. NOTICES. All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered or (ii) transmitted by certified mail, postage prepaid, return receipt requested. Notices shall be addressed and delivered as follows:

To: The Port Authority of New York and New Jersey/
Gateway Program Development Corporation
Attention: (Authority’s Representative)

With a copy to: The Port Authority of New York and New Jersey
Attention: Assistant Director
4 World Trade Center

FIRM

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DATE

150 Greenwich Street, 19th Floor
New York, New York 10007

and

With a copy to: The Port Authority of New York and New Jersey
Attention: General Counsel
4 World Trade Center, 23rd Floor
150 Greenwich Street
New York, New York 10007

and

Gateway Program Development Corporation
Attention: General Counsel
4 World Trade Center, 18th Floor
150 Greenwich Street
New York, New York 10007

To Consultant: ***Insert Consultant Name***
Attn:
Title:
Address:

45. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

46. The Port Authority reserves the right to assign this Agreement and any and all of its rights, interests, and obligations without prior written consent of the Consultant. In the event this Agreement is assigned, it will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

FIRM

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DATE

47. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Chief Procurement Officer
Procurement Department

Date _____

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

[FIRM NAME]

By: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT B

REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL FINANCIAL AND BUSINESS ADVISORY SERVICES FOR THE GATEWAY PROGRAM DEVELOPMENT CORPORATION AS REQUESTED ON AN AS-NEEDED BASIS (RFP #52678)

AGREEMENT ON TERMS OF DISCUSSION

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

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

(Company)

(Signature)

(Title)

(Date)

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

ATTACHMENT C

COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT
PROFESSIONAL FINANCIAL AND BUSINESS ADVISORY SERVICES FOR THE
GATEWAY PROGRAM DEVELOPMENT CORPORATION AS REQUESTED ON AN
AS-NEEDED BASIS (RFP #52678)**

1. Company Name (print or type):

2. Business Address (to receive mail for this RFP):

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

7. Date (MM/DD/YYYY) Firm was Established: ____ / ____ / ____

8. Name, Address and EIN of Affiliates or Subsidiaries (use a separate sheet if necessary):

9. Officer or Principal of Firm and Title:

10. Name, telephone number, and email address of contact for questions:

11. Is your firm certified by the Authority as a Disadvantaged Business Enterprise (DBE)? Yes No

If yes, please attach **Port Authority** certification as a part of this profile.

If your firm is an DBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, to receive information and apply for certification.

ATTACHMENT D

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE) (Rev. 08/15/17)

A. POLICY

It is the policy of The Port Authority of New York and New Jersey (the "Port Authority" or the "Authority") and its related entities, including Port Authority Trans-Hudson Corporation ("PATH") that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of this Contract. Each proposer shall take all necessary and reasonable steps to ensure that its proposal includes DBE participation and performance of work on this Contract, when awarded. This Contract is subject to the United States Department of Transportation ("USDOT") regulations on "DBEs" contained in Part 26 of Title 49 of the Code of Federal Regulations.

The Proposer shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.

B. GOAL

The Port Authority Office of Business Diversity and Civil Rights ("OBDCR") has established a goal for DBE participation on this Contract, which the proposer will be required to show how it will meet, if awarded this Contract. This goal, expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of the contract, is:

DBE Participation Goal: 17 %

for firms owned and controlled by socially and economically disadvantaged individuals (as defined in C.5 below) and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs ("UCPs") websites:

New York UCP – <https://nysucp.newnycontracts.com>

New Jersey UCP – <https://njucp.dbesystem.com>

In the event the successful proposer's proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph I.3 below.

OBDCR is responsible for determining compliance by the proposer with DBE Program requirements established for this solicitation and in this Contract. The proposer shall make all DBE Program submissions required by this solicitation to the Port Authority Procurement Department contact with a copy to OBDCR. Once awarded, the successful proposer (Contractor) will make all DBE Program submissions to OBDCR at the following address and email address:

Contract Number:

Name: Jacqueline Carroll

Email: jacarroll@panynj.gov

Telephone No.: (201) 395-3958

Address: The Port Authority of NY & NJ

2 Montgomery Street, 2nd Fl. Jersey City, NJ 07302

C. **DEFINITIONS**

1. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: **Bidder or Proposer** can be used interchangeably and **Consultant or Contractor** can be used interchangeably.
2. **Certification** means the process by which a business demonstrates to OBDCR or to a New York State Unified Certification Program Certifying Partner ("NYSUCP") or to a New Jersey Unified Certification Certifying Partner ("NJUCP") that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part 26.
3. **Disadvantaged Business Enterprise** or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
4. **New York State Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority and the New York State Department of Transportation.
5. **New Jersey Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, New Jersey Transit and the New Jersey State Department of Transportation.
6. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - a. Any individual OBDCR or a NYSUCP or NJUCP Certifying Partner finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - 1) **Black Americans** which includes persons having origins in any of the Black racial groups of Africa;
 - 2) **Hispanic Americans** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;

- 3) Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- 4) Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- 5) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- 6) Women; and
- 7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration ("SBA"), at such time as the SBA designation becomes effective.

