

**DATE**

**FIRM  
STREET  
CITY, STATE ZIP**

Attention: **CONTACT**

**SUBJECT: REQUEST FOR PROPOSALS TO PROVIDE EXPERT PROFESSIONAL CONSULTANT SERVICES RELATED TO THE INITIAL PHASE OF A COMPREHENSIVE URBAN PLANNING AND TRANSPORTATION STUDY OF THE DOWNTOWN MANHATTAN AREA WITH SPECIAL EMPHASIS ON DEVELOPMENT OF THE WORLD TRADE CENTER SITE AND ADJACENT AREAS**

Dear Mr./Ms.\*\*\*:

The Port Authority of New York and New Jersey, hereinafter referred to as the "Authority", in cooperation with the Lower Manhattan Development Corporation (LMDC), hereby invites your Proposal for furnishing expert professional services for the subject project.

Attached hereto is a copy of an Authority Standard Agreement including Attachment A thereto which should be carefully reviewed by you as it is the form of agreement that the Authority and LMDC intends that you sign in the event of acceptance of your Proposal and which forms the basis for the submission of Proposals. You should therefore not make any changes in this Standard Agreement, nor restate any of its provisions in your Proposal or supporting material. The scope of the tasks to be performed by you are set forth in Attachment A to the Authority's Standard Agreement.

Proposals will only be considered from consultants that meet the following criteria:

- A. A minimum of ten (10) years' experience in urban planning with special emphasis on transportation infrastructure issues.
- B. Demonstrated experience as the prime consultant on three (3) or more urban planning/transportation projects of major complexity and scale, each with a construction value over \$100 million, over the past ten (10) years or demonstrated planning experience with large mixed-use complexes in a major metropolitan area within the last ten years.
- C. Demonstrated knowledge of land use, environmental and zoning issues, and proven experience working with governmental and transportation agencies in the New York / New Jersey metropolitan area within the last ten years.
- D. An established strong regional presence in the New York / New Jersey metropolitan area.

**SUBMISSION REQUIREMENTS**

To respond to this Request for Proposals, provide the following information:

1. Document your compliance with items A through D above. Proposals will only be considered from consultants that demonstrate compliance with these requirements.
2. The "multiplier" referred to in the first line of subparagraph 7.A of the accompanying Standard Agreement including a breakdown of said multiplier, indicating all of its components (e.g., vacation, holiday, sick pay, worker's compensation, office rent, insurance, profit).
3. The name(s), title(s) and hourly rate(s) and job classifications of architectural, planning, engineering and technical personnel, including subconsultants who will be assigned to perform any services requested.

This shall include, but is not limited to the following:

- the organizational structure proposed for the project, including all team members involved, and the resumes of all managers, principals and team leaders.
  - a written commitment of time to be devoted by the firm(s) principal(s).
  - The name of the person who will serve as the point of contact regarding any such issue related to project services.
4. Technical qualifications of architectural, planning, engineering and other technical personnel referred to in paragraph 3 above.
  5. A staffing analysis and an estimated cost for the performance of each task listed in Attachment A.
  6. Specific relevant experience of your firm.

This shall include, but is not limited to the following:

- A complete listing and description of relevant projects, including client contact information
  - Description of any work currently being done by the firm relating to the lower Manhattan area.
  - Description of any previous work done by the firm relating to the lower Manhattan area.
  - Client letters of recommendation or references to be finalized.
7. Demonstrate your understanding of the planning and transportation issues and outline your technical approach to be taken, including a project management work plan.
  8. Disclose any potential conflicts of interest with any current downtown Manhattan projects.
  9. Intended subconsultant(s), the terms and conditions for their compensation (including their multiplier, if applicable), the estimated number of hours of subconsultant services, their MBE/WBE status and the technical qualifications of their key personnel to be assigned to the subject project.
  10. Your attention is directed to paragraph 20 of the Authority's Standard Agreement in which the Chief Engineer has stated the goals for Minority Business Enterprise participation in this project. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms will be provided upon request.

11. A complete list of your firm's affiliates.

If the various completion dates contained in Attachment A cannot be adhered to, you may submit revised dates. However, the fact that you were not able to adhere to the original dates and the extent of the revised dates will be included among the factors which the Authority and LMDC will evaluate in analyzing Proposals. The Authority and LMDC reserve all rights referred to in the last paragraph hereunder.

In accordance with Authority and LMDC policy, we also request you to include in the front of your Proposal, a copy of Attachment B, signed by an officer of your company.

If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, will include clauses entitled "Certification Of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial Or Termination, etc; Disclosures Of Other Required Information" and "Non-Collusive Bidding And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Fee Or Other Fee" (A copy of the agreement is included herewith). The selected consultant shall upon executing said agreement, at time of award, be deemed to have made the certifications contained therein unless said consultant submits a statement with the agreement explaining why any such certification(s) cannot be made.

Address Proposal to: The Port Authority of New York and New Jersey, 241 Erie Street, Jersey City, NJ, 07310-1397, Attention: Laurie Spencer, Senior Consultant Programs Specialist. You are requested to submit six copies of your Proposal in sufficient time so that the Authority receives them no later than 4:00 p.m. on **May 6, 2002**.

The selection process by which a firm shall be selected for the performance of the subject services shall include consideration of the following factors (listed in order of importance):

1. the quality and depth of the experience and qualifications of the staff, including subconsultants, who will be performing services hereunder, as well as the availability of the staff to provide the services hereunder;
2. the extent and quality of experience of the Consultant and the quality of similar service provided to others;
3. Scoping and staffing – staffing assignments, appropriateness of staff time dedicated to each task, including the amount of time to be spent by principals in performance of the required services and the demonstrated ability of the Consultant to complete the services in accordance with the project schedule;
4. The appropriateness and responsiveness of the Consultant's proposed technical approach to the performance of services hereunder;
5. The Consultant's Minority/Women Business Enterprise firm participation plan; and
6. The cost of the Consultant's services.

After review of all proposals received, the Authority will forward two copies of the Agreement and Attachment A thereto to the selected firm who shall sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please call the Project Manager, Paul Pietropaolo, telephone (201) 216-2579. Neither the Project Manager nor any other employee of the Authority or LMDC 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 Chief Engineer of the Authority and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

There shall be no compensation for proposal preparation or presentation.

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

The Authority and LMDC reserve the unqualified right, in their sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more consultants, to waive defects in Proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Very truly yours,

THE PORT AUTHORITY  
OF NEW YORK & NEW JERSEY

Francis J. Lombardi, P.E.  
Chief Engineer

LOWER MANHATTAN  
DEVELOPMENT CORPORATION

Alex Garvin  
Vice President Planning, Design & Development

Attachments

## **ATTACHMENT A**

### **PERFORMANCE OF EXPERT PROFESSIONAL CONSULTANT SERVICES RELATED TO THE INITIAL PHASE OF AN URBAN PLANNING STUDY OF THE DOWNTOWN MANHATTAN AREA WITH SPECIAL EMPHASIS ON TRANSPORTATION AND DEVELOPMENT OF THE WORLD TRADE CENTER SITE AND ADJACENT AREAS**

#### **I. INTRODUCTION**

This Agreement for performance of an integrated urban design and transportation planning study for Downtown Manhattan and the World Trade Center Site (WTC) is being issued by the Port Authority of NY & NJ in cooperation with Lower Manhattan Development Corporation (LMDC) – a subsidiary of the Empire State Development Corporation (ESDC).

The geographic area covered by this scope of work is Downtown Manhattan. In performing the study, emphasis must be placed on the impact of traffic flows via the Holland and Brooklyn Battery Tunnels and lower East River Crossings to and from both Brooklyn and the New Jersey communities along the Hudson River. West Street through traffic and east-west linkage of the World Financial Center, WTC Site and the financial district with a possible Downtown Transportation Concourse linking PATH and NYCT subways are also central components of this study.