D. THE DBE PROGRAM

The Port Authority has established a DBE program in accordance with applicable United States Department of Transportation (USDOT) regulations in 49 CFR Part 26. The Port Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also Port Authority policy:

To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

1. *To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;*
2. *To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;*
3. *To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;*
4. *To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and,*
5. *To assist the development of firms that can compete successfully in the market place outside the DBE program.*

The Director of OBDCR has been delegated as the DBE Liaison Officer. In that capacity, the Director of OBDCR is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the USDOT.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through posting on the OBDCR website: <http://www.panynj.gov/business-opportunities/supplierdiversity.html>.

E. DBE OBLIGATION

The proposer agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract, if awarded. (Note: If the total contract price is increased as a result of change orders, the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation.) Submission of the proposal constitutes a certification and representation by the proposer that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B during contract performance.

Furthermore, the Proposer will ensure that the following clause is placed in every contract or subcontract resulting from this Contract:

“The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.”

F. SUBMISSION OF DBE UTILIZATION PLAN

By submitting a bid or proposal for this Contract, the proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix A1) with its Proposal. If the proposer determines it cannot make this assurance, it may nevertheless submit a bid or proposal, but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The proposer shall submit, with its Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

The proposer shall submit with its Proposal the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

By listing a firm on its DBE Participation Plan and Affirmation Statement (Appendix A2) the proposer is representing the following:

1. It intends to use the firm for the work specified in the DBE Participation Plan and Affirmation Statement (Appendix A2) to perform the work specified.
2. The firm is a certified DBE in the states of either New York or New Jersey and is technically and financially qualified to perform the work specified and that the firm is available to perform the work.
3. If it is awarded the contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this contract, for the work described and at the price set forth in the DBE Participation Plan and Affirmation Statement (Appendix A2).

It will not substitute a DBE firm listed in its DBE Participation Plan and Affirmation Statement (Appendix A2) unless the Port Authority provides prior written approval in accordance with Paragraph J, below.

G. PROMPT PAYMENT AND RETAINAGE PROVISION

The Consultant agrees to pay each subcontractor under this prime contract for the satisfactory performance of its contract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return all retainage, if any, owed to a subcontractor within ten (10) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time-frame may occur only for good cause following written approval from the Port Authority. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this section may constitute a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

H. CREDIT TOWARD DBE GOAL

No credit toward meeting the DBE goal will be allowed unless OBDCR or a NYSUCP or NJUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The DBE shall verify payments on the DBE Payment Request Certification Form attached to all invoices. The Authority will use the following guidelines to determine the amount to be counted toward the DBE goal:

1. OBDCR will credit the entire amount of fees or commissions charged by a DBE firm 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 a USDOT-assisted contract, toward DBE goals, provided OBDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE’s subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
3. Joint ventures between DBEs and non-DBEs may be counted toward the DBE 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 DBE 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.
4. OBDCR will credit expenditures to a DBE subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the contract.
5. Commercially Useful Function
 - a. A DBE 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 DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE 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 DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation (USDOT) funding agency (for example, FAA, FTA or FHWA).

- b. **Work Force.** The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.
- c. **Supervision.** All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work.
- d. **Equipment.** DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors or their affiliates, the DBE 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.
- e. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, OBDCR will presume that it is not performing a commercially useful function.

6. Counting DBE Participation

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.

The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's 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 DBE goal.

- a. **Subcontractors.** 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- b. **Manufacturers/Fabricators.** 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.

- c. Material Suppliers. 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE 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. Brokers/Manufacturer's Representatives. 100 percent 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 a DBE broker/manufacturer's representative will be counted toward the DBE 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. 100 percent of fees or commissions charged by a DBE 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 DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - f. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE 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 on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE 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) DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of the work using trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.
 - 2) DBE Leased Trucks. The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.
 - 3) Non-DBE Trucks. The DBE may lease trucks from non-DBE firms and owner-operators. The value of these trucking services will be counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.
 - g. Joint Venture. Joint ventures between DBEs and non-DBEs will be counted toward the DBE 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 DBE performs with its own forces. The joint venture agreement is therefore subject to review by OBDCR, a copy of which is to be furnished by the firm to be awarded the Contract before execution of the Contract.
7. If a firm is not currently certified as a DBE in accordance with 49 CFR Part 26 at the time of the execution of the Contract, OBDCR will not credit the firm's participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).

8. When a firm loses its DBE certification, OBDCR will follow the applicable regulations in 49 CFR Section 26.87(j).
 - a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the contract or overall goal. OBDCR will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.
 - b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the Contractor may continue to receive credit toward its DBE goal for the firm's work.
9. OBDCR will not credit toward the DBE goal the participation of a DBE subcontractor until the amount being counted toward the goal has actually been paid to the DBE, as evidenced by submission of the Statement of Payments to DBE Subcontractors / Lessors / Suppliers and the DBE Payment Request Certification Form.