The focus for this Scope of Work is the WTC Site, its immediate environs, and restoration and improvement of the many transportation services impacted by the September 11<sup>th</sup> tragedy. This work is undertaken in a broader context of transportation system planning and investment, and economic development activity surrounding the impacted area, extending to adjacent Manhattan neighborhoods, other NYC boroughs, and nearby New Jersey communities. The Port Authority and LMDC intend that this study complement and support ongoing planning efforts to ensure that the planning process promotes a cohesive and effective approach to improving the accessibility of Lower Manhattan consistent with regional transportation and WTC Site development objectives.

#### **II. SCOPE OF WORK**

The services of the Consultant shall generally consist of, but not be limited to the following:

1. Develop improvements to transportation systems in the Downtown Manhattan area for all types of mass transit and pedestrian movements – ferries, buses, commuter rail, subways and PATH.
2. Develop enhancements that would optimize transportation infrastructure in order to support mixed-use development on the 16-acre WTC Site and surrounding area.

3. Integrate the urban planning components of land use, building types, density, pedestrian movements, etc., into a cohesive WTC Site development plan, including provisions for a permanent memorial.

### **III. DESCRIPTION OF THE CONSULTANT'S TASKS**

Tasks to be performed by the Consultant may include, but shall not be limited to the following:

- A. Create a baseline of pre-9/11 vehicular traffic, transit and pedestrian volumes and flows, including pre-existing problems and planned improvements.
- B. Analyze post-9/11 vehicular traffic, transit and pedestrian volume and flow, including the impact and effectiveness of interim measures.
- C. Review and evaluate short-term transportation improvement projects (2-5 year implementation) for their impact, relationship to network conditions, funding sources, time line and cost/benefit.
- D. Review and evaluate available forecasts of future commutation demand on transportation network serving Lower Manhattan, including trans-Hudson intermodal connections.
- E. Review and evaluate long-term transportation improvements for technical feasibility, impacts, cost, relationship to demand forecasts, funding sources and environmental and regulatory approvals necessary.
- F. Develop forecasts of Downtown Manhattan population and land usage trends, including residential, commercial, office space, cultural, recreational and retail.
- G. Provide an urban design framework for Downtown Manhattan concentrating on the area south of Chambers Street/Brooklyn Bridge.

The following issues should be considered:

- a. Open space, parks, and waterfront access
  - b. Retail/restaurants/street life
  - c. Street and traffic patterns, bicycle accommodations, and streetscapes
  - d. Opportunities for civic and cultural institutions
  - e. Potential development sites
  - f. Potential redevelopment areas
  - g. Sustainable design guidelines
- H. Study the compatibility of proposed Downtown Manhattan and WTC Site-specific commercial retail, office, cultural and memorial uses against the LMDC "Principles for Action" and "Blueprint for Renewal".
  - I. Review and evaluate preliminary urban design proposals for the WTC Site with a focus on land use, street and block plans, building massing, vehicular and pedestrian circulation, open space, and links to a proposed underground transportation concourse.
  - J. Provide an urban design plan for the World Trade Center Site and its immediate surroundings, taking into consideration both above and below grade areas.

- K. Develop an appropriate building program for WTC Site uses including memorial and cultural uses, office space, hotel, retail and service areas.
- L. Incorporate related transportation analyses, forecasts and plans developed by stakeholders and agencies with an interest in Downtown Manhattan development. In addition to the Port Authority and LMDC, input from various participating transportation and planning agencies, such as the MTA/NYCT, NYS and NYC DOT's, NYC Department of City Planning, New York Metropolitan Transportation Council, North Jersey Transportation Planning Authority, private transportation operators, and other civic and community groups must be included in the various studies.
- M. Participate in meetings with the Port Authority and LMDC (1 per week) and working sessions with participating agencies (as required), as well as regular presentations at public hearings, community board meetings, and advisory councils (approximately 2 per month).
- N. Coordinate with the entity leading the memorial development process to fully integrate a permanent memorial into the WTC Site.

Tasks shall be performed in accordance with Section V. Process, below, as appropriate.

#### **IV. ADDITIONAL INFORMATION**

- 1. In performing the foregoing tasks, the following issues should be considered, as appropriate:
  - a. Options for street grid and block plans
  - b. Below grade plans and volumes
  - c. Three-dimensional building masses, including floor area calculations
  - d. Pedestrian spaces/Open space plan/Landscaped areas
  - e. Potential locations for below ground transit and other infrastructure
  - f. Physical connections to below ground transit and transportation concourse
  - g. Physical connections to ferry terminals
  - h. Permanent memorial location, size and options for multiple types (e.g., open spaces, enclosed buildings, outdoor sculptures, visitors' center, etc.)
  - i. The study of possible on and off-site locations for:
    - residential and commercial
    - retail
    - performing arts/museum
    - major inter-modal transportation hub
    - commuter and tour buses
    - commercial delivery and service vehicles
  - j. Traffic flow considerations
  - k. Loading/queuing areas for commercial delivery and service vehicles

1. Security related considerations based on risk/threat assessment.
2. **Special consideration should be given to the following issues:**
  - a. Physical connection to Battery Park City, including possible alterations to West Street
  - b. Physical connections to other nearby residential neighborhoods and business districts
  - c. Accommodating the anticipated volume of visitors to a memorial site
  - d. Sequential phasing of development sites
  - e. Redevelopment of the Greenwich Street corridor, south of the World Trade Center Site
  - f. Relationship to routing and passenger circulation of commuter buses and local jitney operations in Downtown Manhattan

## **V. PROCESS**

Each of the Tasks identified above shall include performance of the following phases as appropriate:

### **Phase I. Program Development:**

**WTC Site:** Working with program staff, produce an all encompassing program document for the site, its surrounding area, incorporating and coordinating a complete scope of components that can be translated into a series of diagrams describing the site's potential and establishing the format for public dialog to begin.

**Transportation:** Working with program staff, coordinate analysis of transportation initiatives for Downtown Manhattan, south of Chambers Street/Brooklyn Bridge with the above WTC Site programming.

### **Phase II. WTC Site Conceptual Development:** Produce WTC Site options, including its immediate surrounding area in coordination with the proposed WTC transportation infrastructure developed to date (up to six urban design options for the WTC Site).

Further conceptual development of up to three of the initial six urban design options, leading to reconciliation of a comprehensive and coordinated transportation/urban design plan for the WTC Site and its immediate surrounding area.

### **Phase III. WTC Site Reconciled Plan:** From the three further developed options, recommend a WTC Site development plan. Develop guidelines for implementation.

All phases will require close coordination among the consultant team members with expertise in the following fields:

- Transportation consultant
- Cost estimator



- Environmental consultant
- Traffic consultant
- Structural consultant
- Landscape architect

Phases I through III will require close cooperation with government agencies, in addition to The Port Authority and LMDC, including but not limited to:

Metropolitan Transportation Authority/NYCT  
 New York State Department of Transportation  
 New York City Department of Transportation  
 New York Metropolitan Transportation Council  
 North Jersey Transportation Planning Authority  
 Office of the Deputy Mayor of Economic Development and Planning  
 New York City Department of City Planning  
 New York City Economic Development Corporation

## **VI. DELIVERABLES**

The Consultant shall provide the following submissions in conjunction with performance of the tasks identified above:

### **Phase I.** (Includes Tasks A, B, C, D, E, F and G above)

1. Provide pre-September 11<sup>th</sup> baseline plan of the WTC Site and its immediate surroundings using models, plans, sections, elevations, land use diagrams, etc.
2. Provide a written and graphic document describing the all-encompassing development program for the WTC Site and its surrounding area.
3. Provide written documentation of transportation improvements for Downtown Manhattan, including budget cost estimates.