I. CONTRACT AWARD

1. Only proposers who submit proposals that meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract.
2. If the successful proposer does not reach the DBE goal, the proposer shall nevertheless remain eligible for award of the contract if it can demonstrate to the satisfaction of OBDCR that it has made a good faith effort to meet the DBE goal. In making such a determination, OBDCR shall consider, among other things, the criteria set out in subparagraph 3 below.
3. Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE contract goal, a proposer shall submit with the DBE Goals Statement form (Appendix A1) a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

- a. That the proposer attended any pre-solicitation or pre-bid meetings that were scheduled by the Port Authority to inform DBEs of contracting and subcontracting opportunities;
- b. That the proposer advertised in general circulation, trade association, and minority-focus media, at least 15 days before proposal due date, to request DBE subcontract performance on the specific project;
- c. That the proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- d. That the proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;
- e. That the proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- f. That the proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- g. That the proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

Documented efforts of negotiations with DBEs must include at a minimum:

- 1) The names, addresses and telephone numbers of DBEs that were considered;
 - 2) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 - 3) A statement explaining why agreements with the DBEs could not be reached.
- h. That the proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Port Authority or Consultant;
 - i. That the proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
 - j. That the proposer effectively used the services of available minority/women community organizations; minority/women contractor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.
4. Reconsideration of Good Faith Efforts Determination

In determining whether a proposer has demonstrated good faith efforts, the Port Authority will look at all efforts that the proposer has made. If OBDCR determines that the successful proposer has failed to make good faith efforts to meet the DBE goal, that firm's submission may be deemed non-responsive. The non-responsive firm will have an opportunity for administrative reconsideration, in accordance with the Port Authority's Protest Procedures. In accordance with the Protest Procedures, as part of this reconsideration, the Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. In accordance with the Protest Procedures, a written decision will be sent to the Proposer explaining the basis for finding that the Proposer did or did not meet the goal or make adequate good faith efforts to do so.

J. DBE MODIFICATIONS

In the event that a proposer wishes to modify its DBE Participation Plan and Affirmation Statement (Appendix A2) after its submission or after a contract is awarded, the Proposer then must request approval for the modification from OBDCR in writing. A Proposer may not, without OBDCR's prior consent, terminate a DBE subcontractor approved under this Agreement and then perform the work of the Agreement with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved DBE Participation Plan and Affirmation Statement (Appendix A2). When a DBE subcontractor is terminated or fails to complete its work for any reason, the Consultant must make good-faith efforts to find another DBE subcontractor to substitute for the original DBE. These good-faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. The Consultant must provide OBDCR with any and all documents and information as may be requested with respect to the modification. If OBDCR determines that the Consultant failed to make good-faith efforts, the Port Authority may consider such failure a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any and all other available remedies. Subsequent to Agreement award, all changes to the DBE Participation Plan must be submitted via a Modified DBE Participation Plan and Affirmation Statement (Appendix A3) to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the DBE Plan, the Consultant is directed to use Appendix A3, which may be downloaded at <http://www.panynj.gov/business-opportunities/pdf/PA4243.pdf>.

K. EEO/NON-DISCRIMINATION

During the performance of this Agreement, the Consultant hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Agreement. Consultant shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment, including 49 CFR Part 26.

L. OFFICE OF THE INSPECTOR GENERAL

The Port Authority Office of Inspector General (OIG) is responsible for investigating fraud and misconduct by Port Authority contractors, subcontractors, consultants, suppliers and others, including the DBE Program.

Depending upon the dollar value of the construction project, and regulatory requirements, the OIG might engage the services of an Integrity Monitor who reports to the OIG and assists in monitoring compliance governing the DBE program.

The OIG and its Integrity Monitors may perform on-site investigations and payment verifications, review relevant consultant, contractor, subcontractor and supplier documents, including but not limited to financial records, certificates and licenses, certified payroll reports, and employee sign-in sheets. They may also interview officers and employees of these firms either on-site, at their offices, or at any other location the OIG determines is in the best interest of the Port Authority.

All consultants, contractors, subcontractors, suppliers and others who are participating in the DBE Program in any manner, shall cooperate fully with the Port Authority OIG and shall provide all requested documents immediately upon request. The failure to cooperate may be considered a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

M. PROTECTING AGAINST TERMINATION FOR CONVENIENCE

The Consultant must give a DBE subcontractor five (5) days to respond to the Consultant's notice of termination and advise the Authority/PATH and the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority/PATH should not approve the Consultant's action. If required in a particular case as a matter of public necessity (e.g. safety), the Authority/PATH may provide a response period shorter than five (5) days.

N. CONTRACT ASSURANCE

The Consultant, subrecipient or any of its subcontractors shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Agreement or such other remedy as the Authority/PATH deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Consultant from future bidding as non-responsible.

The Consultant shall include the foregoing language of this section in its subcontracts under this Agreement, and further agrees to provide the Authority/PATH with copies of its subcontracts with its request for subcontractor approval, as well as upon request of the Authority/PATH.

O. APPENDICES

1. APPENDIX A1: Professional, Technical And Advisory Services DBE Goals Statement
2. APPENDIX A2: Professional, Technical And Advisory Services DBE Participation Plan and Affirmation Statement
3. APPENDIX A3: Modified Professional, Technical And Advisory Services DBE Participation Plan and Affirmation Statement
4. APPENDIX A4: Professional, Technical And Advisory Services Information On Solicited Firm