### **Phase II.** (Includes Tasks H, I, J, K and L)

1. Produce up to six (6) urban design options for the WTC Site and immediate area using architectural and computer models, plans, sections, elevations, land use diagrams, area calculations, cost estimates, etc.
2. Further development of up to three (3) of the urban design options for development of the WTC Site and immediate area, with appropriate presentation material.
3. Provide written a report outlining the pros and cons of each option with budget cost estimates for each.

### **Phase III.**

1. Produce a site model of the proposed WTC Site plan option deemed most feasible by the Port Authority and the LMDC.
2. Prepare written documentation of the urban design framework and development guidelines for the WTC Site.
3. Prepare a written summary of the proposed transportation improvement projects for Downtown Manhattan.

### **Computer Program(s) required for graphic material:**

- AutoCAD 2000, 3D Studio Max
- Photoshop. Adobe Illustrator,
- Formats compatible with use in Microsoft Power Point.

### **VII.SCHEDULE OF SERVICES**

Tasks shall be performed in accordance with the following schedule.

Phase I: completed by July 1, 2002

Phase II: completed by September 1, 2002

Phase III: completed by December 1, 2002

P.A. Agreement #4\*\*-\*\*-\*\*\*  
DATE

**PORT AUTHORITY OF NY & NJ  
STANDARD AGREEMENT - SAIV**

FIRM  
STREET  
CITY, STATE ZIP

Attention: CONTACT

**SUBJECT: EXPERT PROFESSIONAL CONSULTANT SERVICES RELATED TO THE INITIAL PHASE OF AN URBAN PLANNING STUDY OF THE DOWNTOWN MANHATTAN AREA WITH SPECIAL EMPHASIS ON TRANSPORTATION AND DEVELOPMENT OF THE WORLD TRADE CENTER SITE AND ADJACENT AREAS**

Dear Mr./Ms. \*\*\*:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") in cooperation with the Lower Manhattan Development Corporation (LMDC) hereby offers to retain **FIRM NAME** (hereinafter referred to as "the Consultant" or "you") to provide expert professional services on an as-needed basis in connection with the performance of comprehensive urban planning and transportation studies during 2002 and 2003 as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority and LMDC do not guarantee the ordering of any services 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.

As used herein "Chief Engineer" shall mean the Chief Engineer, or the Assistant Chief Engineer of the Authority acting either personally or through their duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, I have designated Jerrold Dinkels, Engineering Program Manager, Downtown Redevelopment Program, to act as my duly authorized representative. The Project Manager for this project is Mr. Paul Pietropaolo, telephone (201) 216-2579.

2. Your services shall be performed as expeditiously as possible and at the time or times required by the Chief Engineer. Time is of the essence in the performance of all your services under this Agreement.

3. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit in writing to the Chief Engineer of the Authority for approval an

estimated cost and staffing analysis of such services to the Authority. Approval of such cost and direction from the Chief Engineer in writing to proceed shall effectuate the performance of services under this Agreement. After the point at which your expenditures for such services reach such approved estimated cost, you shall not continue to render any such services unless you are specifically authorized in writing to so continue by the Chief Engineer and you shall submit to him for approval a revised written estimated cost of such services. If no such authorization is issued, the performance of the specifically requested services under 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 an amount equal to the approved estimated cost. Preparation of the cost estimate and staffing analysis mentioned in the first sentence of this paragraph shall not be a compensable service hereunder.

4. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the combined total of each of the approved estimated costs unless you are specifically authorized in writing to so continue by the Chief Engineer. 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.

When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or Intergraph's "Microstation" software or as directed by the Engineer prior to the performance of specific services and shall be submitted to the Authority and LMDC on compact disks, 3.5" floppy diskettes, or as otherwise required.

5. The Consultant shall meet and consult with Authority and LMDC staff as requested by the Chief Engineer in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The Chief Engineer may disapprove, if in his sole opinion the said items are not in accordance with the requirements of this Agreement, sound engineering principles, or are impractical, uneconomical or unsuited in any way for the purpose for which the contemplated construction 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 Chief Engineer, but the Consultant shall 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 his responsibility under this Agreement to furnish in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes therein which are best suited for the contemplated construction, are done in accordance with sound engineering principles and are signed and sealed by a licensed Professional Engineer.

6. In order to effectuate the policy of the Authority, the designs and the concepts in any Contract Drawings and Technical Specifications and all changes therein formulated 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 designs and concepts if the construction were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief Engineer personally, in which case the requirements of said notification shall apply.

7. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, C and D below, subject to the limits on compensation and provisions set forth in paragraphs 3 and 4 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, B, and C hereunder.

A. An amount equal to **\*.\*\*** times the actual salaries paid by you to architects, planners, engineers or other professional and technical personnel but not partners, principals for time actually spent by them in the performance of services hereunder, plus an amount equal to the number of hours actually spent by partners and principals in the performance of services hereunder times the billing rate (no multiplier applied) described below but in each case excluding premium payments for overtime work or night work or for performing hazardous duty. Attached hereto is a schedule of actual salaries and titles of architects, engineers, designers, drafters or other permanent professional and technical personnel employed by you, as well as rates customarily billed for partners and principals on projects such as this. Said schedule shall be the basis for determining compensation, subject to audit and shall be updated by you in writing as required until your services under this Agreement are completed. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Chief Engineer has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase. When requesting salary adjustments for one or more of its personnel, the Consultant shall submit his/her name, title, current direct hourly rate, proposed new direct hourly rate, resulting percentage increase, effective date and reason for the requested change. The Authority reserves the right of approval of all personnel, amounts and salaries of said personnel performing services under this Agreement. For adjustments submitted after the effective date of this Agreement approval will not be withheld if the Consultant demonstrates that increases in salary, or partner's or principal's rate or amount are in accordance with the program of periodic merit and cost of living increases normally administered by it. For the purposes of this agreement, the multiplier set forth in the first line of this sub-paragraph shall be fixed and not subject to increase for the performance of all contemplated services hereunder.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. An amount equal to the premium payments for overtime work or night work or for performing hazardous duty, actually paid to partners, principals, architects, engineers, designers, drafters, or other professional and technical employees for time actually spent by them in the performance of services hereunder when such overtime or other premium payments have been demonstrated to be in accordance with the Consultant's normal business practice and have been authorized in advance by the Chief Engineer in writing. The Project Manager for the Authority shall have the right to authorize and approve premium payments up to a total amount of \$1,000 per occasion. Payments above said total amount shall be subject to the prior written authorization of the Chief Engineer. Such premium payments to supervisory employees, who do not receive such payments in the Consultant's normal business practice shall not be given under this Agreement.

C. An amount equal to the amounts actually paid to subconsultants hereunder who have been retained after the written approval by the Chief Engineer of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

D. An amount equal to the out-of-pocket expenses, approved in advance by the Chief Engineer, 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 mailing and delivery charges for submittal of drawings, specifications and reports; long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

Notwithstanding the above the Authority will pay an amount approved in advance by the Chief Engineer and computed as follows for the reproduction of submittal drawings, specifications and reports:

- 1) 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
- 2) 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.

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 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, Telex

and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

You shall obtain the Chief Engineer'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.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other 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 multiplier referred to in subparagraph A above.

8. 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 and LMDC shall have the right to audit all such records.

The Authority and LMDC 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 one year after completion of services to be performed under this Agreement.

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

10. 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 without cause upon three (3) days notice to you. 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 hereinbefore set forth. 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, but if termination is without fault on your part, the Authority shall 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 Chief Engineer through the date of termination, minus all prior payments to you.

11. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority and LMDC or the services performed in connection with this Agreement, unless you first obtain the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

12. Under no circumstances shall you or your subconsultants communicate in any way with any 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 the Chief Engineer, 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 Chief Engineer.

13. Any services performed for the benefit of the Authority and LMDC at any time by you or on your behalf, even though in addition to those described herein, even if expressly and duly authorized by the Authority or LMDC, 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.

14. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or LMDC or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority or LMDC from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority or LMDC 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 or LMDC.

15. Mylars of the contract drawings, originals of technical specifications, 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 LMDC, and the Authority and LMDC shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant hereby warrants and represents that the Authority and LMDC 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 presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Authority and LMDC the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent be



owned by the Consultant or one of his employees, or his subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not your Proposal is accepted by the Authority and LMDC, 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 of which 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 and LMDC, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority and LMDC without liability of any kind, except as may arise under valid existing or pending patents, if any.

16. 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, his officers, agents, employees, or subconsultants, the Authority and LMDC shall have, without cost or expense to them an irrevocable, non-exclusive royalty-free license to make, have made, and use, either 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 or LMDC. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority and LMDC, but it is expressly understood and agreed that, as between the Authority and LMDC and the Consultant the license herein provided for shall nevertheless arise for the benefit of the Authority and LMDC 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 and LMDC to their successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority and LMDC but such license shall not be otherwise transferable.

17. You shall promptly and fully inform the Chief Engineer in writing of any patents or patent 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.

18. This Agreement being 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 and LMDC shall be void and of no effect as to the Authority and LMDC, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Chief Engineer. 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 and LMDC to such subconsultant or give the subconsultant any rights against the Authority and LMDC.

19. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of

which is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women: and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

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

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;

B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification

The Chief Engineer has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent to qualified and certified WBEs on consultant projects.

To be "certified" a firm must be certified by the Authority's Office of Business and Job Opportunity.

In order to facilitate the meeting of this goal, the Consultant shall use every good faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms, which is available to you at your request. The Consultant will be required to submit to the Authority's Office of Business and Job Opportunity for certification the names of MBE/WBE firms he proposes to use who are not on the list of certified MBE/WBE firms.

20. The Consultant assumes the following distinct and several risks, whether they arise from the acts or omissions (whether negligent or not) of the Consultant or its subconsultants, of the Authority or LMDC or of third persons or from any other cause, and whether such risks are within or beyond the control of the Consultant excepting only risks which arise solely from affirmative acts done by the Authority or LMDC subsequent to the execution of this Agreement which actual and willful intent to cause the loss, damage and injuries described in subparagraphs A through D below:

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

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

C. The risk of claims, arising out of or alleged to arise out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants or the Authority or LMDC, 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 or the Authority or LMDC on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of services hereunder (whether or not actually caused by or resulting from the performance of the services hereunder) including claims against the Consultant or its subconsultants or the Authority or LMDC for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority and LMDC against all claims described in subparagraphs A through D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way 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 there 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 his 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 he 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 he would assume or the claims for which he would be responsible in the absence of such enumerations.

This paragraph shall not limit the responsibilities the Consultant would have in the absence of this paragraph. 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".

## 21. COMMERCIAL GENERAL LIABILITY INSURANCE AND WORKER'S COMPENSATION INSURANCE

### A. Commercial General Liability Insurance:

1) The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor coverages, and Comprehensive Automobile Liability Insurance (covering any, owned, non-owned, and hired autos), with contractual liability covering the obligations assumed by the Consultant under this agreement, in limits of not less than \$2,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. In addition, the policy shall include the Authority and LMDC as additional insureds and shall contain a provision that the policy may not be canceled, terminated or modified without thirty days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the standard, basic unamended and unendorsed Commercial General Liability Policy.

2) Further, Commercial General Liability Policy shall be specifically endorsed to prohibit the insurance carrier from raising any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority without obtaining express advance written permission from the General Counsel of the Authority

3) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- (a) Endorsement to eliminate any exclusions applying to the underground property, explosion and collapse hazards.
- (b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.

### B. Workers' Compensation Insurance:

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law.

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$250,000 per occurrence.

- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$250,000 per occurrence.

C. Compliance:

1) Prior to commencement of work at the site, the Consultant shall deliver a certificate from his insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth to the Risk Financing Division of the Authority at the following address:

Port Authority of NY & NJ  
Supervisor, Contract Insurance  
Risk Management  
241 Erie Street – Room 301  
Jersey City, NJ 07310

2) The Consultant shall also forward a copy of the aforementioned certificate to the Project Manager, at the following address:

Paul Pietropaolo

The Port Authority of NY & NJ  
241 Erie Street – Room 230  
Jersey City, NJ 07310

3) Upon request of the Manager, Risk Management, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

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

By signing this Agreement, the Consultant and each person signing on behalf of the 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 agreement for failure to meet standards related to the integrity of the Consultant;
- C. 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;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. 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 \$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;

F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and

G. 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.

## 23. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO 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:

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 April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Consultant's Questions"), 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; and

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.

The foregoing certifications 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 foregoing certifications, 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 foregoing certifications, 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.

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority and LMDC in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications 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 LMDC and that the Authority and LMDC will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority and LMDC 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 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 and LMDC 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 and LMDC agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority and LMDC will evaluate the reasons therefor provided by the Consultant.

#### 24. 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

The Consultant is 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 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 New Jersey to submit a proposal on a Port Authority agreement and then to establish that it is eligible to be awarded an agreement on which it has submitted a proposal 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.

## 25. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

During the term of this Agreement, the Consultant shall not offer, give or agree to give anything of value either to a Port Authority or LMDC employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority or LMDC, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority or LMDC of duties involving transactions with the Consultant on behalf of the Port Authority or LMDC, whether or not such duties are related to this Agreement or any other Port Authority or LMDC 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 Port Authority or LMDC agreement), etc. which might tend to obligate the Port Authority or LMDC 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 Port Authority or LMDC agreement. Where used herein, the term "Port Authority or LMDC" shall be deemed to include all subsidiaries of the Port Authority or LMDC.

The Consultant shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

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 April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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

## 26. CONFLICT OF INTEREST

During the term of this agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority or LMDC) to which it is contemplated the Port Authority or LMDC may become a party, or participate in any way in the review or resolution of a claim in connection with such a agreement if the Consultant has a substantial financial interest in the consultant or potential contractor of the Port Authority or LMDC or if the Consultant has an arrangement for future



employment or for any other business relationship with said contractor or potential contractor, nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a consultant or potential consultant of the Authority or LMDC, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Director, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director 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 Director to be no longer appropriate because of such preclusion, then the Director 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 the Authority or LMDC may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements which result, directly or indirectly, from the services provided by the Consultant hereunder.

## 27. DEFINITIONS

As used in sections 23 to 26 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 and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting 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.

28. The entire agreement between the parties is contained herein 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 duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

29. No Commissioner, officer, agent or employee of the Authority or LMDC 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.

30. 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.

Very truly yours,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

LOWER MANAHATTAN  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Francis J. Lombardi, P.E.  
Chief Engineer

By: \_\_\_\_\_  
Alex Garvin  
Vice President, Planning, Design & Development

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

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

ACCEPTED:

Company

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

Title: \_\_\_\_\_

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

## **INSTRUCTIONS**

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "30 to "31 and insert a new Paragraph "30 as follows:

30. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York.

## **ATTACHMENT B**

### **AGREEMENT ON TERMS OF DISCUSSION**

The Port Authority's receipt or discussion of any information (including information contained in any proposal, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) is not to impose any obligation whatsoever on the Port Authority or to 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 letter, either orally or in writing, is not given in confidence and 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 any information received from us, or made at any other time in any fashion, shall be void and of no effect. This letter is not intended, however, to grant to the Port Authority rights to use any matter which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Port Authority.